



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

JOHN J. HOFFMAN
Acting Attorney General

MICHELLE L. MILLER
Acting Director

October 8, 2015

Hon. Mary C. Jacobson, A.J.S.C.
Superior Court of New Jersey - Mercer County
Criminal Courthouse
P.O. Box 8068
400 S. Warren Street
Trenton, NJ 08650-0068

Re: Paff v. New Jersey Dept. of Educ. et al.
Docket No. MER-L-1523-15

Dear Judge Jacobson:

Pursuant to your September 23, 2015 order, enclosed please find the certification of Donna Fletcher-Lugo with attached exhibits including the un-redacted documents for in camera review.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Angela L. Velez
Angela L. Velez
Deputy Attorney General

C: C.J. Griffin, Esq.



JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for State Defendants
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625-0112

By: Angela Velez
Deputy Attorney General
(609) 777-4861

)	SUPERIOR COURT OF NEW JERSEY
)	LAW DIVISION - MERCER COUNTY
_____ JOHN PAFF,)	
)	
Plaintiffs)	Docket No. MER-L-1523-15
)	
v.)	
)	
NEW JERSEY DEPARTMENT OF)	
EDUCATION AND DONNA)	
FLETCHER-LUGO,)	<u>CIVIL ACTION</u>
)	
Defendants.)	CERTIFICATION OF SERVICE
)	
_____)	

I, PATRICIA A. COLLINS, hereby certify as follows:

1. I am a Legal Secretary in the Division of Law, Department of Law and Public Safety, State of New Jersey.

2. On October 8, 2015, at the direction of Angela L. Velez, Deputy Attorney General, I served two copies of Certification of Donna Fletcher-Lugo in the above captioned matter via overnight mail to

C.J. Griffin, Esq.
Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601-7054

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Patricia A. Collins
PATRICIA A. COLLINS

DATED: 10/18/15

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendants New Jersey
Department of Education and Donna Fletcher-Lugo
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625-0112

By: Angela L. Velez
Deputy Attorney General
(609) 777-4861

_____	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MERCER COUNTY
JOHN PAFF,	:	
	:	DOCKET NO: MER-L-1523-15
Plaintiff,	:	
	:	
v.	:	CERTIFICATION OF DONNA
	:	FLETCHER-LUGO
NEW JERSEY DEPARTMENT OF	:	
EDUCATION AND DONNA FLETCHER-	:	
LUGO,	:	
	:	
Defendants.	:	
_____	:	

I, DONNA FLETCHER-LUGO, OF FULL AGE, HEREBY CERTIFY:

1. I was the Custodian for the New Jersey Department of Education on June 5, 2015. I handled this OPRA request and in that capacity, I am familiar with the facts regarding the redaction of the documents provided to the requestor.

2. In my experience as OPRA Custodian for the Department, I am aware that the personal characteristics of the student and other information surrounding the student's placement in this special education matter, including the actions taken by the

parents, the size of the special education population, the student's placement, the time period, and the evaluation of the student make the student unique and create a heightened risk of exposing the student's identity in violation of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. sec. 1232g.

3. Attached hereto as Exhibit A is the redacted Settlement Agreement between P.A. and J.A. and the Millburn Township Board of Education as provided to Plaintiff John Paff pursuant to his May 8, 2015 OPRA request.

4. Several of the redactions in Exhibit A are labeled by number for identification for the convenience of the court and the parties and are referred to herein as A-1 through A-7.

5. Redactions numbers A-1 through A-7 to Exhibit A provide information regarding actions taken by the parents, the size of the special education population, the student's placement, the time period, and the evaluation of the student.

6. Attached hereto as Exhibit B is the redacted Stipulation of Settlement Agreement between P.A. and J.A. and the Madison Borough Board of Education as provided to Plaintiff pursuant to his May 8, 2015 OPRA request.

7. All of the redactions in Exhibit B are labeled by number for identification for the convenience of the court and the parties and are referred to herein as B-1 through B-19.

8. Redaction B-1 is the student's address and is personally identifiable information required to be redacted under FERPA.

9. Redactions B-2 and B-3 reveal the gender of the student and, in combination with the parents' and student's initials and the other information redacted in Exhibit B, risks exposing the identity of the student.

10. Redactions B-8, B-10, B-11, B-14 through B-17, B-19, and B-20 are the name of the student's placement, which is so unique that, in combination with the parents' and student's initials and the other information redacted in Exhibit B, it risks exposing the identity of the student.

11. Redactions B-4, B-5, B-7 and B-8 contain information surrounding the student's placement, including the actions taken by the parents, the student's placement and the time period, that are so unique that, in combination with the parents' student's initials and the other information redacted in Exhibit B, it risks exposing the identity of the student.

12. Redactions B-6, B-9 and B-12 contain information surrounding the student's placement, including her Individualized Educational Plan, the evaluation of the student, and her needs, which are so unique that, in combination with the parents' student's initials and the other information redacted in Exhibit B, it risks exposing the identity of the student.

13. Redactions R-13 and R-18 contain information surrounding the student's placement that describe the type of placement which is so unique that, in combination with the parents' and student's initials and the other information redacted in Exhibit B, it risks exposing the identity of the student.

14. Attached hereto as Exhibit C under seal is an un-redacted copy of Exhibit A submitted for in camera review.

15. Attached hereto as Exhibit D under seal is an un-redacted copy of Exhibit C submitted for in camera review.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Donna Fletcher-Lugo

Dated:

EXHIBIT A



LINDABURY, McCORMICK, ESTABROOK & COOPER
 A Professional Corporation
 53 Cardinal Drive
 P.O. Box 2369
 Westfield, New Jersey 07091
 (908) 233-6800
 Attorneys for Respondent, Millburn Township Board of Education

RECEIVED
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 STATE OF NEW JERSEY
 OFFICE OF ADMINISTRATIVE LAW

P.A. and J.A. o/b/o A.A.,	: STATE OF NEW JERSEY
Petitioners,	: OFFICE OF ADMINISTRATIVE LAW
-vs.-	: OAL DOCKET NO.: EDS 18665-2013 N
MILLBURN TOWNSHIP BOARD OF	: AGENCY REF. NO: 2014-20539
EDUCATION AND MADISON	:
BOARD OF EDUCATION,	: STIPULATION OF SETTLEMENT
Respondents.	:

WHEREAS, A.A. is an educationally disabled student as defined in *N.J.A.C. 6A:14-1.1 et seq.*, and eligible for special education and related services under the category of [REDACTED] and

WHEREAS, the Millburn Township Board of Education ("Respondent" or "District") was previously the local educational authority with the responsibility of providing a free, appropriate public education to A.A.; and (1)

(2) WHEREAS, [REDACTED] P.A. and J.A. ("Parents" or "Petitioners") [REDACTED] A.A. [REDACTED] A.A. at [REDACTED] in [REDACTED] a non State approved school; and (3)

WHEREAS, the [REDACTED] A.A. [REDACTED] in order that [REDACTED] receive a free, appropriate public education; and (4)

WHEREAS, in or about [REDACTED] A.A.'s [REDACTED] (5)

[REDACTED] Petitioners moved from Millburn, New Jersey to Madison, New Jersey;

WHEREAS, in or about October 2012, the Madison Board of Education became the local educational agency responsible for providing A.A. with a free, appropriate public education.

WHEREAS, there is a dispute between Petitioners and the District regarding A.A.'s

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[REDACTED] through [REDACTED]; and

NOW THEREFORE, the parties, having a desire to settle the above matter in an amicable way, hereby agree as follows:

1. The District agrees to reimburse Petitioners five thousand dollars (\$5,000) toward the educational costs of [REDACTED] for November 2011 through October 2012. The reimbursement shall be provided to the Parents within 30 days of receipt of invoices and proof of payment. Any and all costs over and above this financial contribution from the District shall be the sole responsibility of Petitioners.

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2. Petitioners waive their right to any reimbursement for transportation.

3. Petitioners waive their right to any attorney's fees.

4. Petitioners waive their right to reimbursement for any independent evaluations.

5. The parties have reached this compromise to avoid the expense, inconvenience, and potential acrimony of a due process hearing under the special education laws.

6. It is understood that the execution of this Agreement does not constitute an admission by the District. The District specifically disclaims any liability to A.A. except as set forth in this Agreement.

7. In consideration of the settlement of the captioned matter, the Parties shall release one another from any and all past, present and future claims, rights, and liability, including but not limited to any and all past, present, and future claims for attorney's fees, compensatory education, money damages, civil liability, relating to any purported incidents of harassment, intimidation or bullying or any other equitable or legal relief.

8. In consideration of the settlement of the captioned matter, the Parties waive their right to take any action against one another, including but not limited to, administrative actions, civil actions, complaint investigations, OCR investigations or

- any other action through the date of this Agreement, except as same may relate to the enforcement of this Agreement.
9. If A.A. or A.A.'s legal representative initiates any legal proceeding to invalidate or set aside all or any portion of this Stipulation of Settlement, P.A. and J.A. will hold the District harmless and will indemnify the District for any liability, judgment, legal fees, or other costs or expenses arising from such legal proceedings. P.A. and J.A.'s liability shall be joint and several.
 10. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final Agreement on any and all issues.
 11. This Agreement shall be governed by the laws of the State of New Jersey.
 12. If, during the term of this Agreement, a specific clause of the Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.
 13. The parties have entered into this Agreement freely and voluntarily with a full understanding of their rights and the contents of this Agreement. The parties acknowledge that they had the opportunity to consult with legal counsel or a representative of their choice and that they reviewed the Agreement in detail with their counsel or representative and fully understand its requirements and limitations.
 14. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that, following the full execution of this Settlement Agreement, neither Petitioners, Respondent District, Respondent District's staff, nor either parties' attorneys will take any action to publicize the terms and nature of this Settlement Agreement, except that disclosure is permitted: (1) as necessary with regard to any proceedings for the enforcement of the Settlement Agreement; (2) to the student's immediate family, attorneys, agents and pertinent Respondent District staff, who shall agree not to disclose the facts of or any of the terms of this Settlement Agreement as if they were a party to it; (3) as may be required by any court of agency of competent jurisdiction; and (4) as may be required by law.
 15. This Agreement disposes of any and all claims that were raised or could have been raised in the captioned petition for due process.
 16. This Agreement shall be incorporated into a Final Order by the Honorable Barry E. Moscowitz, A.L.J.
 17. This Agreement is subject to ratification by the Millburn Township Board of Education.



ON BEHALF OF *MA*



Date: 5/8/14

P.A., Parent

J.A., Parent

Date: 5/8/14

ON BEHALF OF THE MILLBURN TOWNSHIP BOARD OF EDUCATION



Date: 5-17-14

EXHIBIT B

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057
(856) 234-4114
(856) 234-4262 fax

RECEIVED

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STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

Attorneys for Respondent, Madison Borough Board of Education

BY: JOHN B. COMEGNO II, ESQUIRE
CAITLIN PLETCHER, ESQUIRE

P.A. & J.A. a/b/o A.A.,

Petitioners,

v.

MILLBURN TOWNSHIP BOARD OF
EDUCATION AND MADISON
BOROUGH BOARD OF EDUCATION,

Respondents.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

DOCKET NO: EDS 18665-2013
AGENCY REF: 2014-20539

SETTLEMENT AGREEMENT AND
GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between Respondent, Madison Borough Board of Education (the "Board"), located at 359 Woodland Road, Madison, New Jersey, and P.A. and J.A. (hereinafter referred to as "Petitioners" or "Parents"), who reside at [REDACTED] Madison, New Jersey, on behalf of their [REDACTED] A.A., a student who is enrolled in the Madison Borough School District (hereinafter referred to as the "District") (the Board, Parents, and A.A. are collectively referred to as the "Parties"). This Agreement is being entered into by the Parties to resolve and settle all outstanding issues involved in the dispute as follows;

WHEREAS, A.A. is a student who 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 Board is the local educational authority with the responsibility of providing a free, appropriate public education to A.A.; and (3)

WHEREAS, prior to A.A.'s enrollment in the District [REDACTED] was enrolled in the Millburn Township School District ("Millburn"); and

(4) WHEREAS, [REDACTED] when A.A. was enrolled in Millburn, the Parents [REDACTED] a private school that is located in [REDACTED] and

(5) WHEREAS, A.A. [REDACTED] through the present date; and

WHEREAS, the Parents moved into the District and the Board proposed an IEP; and

(6) WHEREAS, the Parties were able [REDACTED] at which time the [REDACTED] and

(7) WHEREAS, on or about [REDACTED] the Parents filed a Petition for Due Process to formally challenge the Board's proposed program; and

WHEREAS, the Board has expressed its concerns to the Parents regarding the (8) [REDACTED]; and

(9) WHEREAS, the Board continues to maintain that A.A.'s [REDACTED]

would provide A.A. with a free and appropriate education in the least restrictive environment pursuant to IDEA, 20 U.S.C. § 1400, *et seq.*, and N.J.A.C. 6A:14-1.1 *et seq.*; and

WHEREAS, the Parties, without alleging or admitting deficiencies in the special

education and related services proposed for A.A. by the Board, are desirous of arriving at an amicable resolution regarding A.A.'s educational program; and

WHEREAS, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties enter into this Agreement to outline their agreement, release claims, and express the full and complete terms of same;

NOW, THEREFORE, THE PARTIES HEREBY AGREE THAT:

1. The Board will reimburse the Parents for certain expenses associated with A.A.'s attendance at the [REDACTED] Specifically, the Board's sole, final, and total financial obligation toward any special education and related services for A.A. shall be to provide reimbursement to the Parents in an annual amount not to exceed twenty-five thousand dollars (\$25,000) for the 2013-2014, 2014-2015, 2015-2016 and 2016-2017 school years. With the exception of the 2013-2014 school year, this amount shall be provided by the Board directly to the Parents by way of reimbursement on an equal monthly basis of \$2,500 upon the Parents' submission to the Board's Business Office, which is located at 359 Woodland Road, Madison, New Jersey, of documentation verifying proof of A.A.'s continued attendance at the [REDACTED] and a copy of a paid invoice detailing the tuition paid and a credit card receipt(s) or cancelled check(s) for the payment of same. The Board shall provide reimbursement to the Parents within 45 days of receipt of the documentation listed in this paragraph. For the 2013-2014 school year, the Board shall reimburse the Parents in the amount of \$25,000 within 45 days of receipt of the documentation listed above.

2. Additionally, in order to receive the funds set forth above, the Parents shall submit proof of continued District residency to the Board's Business Office by September 15th of each year.

3. The Parents and A.A. shall remain solely responsible for any and all of the remaining costs associated with A.A.'s [REDACTED]

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[REDACTED]

of educational, special education and/or related services to A.A.

4. The Parents, individually and on behalf of A.A., and A.A. hereby forever knowingly, freely and voluntarily waive the right to the provision of a thorough and efficient and/or free and appropriate public education by the Board. The Parents, individually and on behalf of A.A., and A.A. further knowingly, freely and voluntarily agree to waive any current or future eligibility A.A. may have for the provision of special education and/or related services by the Board.

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5. The Board acknowledges that A.A. may [REDACTED]

[REDACTED]

6. The Parents, individually and on behalf of A.A., and A.A. hereby waive any claim which they have or may have as to the appropriateness of the placement, special education and/or related services provided to A.A. at the [REDACTED]

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7. The Parties agree to submit this Agreement for approval by an Administrative Law Judge. The Parties expressly agree and acknowledge that the provisions of N.J.A.C. 6A:14-6.5 have been met and complied with, in view of their respective positions and to the extent that the

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[REDACTED] is the only placement which the Parties are able to agree upon at this time in order to resolve their claims. This Agreement does not represent an admission or representation on the part of the Board that placement at the [REDACTED] is or was required to provide A.A. with a free and appropriate public education, or as to the certification or qualifications of

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personnel at the [redacted] or that the [redacted] necessarily constitutes the most appropriate placement for A.A. except to the extent that such placement [redacted]

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[redacted]

8. Each Party shall be responsible for their own attorneys' fees, expert costs and any other costs incurred in connection with this matter.

9. The Parents, individually and on behalf of A.A., and A.A. hereby forever and fully waive and release the Board from all claims that have accrued as of the date of this Agreement which they and/or A.A. have or may have against the Board in relation to the educational, special education and/or related services provided to A.A., including all legal, contractual, common law, statutory and/or equitable claims under state and/or federal law through the date of this Agreement, including but not limited to claims for and/or under:

- a. compensatory education;
- b. attorneys and other professionals' fees;
- c. N.J.A.C. 6A:14-1.1, et seq.;
- d. Individuals with Disabilities in Education Improvement Act, 20 U.S.C. §1415, et seq.;
- e. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq.;
- f. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101;
- g. Family Education Rights and Privacy Act, 20 U.S.C. §1232g, et seq.;
- h. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000, et seq.;
- i. The Rehabilitation Act of 1973, as amended, 29 U.S.C. §7801, et seq.;
- j. 29 U.S.C. §794(a);
- k. 42 U.S.C. §1983;

l. 42 U.S.C. §1988; and

m. New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq.

Nothing in the Release set forth in this Paragraph shall be construed as a release or waiver of any claims between the Parties seeking to enforce any term or provision of this Agreement.

9. In the event that any future dispute arises concerning A.A.'s educational program, placement, the educational, special education and/or related services provided to A.A., or A.A.'s eligibility for special education and related services, the Parents and A.A. hereby waive any and all "stay put" or other rights under federal and state law which would require that the Board provide A.A. with continued services at the [REDACTED] beyond the terms of this Agreement, or any out-of-district placement, and agree that A.A.'s "stay-put" placement shall be considered the last agreed upon in-district program. (19)

10. The Parents must inform the Board immediately if they are no longer residents of the District. In the event that the Parents are no longer residents of the District, if A.A. ceases to attend or be enrolled at the [REDACTED], or if the Parents or A.A. commences any other action against the Board related to A.A. (other than enforcement of this Agreement), all of the Board's obligations hereunder shall immediately cease. (20)

11. Neither Party will be considered to be a "prevailing party" for any purpose.

12. 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.

13. The Parties agree that terms of this Agreement shall remain strictly confidential to the fullest extent permitted by law, and they shall not share or communicate the terms of same with any other individual, unless enforcement of same is sought by either Party in a court of law.

14. The Parties acknowledge that they have read and understand the terms of this Agreement, that they have had the opportunity to have the Agreement reviewed by counsel, that

they are satisfied with the advice of their respective counsel, and that they are entering into this Agreement knowingly, freely, voluntarily, without coercion and not under the influence of anything or anyone.

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

16. 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.

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

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

THIS SPACE HAS BEEN LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Parties hereto set their hands and seals the day and year written above.

For the Board:
MADISON BOROUGH BOARD OF
EDUCATION

For the Petitioners:
P.A. and J.A. o/b/o A.A.

BY: *Lisa Ellis*
Lisa Ellis, Board President

BY: _____

Dated:

Dated:

BY: *Gary S. Lane*
Gary S. Lane, Business
Administrator/Board Secretary

BY: _____

Dated:

Dated:

IN WITNESS WHEREOF, the Parties hereto set their hands and seals the day and year written above.

For the Board:
MADISON BOROUGH BOARD OF
EDUCATION

For the Petitioners:
P.A. and J.A. o/s/o A.A.

BY: _____
Lisa Ellis, Board President

BY: _____

Dated:

Dated: 

BY: _____
Gary S. Lane, Business
Administrator/Board Secretary

BY: 

Dated:

Dated: 4/29/14

