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Alpine Board of Education
Our File No.: 127

		State of New Jersey
██████████. and ██████████ o/b/o ██████████,	:	Office of Administrative Law
Petitioners,	:	Department of Special
	:	Education Programs
	:	
vs.	:	OAL Dkt. No.: <i>tbd</i>
	:	Agency Ref. No.: 2015-21735
ALPINE BOARD OF	:	
EDUCATION	:	SETTLEMENT AGREEMENT
	:	AND RELEASE
Respondents.	:	
	:	

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made between the Alpine Board of Education ("Board"), with offices located at Hillside Avenue, P.O. Box 1038, Alpine, New Jersey, and ██████████, and ██████████ ("Parents") whose address is ██████████ Alpine, New Jersey (hereinafter collectively referred to as the "Parties") on behalf of ██████████ ("Student").

WHEREAS, the Board operates a Kindergarten through Eighth Grade school district ("District") serving the residents of Alpine, New Jersey; and

WHEREAS, the Student resides in Alpine, New Jersey, and has been found eligible for special education and related services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") under the classification category of ██████████ and

WHEREAS, during the 2013-2014 school year, the Student received an education, through an Individualized Education Program (“IEP”) proposed on December 6, 2013, at the Therapeutic Intervention Program (“TIP”) located in the Norwood Public School District, which is a self-contained special education program designed to provide academic instruction, behavioral support and therapeutic techniques for students with emotional and behavioral needs, affording opportunities for inclusion into the regular academic classroom as well as inclusion for all appropriate grade level “specials,” providing for teacher assistants to shadow students when included into the general education setting; it also provides social skills instruction, individual and group counseling and in-school parent training; and

WHEREAS, towards the end of the of the 2013-2014 school year, the parties discussed the concept of the Student attending a residential program, and, in the Summer of 2014, the Parents expressed disagreement with continuing the District’s placement of the Student at TIP for the 2014-2015 school year, requesting instead that the District fund the educational, clinical and residential costs for the Student’s education at Little Keswick School (“Little Keswick”), an accredited out-of-district, non-public school located in Keswick, Virginia, designed) to meet the needs of learning disabled and emotional disturbed (which is not expressly approved by the New Jersey Department of Education for the education of students with disabilities, but is, however, approved and licensed by the Commonwealth of Virginia Department of Education); and

WHEREAS, the Parties are desirous of resolving the issue of the Student’s program and placement for the 2014-2015 school year without having to resort to further litigation;

NOW, WHEREFORE, based on the foregoing premises and the mutual promises and covenants contained herein, the parties agree as follows:

1. Applicable School Years. This Agreement shall cover the period beginning September 1, 2014 and ending on August 31, 2015, which shall be collectively referred to as “the Settlement Period.”

2. Reimbursement of Certain Tuition Costs. Subject to the conditions set forth in this Agreement, the Board shall contribute a maximum of

\$80,000 annually toward the educational costs for the Student's attendance at Little Keswick for 2014-2015 school year and the 2015 ESY, for so long as said placement remains appropriate, subject to annual reviews in accordance with federal and State law. This amount represents 73.77% of the total annual costs for the mandatory services of special education, room and board, combined residential services, individual counseling, group counseling, and family counseling (which is \$108,449). The Board's contributions shall be prorated for any partial month/year during which the Student attends Little Keswick. The Board shall reimburse the parents for the Board's share of costs paid until the Board enters into a tuition agreement with Little Keswick, if possible. Reimbursement shall be contingent upon the receipt of records evidencing the Student's attendance at Little Keswick during the applicable time period and submission of proof of payment that the Parents have paid Little Keswick no less than the amount being reimbursed. Payment shall be made by the Board directly to the Parents in accordance with the existing procedures in the District for processing vouchers. After this Agreement is approved by the Board and administrative law judge, the District shall enter into a tuition agreement with Little Keswick, if possible, for its portion of the costs of attendance or, alternatively, shall continue to make reimbursement to the Parents on a monthly basis and within thirty days of the District's receipt of all necessary vouchers, invoices, proof of payment and confirmation of the Student's attendance at Little Keswick for the preceding month.

3. Stay-Put. The financial terms of this Agreement shall remain in effect as long as the placement at Little Keswick is continued. In the event that Little Keswick's costs increase, the Board shall pay the same percentage (73.77%) of the costs of attendance as set forth in paragraph 2 above. Additionally, in the event that Little Keswick terminates the Student's placement, the parties will reconvene within the timelines specified in *N.J.A.C. 6A:14-1 et seq.* to determine a new placement for the Student, after which point the Parents retain all of their rights to file a request for due process for the remainder of the relevant school year should there be a dispute with regard to the Student's newly-proposed placement.

4. Continued Residency in the District and Continued Attendance at Little Keswick. It is expressly understood that the Board's obligations under the Agreement are contingent upon the Student's continued residency

within the District. It is also understood that if the Student leaves Little Keswick at any time for any reason, or the Student's Parents are no longer domiciled within the District, the Board's financial responsibility for this placement shall immediately cease. Should either circumstance arise, the Parents agree to notify the Board immediately. The Parents agree to reimburse the Board for any payments the Board makes to Little Keswick on the Student's behalf if, during such time, either: (1) they did not reside within the District, or (2) the Student ceased attending Little Keswick. If any payments from this Agreement remain outstanding at that time, it is agreed that the amount of tuition owed to Little Keswick will be reduced on a *pro rata* basis, based upon the time the Student attended Little Keswick.

5. Other Costs and/or Services. It is expressly understood that the amounts specified in Paragraph 2 above represent the Board's entire financial obligation for the Student's anticipated educational program and requirements during the Settlement Period. The Parents shall be solely responsible for any and all other costs associated with the Student's placement at Little Keswick beyond those set forth above, including but not limited to, related services or therapies, medical services, supportive and/or therapeutic services, transportation services, evaluations, data analysis, one-to-one supervision, other residential costs, and/or any incidental and miscellaneous expenses such as books, materials and supplies, for so long as the Student attends Little Keswick.

6. Development of IEPs. Within thirty days of the date that this agreement is approved by an Administrative Law Judge, the District shall hold an IEP meeting to ensure that the IEP is consistent with Little Keswick's program. Additionally, the Parties agree that on a mutually agreeable date on or before May 31, 2015, they shall participate in an annual review meeting to review the Student's program and placement for the 2015-2016 school year. In the event that the parties agree to continue the student's program at Little Keswick, this Agreement and provisions set forth herein shall be extended (including but not limited to the release and indemnification provisions).

7. Exchange of Student Information. The Parents shall provide the Board's Child Study Team with all reports, documents, pupil records and other information pertaining to services provided at Little Keswick during

the Settlement Period. By signing this Agreement, the Parents are hereby authorizing the Student's instructors and providers and the Board, through its designees (Child Study Team staff), to exchange any and all reports, documents, pupil records and any other information regarding the Student's program and placement including engaging in discussions pertaining to the Student and/or conducting any observations of the Student at Little Keswick. A separate consent form consistent with this paragraph shall be signed by the Parents upon request if required by Little Keswick.

8. Satisfaction of the Board's Educational Obligations. The Parties agree that the educational program provided to the Student pursuant to this Agreement satisfies the Board's obligation to provide the Student with an appropriate education in accordance with all applicable federal and State laws.

9. No Further Action. The Parents or any persons or entity acting on their or the Student's behalf, agree not to file any suit, or cause any suit, demand, administrative, judicial or other proceeding, claim, complaint or other action of any kind against the Board or its officers, agents, employees or assigns for the District's alleged failure to provide the Student with a free and appropriate education ("FAPE") during the Settlement Period or any prior school years. It is expressly understood, however, that either party may bring an action to enforce the terms of this Agreement.

10. Release. The Parents release and discharge the Board from any liabilities, duties, obligations or other responsibilities, under any State or federal law, with respect to the Student's education from the date the Student's education became the District's responsibility through the Settlement Period, and knowingly and voluntarily agrees to waive any claims for additional contributions, financial or otherwise, toward the Student's education for so long as the Student remains enrolled at Little Keswick through the Settlement Period, including, but not limited to: (a) any additional tuition fees or other monies paid or to be paid to Little Keswick for the Student's education, instruction, treatment, services or other enrollment expenses; and (b) responsibility under any State or federal law, statute, rule or regulation, to provide any additional educational instruction, services, treatment or support of any kind to be provided to the

Student for so long as the Student is enrolled at Little Keswick during the Settlement Period. Finally, the parties agree that this Agreement shall constitute full and final satisfaction of any and all disputed and outstanding claims between the Parties, including, but not limited to, those included in the Request for Due Process filed by the parents bearing Agency Ref. No. 2015- 21735.

11. Indemnification. The Parents shall indemnify and hold forever harmless the Board, its officers, employees, administrators, and/or agents from any and all claims and actions that may at any time be made or instituted against them by anyone (including the Student and/or anyone action on the Student's behalf) for the purposes of enforcing a claim for damages resulting from or relating to the educational placement, clinical services, evaluations and/or other related services provided to the Student while enrolled at Little Keswick during the Settlement Period.

12. No Admission. This Agreement is the compromise of disputed claims and shall never be treated as an admission of liability by either party for any purpose, including, but not limited to, an admission that placement at Little Keswick, or any other out-of-district placement, is required by law. It is expressly stated and agreed by the Parties that neither party is the prevailing party for any purpose, including, but not limited to, attorney fees, costs, expert witness fees, and/or costs of evaluation. All parties shall bear their own attorney/advocate fees, costs, expert witness fees, and/or costs of evaluation for the entirety of any matter or matters related to the subject matter of this Agreement.

13. Confidentiality. The terms and conditions of the within Agreement shall remain strictly confidential and shall not be divulged to any third party, except to the party's attorney and/or accountant/auditor unless such disclosure is required under applicable law and/or legal process to enforce or explain same to a court of law or government entity.

14. No Reliance. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. Each party acknowledges that they are not relying upon any oral statements, representations, promises or expectations

which are not expressly and explicitly set forth in this Agreement, which alone fully and completely expresses all agreements between the Parties.

15. Full Understanding. The Parties acknowledge that they are entering into this Agreement of their own accord and without any undue influence, coercion or pressure of any kind; that all the provisions of this Agreement, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; that they have given due consideration to such provisions and questions, and understand them clearly; that the provisions embodied in this Agreement are in all respects acceptable to them and that they, therefore, accept these provisions in full and final satisfaction of all claims and demands which have been raised or which could have been raised in any litigation related to the Student.

16. Modifications and/or Waivers. A modification or waiver of any of the provisions of this Agreement shall be effective and enforceable only if made in writing and executed with the same formality as this Agreement. The failure of any party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature or of a continuation of an existing default.

17. Legal Counsel. The Parties recognize that each are represented by, legal counsel of their own choosing, that they are fully satisfied with the legal representation provided, that they sign the within Agreement as their own voluntary act and deed, and that they fully understand the duties and obligations enumerated herein.

18. Governing Law. This Agreement shall be subject to the laws of the State of New Jersey, without regard to its choice of law principles.

19. Ratification. This Agreement is subject to ratification by the Board, and is without prejudice to any party if the terms are not agreed upon.

20. Approval by Administrative Law Judge. This Agreement shall be forwarded to an Administrative Law Judge for review and incorporation into a final Order consistent with N.J.A.C. 6A:14-6.5(c), and is contingent upon such approval.

21. Section Headings. Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.

22. Counterparts. This Agreement may be executed in any number of counterparts, which, taken together, shall constitute but one instrument. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Agreement to be effective.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the year and date set forth below.

WITNESS:

**ALPINE BOARD OF
EDUCATION**

Duffly Doulon Ed R
~~Dorina Alonso~~ *Cecily Gordon*
~~Board Secretary/Bus. Adm.~~
Superintendent

By: *Philip Simotas*
Philip Simotas
Board President

Dated:

Dated: 10/2/14

WITNESS:

~~_____~~
10/1/14

By: ~~_____~~

Dated:

Dated: 9-30-14

WITNESS:

~~_____~~
10/1/14

By: ~~_____~~

Dated:

Dated: 9/30/14