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Attorneys for Respondent
Brick Township Board of Education
Our File No.: BRICK-131

	:	
	:	STATE OF NEW JERSEY
	:	DEPARTMENT OF EDUCATION
Petitioners,	:	
	:	OFFICE OF SPECIAL EDUCATION
	:	PROGRAMS
v.	:	
	:	OAL DOCKET NO.: 00203-2019
BRICK TOWNSHIP BOARD OF	:	AGENCY REF. NO.: 2019- 29170
EDUCATION,	:	
	:	
Respondents.	:	SETTLEMENT AGREEMENT AND
	:	RELEASE
	:	

WHEREAS, _____ who was born on _____ is currently _____ years of age, just finished her fifth (5th) grade year at Lanes Mill Elementary School, is scheduled to begin attending Veterans Memorial Middle School in September 2019, and is eligible for the provision of special education and related services under 20 U.S.C. §1415 et seq., and N.J.A.C. 6A:14-1.1 et seq.; and

WHEREAS, the Brick Township Board of Education (hereinafter "Board") is the local educational agency ("LEA") with responsibility for providing a free and appropriate public education ("FAPE") in the least restrictive environment ("LRE") to S.M. during the 2017-2018 and 2018-2019 school years; and

WHEREAS, a dispute arose between the parties with regard to _____ special education services during the 2018-2019 school year; and

WHEREAS, _____ was first classified as eligible for special education and related services on April 16, 2018 including the provision of an extended school year program ("ESY") for the Summer 2018 term; and

WHEREAS, on or about November 20, 2018, individualized education program (“IEP”) was amended to include Occupational Therapy and Counseling. ESY for Summer of 2019 was not discussed by the Board at the November 20, 2018 meeting. The Board preferred to discuss the possibility of ESY services at the student’s annual review IEP meeting in the Spring of 2019; and

WHEREAS, on or about December 5, 2018, parents, through their attorney, Hillary D. Freeman, Esq., filed a Petition for Mediation seeking placement in ESY for the Summer 2019 term; and

WHEREAS, on or about December 18, 2018, the matter was converted by the Office of Special Education Programing and Policy to a request for a due process hearing; and

WHEREAS, on or about January 2, 2019, the parties agreed to immediate transmittal of this matter to the New Jersey Office of Administrative Law (“NJ OAL”); and

WHEREAS, on or about January 17, 2019, the parties appeared for a Settlement Conference at the NJ OAL before the Honorable Joseph F. Martone, ALJ, t/a; and

WHEREAS, despite the parties’ good faith negotiations they were unable to reach a settlement at the January 17, 2019 Settlement Conference; and

WHEREAS, whereas the matter was then transferred to the Honorable Sarah G. Crowley, ALJ;

WHEREAS, on or about January 25, 2019, a conference call was held between the counsel for both parties and ALJ Crowley; and

WHEREAS, due process hearing dates were scheduled for June 19, 21, 25, and 26 2019; and

WHEREAS, the June 19, 2019 scheduled due process hearing date was converted to a settlement conference, and the parties appeared before ALJ Crowley on that date; and

WHEREAS, despite the parties’ continued good faith negotiations, a resolution was not achieved; and

WHEREAS, the parties adjourned the June 21, 2019 scheduled hearing date; and

WHEREAS, subsequent to June 21, 2019, the parties continued to engage in settlement discussions; and

WHEREAS, on June 25, 2019, the parties appeared before ALJ Crowley and placed a settlement on the record; and

NOW THEREFORE, as a result of the good faith and amicable negotiations between the parties, the following terms and conditions were agreed upon to fully resolve this litigation:

1. The Board agrees that shall attend ESY for the Summer 2019 term by way of stay-put wherein she was deemed eligible for ESY for the Summer 2018 term in her April 16, 2018 IEP.
2. The Board agrees that during the 2019-2020 schooling year will be evaluated by an Independent Child Study Team, at the Board's expense, to determine whether the child will be eligible for ESY during the Summer 2020 term. The parameters of the evaluation shall be mutually developed by the parties, and the evaluation shall take place after the Christmas/New Year's break in January 2020. Upon completion of the evaluation, both parties agree to be fully bound by all recommendations made by the Independent Child Study Team.
3. The Board shall provide counseling services two (2) times per week during the 2019-2020 school year. Each session will be twenty (20) minutes in duration. One (1) of the weekly counseling sessions shall be provided on an individual basis (1:1), and the other weekly session shall be provided in a small group setting.
4. During the 2019-2020 school year, shall receive pull-out replacement instruction for Language Arts Literacy. For all other core academic classes during the 2019-2020 school year, . shall receive in-class resource instruction.
5. Beginning in September 2019, will receive the related service of speech therapy one time per week for twenty (20) minutes in a small group setting.
6. On or before August 1, 2019, current IEP will be amended to reflect these changes. The parties agreed to waive attendance at an IEP meeting regarding this. Same amended IEP will be provided to Petitioners and will be ready for implementation by the Board prior to the commencement of 2019-2020 schooling year.
7. The Board shall contribute \$3,500.00 towards Petitioners' attorney's fees. The Board shall not be responsible for any additional attorneys' fees for any reason whatsoever over and above the \$3,500.00 figure.
8. Any and all other costs and expenses, of whatsoever nature, incurred by the parents regarding the filing of the due process petition against the District or any private educational expenses associated with this matter not specifically addressed herein, are

and shall remain the sole responsibility of the Parents. The foregoing shall constitute the full and complete settlement regarding any and all claims of whatever nature the Petitioners and/or student have or may have against the Board through the date on which the Board approves the Settlement Agreement reached by the parties in this matter.

9. The District has no obligation to provide compensatory educational or related services to _____ for the 2017-2018 or 2018-2019 school years or for any and all prior school years.
10. This Settlement Agreement is made without any admissions of liability or responsibility or wrongdoing by any party hereto and shall not be construed as an admission by the Respondent that it did not offer _____ a FAPE in the LRE for the 2017-2018 and 2018-2019 school years or for any and all prior school years.
11. As a material part of this Agreement, the Parents, individually, and on behalf of _____ specifically release and waive all rights and claims of whatsoever nature relating to _____ education, including, but not limited to any claim for reimbursement for educational services unilaterally provided to date, reimbursement of any and all incurred attorneys' fees and costs except as specifically identified in Paragraph 7 above, their procedural rights, and the receipt of educational services for _____ from the Brick Township School District, for the effective dates of this Agreement. Nothing herein shall preclude the Parents from pursuing any HIB claims through the date of this Agreement under any State or Federal law.
12. This Settlement Agreement shall be governed by the Laws of the State of New Jersey.
13. This Settlement Agreement represents the entire Agreement between the parties and will not be modified in whole or in part except by a mutual subsequent written and signed Agreement.
14. It is acknowledged that this Settlement Agreement has been entered into freely, willingly and voluntarily, without duress or coercion, and with the opportunity to consult with counsel of each party's choosing and option. The Petitioners did consult with Hillary D. Freeman, Esq., and Respondent did consult with Paul C. Kalac, Esq., of Weiner Law Group, LLP.
15. The parties acknowledge that they were represented by competent counsel, and the parties acknowledge that they are satisfied with the representation of their counsel. It

is further acknowledged that they understood the contents of this Settlement Agreement, and that each party hereto will be responsible for bearing any and all costs related to this matter and for their own attorneys' fees and costs, and any other costs pursuant to 20 U.S.C.A. §1415 or any other Federal or State Statutes other than the \$3,500.00 figure for fees and costs referenced in Paragraph 7 above. It is further agreed that neither party is considered a "prevailing party", as that term is defined under prevailing special education law, for any purposes.

16. This Settlement Agreement is subject to approval by the Brick Township Board of Education. Upon full execution and approval by the Board, the herein Settlement Agreement shall be submitted to the New Jersey Office of Administrative Law's Trenton vicinage for approval and incorporation into a Final Decision and Order by ALJ Crowley. This Settlement Agreement shall be recommended for approval at the July 11, 2019 Board meeting.
17. Petitioners waive all requests for compensatory education and related services for the 2017-2018 and 2018-2019 school year that have been made to date, and hereby withdraw their December 5, 2018 Due Process Petition with prejudice or for any and all prior school years.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement or caused their representatives to sign this Settlement Agreement on the dates set forth below.

PETITIONERS

Date: _____

Date: _____

BRICK TOWNSHIP BOARD OF EDUCATION

Date: _____

Stephanie Wohlrab, President
Brick Township Board of Education

Date: _____

James W. Edwards, Jr., CPA, Business
Administrator/Board Secretary
Brick Township Board of Education