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Our File No. 77293 ELH

2013 05 30 12:51
OFFICE OF ADMINISTRATIVE LAW

M.K. O/B/O J.D.

Petitioner,

v.

SEA GIRT BOARD OF EDUCATION

Respondents.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
AGENCY REF NO.: 2013-19936

**SETTLEMENT AGREEMENT AND
GENERAL RELEASE**

THIS AGREEMENT made this ____ day of _____, 2013 by and between the Sea Girt Board of Education (hereinafter referred to as the "Board") with offices located at 451 Bell Place, Sea Girt, New Jersey 08750, and [REDACTED] [REDACTED] (hereinafter "M.K." and/or "Petitioner"), parents of J.D., whose address is [REDACTED] New Jersey [REDACTED] and

WHEREAS, J.D. is a student residing within the Sea Girt School District (the "District"), who is eligible to receive special education and related services under the classification of [REDACTED]; and

WHEREAS, M.K. removed and unilaterally placed J.D. [REDACTED] [REDACTED] for the 2012-2013 school year; and

WHEREAS, M.K. filed a due process petition dated February 19, 2013, with the New Jersey Office of Special Education Programs (hereinafter "the petition"); and

WHEREAS, the petition was assigned agency reference number 2012-19936; and

WHEREAS, the petition was subsequently transmitted to the New Jersey Office of Administrative Law; and

WHEREAS, a hearing regarding the petition was scheduled before Hon. John Schuster, A.L.J. on April 5, 2013; and

WHEREAS the parties, having a desire to settle the petition amicably, hereby agree as follows:

1. The parties agree that J.D. will be privately educated at M.K.'s expense, subject to the contributions outlined at paragraph 2 below.
2. The parties agree that, provided J.D. remains a resident of Sea Girt, the District and/or its insurance carrier will make the following financial contributions paid directly to M.K. to be applied towards J.D.'s education: one payment in the amount of seventeen thousand dollars (\$17,000), paid within thirty (30) days of the effective date of this agreement; and a second payment in the amount of thirty-seven thousand dollars (\$37,000), paid on or before July 31, 2013, which represents total contribution on behalf of the District for the 2012-2013 school year.
3. In consideration of the guaranteed payments outlined above, M.K. agrees that the payments itemized in this paragraph shall be the maximum financial responsibility of the District to M.K. on behalf of J.D. from the beginning of time through September 1, 2013.
4. M.K. agrees to use the monies paid by the District and/or its insurance carrier solely for the [REDACTED] education of J.D. for the 2012-2013 school year.

5. The total of the two payments provided in paragraph 2 above by the District and/or its insurance carrier on behalf of the District shall constitute the totality of the District's responsibility, and there will be no additional obligation for transportation, student costs, related services or any other expenses related to J.D.'s education at any time during the 2012-2013 school year. Any costs associated with the education of J.D. that exceed the amount of the financial contribution from and/or on behalf of the District, shall be borne by M.K.

6. In addition to ensuring J.D.'s attendance and paying any and all tuition costs, M.K. shall be responsible for providing all necessary related services and incurring all other expenses related to J.D.'s education and related services from the execution of this Agreement through September 1, 2013, subject to reimbursement as outlined in paragraph 2 above. It is expressly understood that the cost of all educational and related services for J.D., other than the payments outlined in paragraph 2 on behalf of the District, shall be borne entirely by M.K. and shall not be reimbursed by the Board.

7. It is understood and agreed that since none of J.D.'s providers of educational or related services are to be employed by the Board, the Board shall have no responsibility for the payment of wages, benefits or other compensation or reimbursement of expenses to any provider of education-related services to J.D. Furthermore, the Board shall have no responsibility for federal, state and local withholding tax requirements, if any, nor any requirement under worker's compensation, disability insurance, social security and unemployment insurance laws, if necessary.

8. It is understood that by meeting its responsibilities pursuant to this Agreement, the Board will have provided J.D. with a free appropriate public education through September 1, 2013.
9. With respect to J.D.'s educational program for the 2013-2014 school year, within 60 days of an Administrative Law Judge's approval of this agreement as a Final Decision, the District agrees to convene a re-evaluation planning meeting, or alternatively to agree upon re-assessments of J.D. without need for a meeting, to conduct the agreed-upon evaluations and thereafter to reconvene for purposes of revisiting J.D.'s classification and offering an Individualized Education Plan for the 2013-2014 school year at a combined eligibility determination and IEP meeting.
10. If during the school years covered by this Agreement J.D. ceases to reside in Sea Girt, M.K. agrees to reimburse Sea Girt the difference between the lump sum payment and the total of documented payments on account of J.D.'s education for the period of time during which J.D. resided in Sea Girt. M.K. agrees to pay such funds directly to the Board within thirty (30) days of the cessation of J.D.'s residency in Sea Girt. If M.K. fails to do so, then Sea Girt shall have the right to commence legal action for a monetary judgment in New Jersey Superior Court or any other court of competent jurisdiction.
11. The parties agree to refrain from filing any proceeding, action or complaint regarding the educational program provided to J.D. from the beginning of time through September 1, 2013. It is expressly understood and agreed, however, that the parties reserve

the right to bring a claim before any tribunal of competent jurisdiction to enforce their rights under this Agreement.

12. The terms of this Agreement represent the compromise of disputed claims between the parties. It shall not be treated as an admission on the part of the Board that it has not offered J.D. an appropriate educational program and placement from the beginning of time through September 1, 2013. It shall not be treated as an admission that the Petitioner has engaged in any wrongdoing or that either party has failed to act in accordance with the law.
13. M.K. releases and forever discharges the Board, its officers, employees, administrators, agents and servants from any and all past, present or future claims which she or J.D. have or might have against them, because of all damages, liabilities, losses or injuries to person or property, or both, whether developed or undeveloped, including attorneys' fees, resulting from the educational and related services provided to J.D. from the beginning of time through September 1, 2013.
14. M.K. also agrees to indemnify and hold forever harmless the Board, its officers, employees, administrators, agents and servants from and against any and all claims and actions instituted and/or asserted against the Board by anyone for the purpose of enforcing a claim for damages resulting or to result from the educational and related services provided to J.D. from the beginning of time through September 1, 2013.
15. Petitioner hereby waives any and all rights to transportation provided by the Board for J.D. through September 1, 2013.

16. It is expressly acknowledged that placement at [REDACTED] or any [REDACTED] placement does not represent any placement by the Board and that neither [REDACTED] nor any [REDACTED] placement shall be considered "stay put" for any purposes.
17. It is expressly acknowledged and agreed that Sea Girt schools, as the last agreed-upon placement, shall be considered the "stay put" placement for J.D. under state and federal law.
18. While J.D. is in attendance at [REDACTED] or any out-of-district placement, he will remain disenrolled from the Sea Girt Board of Education and no IEP will be created for him by the Board. Petitioner hereby releases the Board from any obligation to do so or to provide any other services to which the parents or J.D. might otherwise be entitled under applicable State or Federal law.
19. It is expressly understood that the Board's payment obligation under this agreement constitutes the Board's entire financial obligation for J.D.'s educational program during the 2012-2013 school year. Further, it is understood that by meeting its responsibilities pursuant to this Agreement, the Board has provided J.D. with a free appropriate public education for the 2012-2013 school year. This Agreement supersedes the last IEP developed for J.D. by the Child Study Team to the extent that there are differences between the two.
20. It is understood and agreed that M.K. shall be responsible for any other costs beyond that which is set forth herein and associated with J.D.'s placement at [REDACTED] [REDACTED] or any other school or facility, including, but not limited to tuition, related services,

medical services, such other supportive services as Petitioner in her sole discretion may choose to provide to J.D., and incidental and miscellaneous expenses, such as books, notebooks, pens, computers, supplies, etc. for the 2012-2013 school year. Furthermore, to the extent that the M.K. may be/become dissatisfied with the performance of any provider of educational or related services, it is understood that the Board has no responsibility for any deficiencies in such performance or for any failure to provide services.

21. It is understood and agreed that the Board shall not be financially responsible for an alternative placement for J.D. should he discontinue attending [REDACTED] unless M.K. and the Sea Girt Board of Education Child Study Team mutually agree that a different placement is appropriate. The parties reserve all legal rights in such circumstances.
22. Petitioner agrees to sign authorizations, however often as the District may determine necessary, permitting the District to obtain all documentation relating to J.D. while [REDACTED] is enrolled at [REDACTED] or any [REDACTED] placement, including but not limited to progress reports, counseling notes, report cards, anecdotal records and disciplinary records. However, it is understood that should there be any cost associated with obtaining such records, such cost will not be the responsibility of Petitioner and will be borne by the District.
23. This Agreement shall be governed by the laws of the State of New Jersey and constitutes a legal release of all claims that were or could have been raised in the due process petition filed by Petitioner and as set forth herein through September 1, 2013.

24. Beyond the payments outlined above, each party shall be responsible for their own attorney's fees and expert costs pursuant to 20 U.S.C. 1415 (i)(3)(B).
25. The parties each hereby verify, affirm and represent that they have each had the opportunity to discuss the terms of this agreement with counsel, that they understand its contents and are entering into this agreement voluntarily and with full understanding of its meaning.
26. The parties acknowledge that they have been represented by and have had the opportunity to consult with legal counsel throughout the negotiations of this Agreement, that they have reviewed this Agreement with their counsel, and that they fully understand its requirements and limitations. The parties further expressly state that they are fully satisfied with the representation provided by their legal counsel.
27. This Agreement shall be subject to ratification by the Board and is without prejudice to either party if the terms are not ratified. Petitioner is not bound by this Agreement until it has been ratified by the Board. Upon ratification of this Agreement, the Board shall cause a copy of the relevant resolution to be forwarded to Petitioner.
28. The parties agree that they will not disclose the terms, conditions, amounts or other details of this Agreement except as may be required by applicable law or court order. Petitioner may disclose the existence and terms of this Agreement to her attorneys, accountants (or other tax preparation consultant) and immediate

family members, with the understanding that any such disclosure shall not be deemed a breach hereof by Petitioner.

29. This Agreement represents the entire Agreement between the parties and constitutes a full and final settlement of all claims that were or could have been raised by the parents against the Board with respect to J.D.'s educational programming from the beginning of time through September 1, 2013. This Agreement will not be modified in whole or in part except by a mutual subsequent and written signed Agreement.

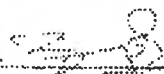
M.K. FURTHER CERTIFIES, ACKNOWLEDGES, AND REPRESENTS THAT SHE IS ABLE TO READ AND UNDERSTAND ENGLISH, THAT EACH UNDERSTANDS ALL OF THE PROVISIONS HEREIN, WITH THE ADVICE AND ASSISTANCE OF HER ATTORNEY, AND THAT SHE MAKES THIS RELEASE KNOWINGLY AND VOLUNTARILY. M.K. ACKNOWLEDGES THAT SHE HAS NO PHYSICAL OR MENTAL PROBLEM, CONDITION, OR IMPAIRMENT OF ANY KIND WHICH HAS INTERFERED WITH HER ABILITY TO READ AND UNDERSTAND THE MEANING OF THIS RELEASE OR ITS TERMS. M.K. FURTHER REPRESENTS THAT IN SIGNING THIS RELEASE, SHE DOES NOT RELY ON ANY PROMISES OR REPRESENTATIONS MADE BY ANYONE OTHER THAN THOSE STATED SPECIFICALLY HEREIN.


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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year aforesaid.

WITNESS:

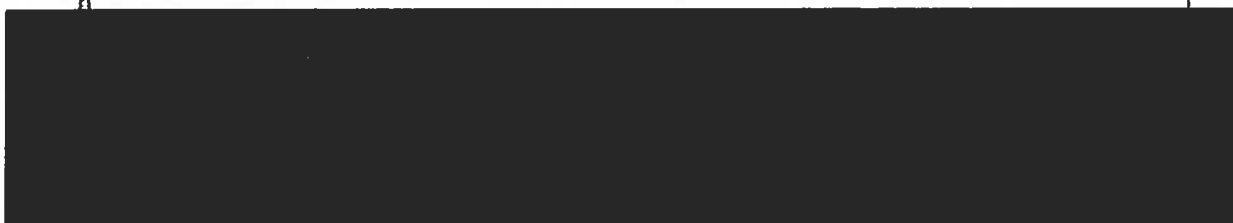
SEA GIRT BOARD OF EDUCATION


BRIAN F. SAVAGE
Business Administrator/
Board Secretary


COLLEEN PRIOR
Board President

DATED: 5-23-13

DATED: 5-23-13



DATED: 4/23/13

DATED: 4/23/13

WITNESS: