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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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S.B. and E.B. o/b/o J.B.,	:	
	:	
	::	CIVIL ACTION
	:	
Plaintiffs,	:	Docket No.
	:	
v.	:	
	:	
SUMMIT CITY	:	
BOARD OF EDUCATION,	:	
	:	<b>COMPLAINT</b>
Defendant.	:	
	:	
	:	

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Plaintiffs S.B. and E.B., parents of J.B., a minor, residing at \_\_\_\_\_ :  
\_\_\_\_\_, Summit, New Jersey 07901, by way of Complaint against Defendant  
SUMMIT CITY BOARD OF EDUCATION (“Defendant”), with business offices at  
14 Beekman Terrace, Summit, New Jersey 07901, say:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 because Plaintiffs' claims arise under the Constitution and laws of the United States, in particular, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq.; 20 U.S.C. § 1415(i)(3), which provides jurisdiction over claims for attorneys' fees and costs in matters arising under the IDEA; 42 U.S.C. §1983; and 28 U.S.C. §§ 2201 and 2202, which authorize this Court to grant declaratory and injunctive relief.
2. Venue in this district is appropriate under 28 U.S.C. §1391(b) because all of the Defendants reside in the district and all of the events or omissions giving rise to Plaintiffs' claims occurred within the district.

**PARTIES**

3. J.B. is a 13 year old boy (date of birth: May 18, 2002) who at all times relevant has been domiciled within the geographical area served by the Defendant school district. At all times relevant, J.B. has been determined by the Defendant to be eligible for special education and related services pursuant to the IDEA.
4. Plaintiffs S.B. and E.B. are J.B.'s biological parents.

5. Defendant Summit City Board of Education is the legally constituted body corporate responsible for the conduct and supervision of schools in the geographical area in which Plaintiffs reside pursuant to N.J.S.A. 18A:10-1 et seq. and is a local education agency obligated to observe the requirements of the IDEA pursuant to 20 U.S.C. §1401(15).

### COUNT I

6. Plaintiffs repeat each and every paragraph above as if set forth at length herein.
7. J.B. is diagnosed with [REDACTED] and engages in severe maladaptive behaviors.
8. J.B. was placed at a school known as [REDACTED], an out-of-district special education placement, by way of a settlement agreement between the Plaintiffs and the Defendant executed in 2010.
9. The settlement agreement required the Plaintiffs to provide sixty (60) days notice of any request to change J.B.'s placement.
10. By letter dated November 3, 2014, S.B. and E.B. informed the Defendant of their desire to have J.B. removed from [REDACTED] in favor of an in-district placement, specifically in the Middle School ABA program, located at Defendant's LCJ Middle School. Defendant agreed with this request.

11. On December 12, 2014, the parties met to develop a transition plan and interim thirty day IEP. At this meeting the Defendant agreed to provide four hours per month of behavioral support with an additional six hours per month to help J.B. with the transition to LCJ Middle School.
12. Additionally, at the same meeting, the Defendant requested and S.B. and E.B. agreed that J.B. should be evaluated to determine his eligibility for related services, specifically speech, physical and occupational therapies. The Defendant took the position that not only were these evaluations necessary to determine J.B.'s eligibility but absent the evaluations it was not possible to create accurate goals and objectives for his related services. Therefore, the Defendant refused to include the related services in the interim IEP.
13. On February 24, 2015 another IEP meeting was held to review J.B.'s evaluations and create an IEP for the 2015-2016 school year. At this meeting it was determined J.B. would receive speech and occupational therapy.
14. The IEP proposed at the February 24 meeting, decreased J.B.'s behavioral services from ten hours per month to four. Plaintiffs voiced concern that the addition of J.B.'s related services was yet another period of transition. Therefore, Plaintiffs requested the Defendant continue to provide ten hours of behavioral supports per month during the transition period.

15. On March 25, 2015 the Plaintiffs received the written IEP purportedly based on the February 24, 2015 meeting. This IEP included four hours a month of behavioral supports with an additional four hours to be provided only from March 10, 2015 to April 15, 2015. The additional four hours of behavioral supports were to be provided to J.B. during the period when he began to receive his related services.
16. Due to the late receipt of the IEP and the timing of the District's 2015 Spring Break Recess, J.B. would have only received the behavioral supports for approximately two days. Plaintiffs requested that the time frame be adjusted, however the Defendants refused.
17. On April 10, 2015, Plaintiffs initiated legal proceedings with the New Jersey Department of Education alleging claims arising under, inter alia, the IDEA, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq.
18. Plaintiffs' petition invoked the "stay put" provision under the IDEA, 20 U.S.C. § 1415(j), as well as N.J.A.C. 6A:14-2.7(u), thereby preventing Defendant from reducing the behavioral supports.
19. Defendant asserted that implementation of the "stay put" provision applied to the December transitional IEP and, therefore, refused to provide the speech and

occupational therapy agreed upon by the IEP team and included in the February IEP. As a result, the Plaintiffs were left with no other choice than to file for emergent relief so that the related services would be provided immediately.

20. The New Jersey Department of Education accepted Plaintiffs' pleadings as they were submitted, including their claims arising under the IDEA, Section 504, and the ADA.
21. After efforts to amicably resolve the matter failed, the New Jersey Department of Education transmitted the matter to the New Jersey Office of Administrative Law ("OAL").
22. The matter proceeded to a hearing on June 22, 2015.
23. On June 23, 2015, the ALJ presiding over the matter issued a decision that was fully favorable to Plaintiffs. (Attached as Exhibit A is the Judgment of the Honorable Ellen Bass dated June 23, 2015).
24. The ALJ found "(the) due process petition did not serve to stay implementation of the February 24, 2015, IEP," that "J.B. should immediately receive the therapies, interventions, and instructional services promised." The ALJ concluded "a blanket refusal to implement the new IEP under the facts presented . . . would deny FAPE to J.B."

25. The ALJ decided that the IEP provides eight hours of behavioral interventions per month for six weeks, with four hours per month thereafter. The ALJ ordered the extra four hours per month of behavioral support in order to support the transition into related services.
26. This decision was not appealed to either the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to the District Court for the District of New Jersey pursuant to 20 U.S.C.A. 1415(e)(2).
27. As a result of the aforementioned administrative litigation, Plaintiffs secured the full measure of substantive relief they sought in bringing an action in the Office of Administrative Law. As such, the Plaintiffs are “prevailing parties” with respect to this matter and are therefore entitled to reimbursement of the attorneys’ fees and costs of litigation expended in connection with the matter.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Honorable Court enter Judgment:

- A. Declaring Plaintiffs the prevailing party in their dispute with the Defendant;
- and

- B. Awarding the Plaintiffs their attorneys' fees and costs of litigation expended in connection with this matter; and
- C. Awarding such other relief as is equitable and just.

Respectfully submitted,

Dated: October 13, 2015

s/Ira M. Fingles  
Ira M. Fingles  
Attorney for Plaintiffs



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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY - NEWARK**

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S.B. and E.B. o/b/o J.B.,  Plaintiffs,  v.  SUMMIT CITY BOARD OF EDUCATION,  Defendant.	CIVIL ACTION  DOCKET NO. 2:2015-cv-07133-KSH-CLW  <b>SETTLEMENT AGREEMENT AND RELEASE</b>
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This Settlement Agreement and Release (“Agreement” or “Settlement”) is entered into by and between Summit City Board of Education (“the Board” or “Defendant”), and S.B. and E.B. o/b/o J.B. (“Plaintiffs”) (the Board and Plaintiffs collectively referred to as the “Parties”).

WHEREAS, Plaintiffs brought the within action docketed as S.B. and E.B. o/b/o J.B., Plaintiffs, v. Summit City Board of Education, Defendant, in the United States District Court for the District of New Jersey – Newark, Docket No.: 2:2015-cv-07133-KSH-CLW (“District Court Action”), under the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. 1400 et. al. (“IDEIA”), seeking payment of attorneys’ fees and costs as the alleged prevailing party in certain underlying administrative proceedings, captioned as S.B. and E.B. o/b/o J.B. v. Summit City Board of Education, OAL Docket Nos. EDS 8558-15 and 8927-15, Agency Ref. No. 2015-22614 (“Administrative Matter”); and

WHEREAS, in their Complaint in the District Court Action, Plaintiffs allege that they were the prevailing party in Administrative Matter under the IDEIA, and as such, are entitled to an award of attorneys' fees; and

WHEREAS, the Board denies Plaintiffs were the prevailing party in the Administrative Matter and denies all liability to Plaintiffs, especially given the relief ordered essentially consisted of items agreed upon as a tentative settlement prior to the issuance of the order in the Administrative Matter, but the Board wishing this matter to be resolved, along with the Board's insurance carrier also wishing this matter to be resolved; and

WHEREAS, this Settlement is being entered into by the Parties for the purposes of amicably settling this dispute and avoiding unnecessary further legal expenses by all Parties; and

WHEREAS, the Parties, following good faith negotiations, without alleging or admitting any liability, have amicably resolved the above District Court Action; and

WHEREFORE, THE PARTIES HEREBY AGREE THAT:

1. The Board will make a lump sum payment of forty-seven thousand five hundred dollars (\$47,500.00) to Plaintiffs' (the "Settlement Payment"), which monies shall be furnished by the Board's insurance carrier via check directly to payees "S [REDACTED] and E [REDACTED] B [REDACTED]" within seven (7) days after the execution of this Agreement by all Parties, and after the Board receives a signed W-9 form from Plaintiffs.

2. The Board makes no representations or warranties regarding the taxability of any portion of the Settlement Payment referenced above. Plaintiffs understand and agree that an IRS Form 1099 will be issued in connection with the Settlement Payment. Plaintiffs acknowledge that the Board is not paying or withholding taxes on the Settlement Payment set forth above. Plaintiffs agree to assume full liability for any applicable state, federal and/or local taxes that may be required by law to be paid with respect to any portion of the Settlement Agreement. Given the

Board is not withholding any taxes from the Settlement Payment, in the event the Internal Revenue Service, the New Jersey Division of Revenue, and/or any taxing authority assesses the Board with any taxes or penalties for failure withhold any taxes from the Settlement Payment, Plaintiffs agree to be fully responsible for any such taxes or penalties arising from the failure to withhold taxes from the Settlement Payment.

3. In consideration of the Board's agreement to pay Plaintiffs the Settlement Payment, the Plaintiffs hereby agree the District Court Action is dismissed with prejudice, the District Court Action shall remain closed, and the Parties forever waive and release all claims filed in the District Court Action, and all claims that could have been or should have been brought in the District Court Action arising from or related to the facts pled in the District Court Action, including but not limited to, all claims for attorneys' fees arising from the Administrative Matter and/or District Court Action. Additionally, the Plaintiffs forever waive and release all known and unknown legal and/or equitable claims they may have against the Board under any state and/or federal law relative to the Administrative Matter and/or District Court Action arising from or related to the facts pled in the matter which is the subject of this Agreement.

4. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and subsequent written or oral agreements, understandings, and negotiations.

5. This Agreement shall be interpreted, enforced, and governed under the laws of the State of New Jersey. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

6. This Agreement may only be amended in writing by way of a document signed by all Parties.

7. The Parties agree and acknowledge that this Agreement is subject to approval by the Board during its next regularly scheduled meeting following the execution of this Agreement.

8. The terms of this Agreement shall remain confidential to the extent allowed by law and shall not be disseminated, discussed with, or disclosed to any person(s), entity, or organization who is not a party in the above-captioned matter, except as needed to enforce same or as authorized by law.

9. The Parents represent, verify and affirm to the Board that they have the authority and ability to enter into this Agreement on behalf of J.B., and that it shall be binding on them, as well as to J.B.

10. The Parties acknowledge that they have had the opportunity to review the terms of this agreement with counsel and are satisfied with the representation provided. The Parties enter into this Agreement knowingly, without coercion or other improper influence.

11. The Parties acknowledge and agree that the United States District Court for the District of New Jersey retains jurisdiction as to any dispute regarding this Agreement.

IN WITNESS WHEREOF, the Parties hereto set their hands and seals the dates and year written below.

FOR THE SUMMIT CITY BOARD OF EDUCATION:

BY: \_\_\_\_\_  
Louis J. Pepe, RSBA, Assistant Superintendent  
for Business/Board Secretary

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
David Dietze, Board President

DATED: \_\_\_\_\_

FOR THE PARENTS:

BY: \_\_\_\_\_  
S.B., individually and o/b/o J.B.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
E.B., individually and o/b/o J.B.

DATED: \_\_\_\_\_