



# Sussan | Greenwald & Wesler

ADVOCATING FOR THE SPECIAL NEEDS CHILD

\*Admitted to NJ & NY Bar

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January 16, 2015

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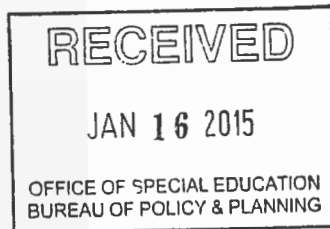
Peggy McDonald, Director

Office of Special Education Programs

Department of Education

P.O. Box 500

Trenton, NJ 08625



**RE: P.L. and D.L. o/b/o M.L. v. Holmdel Board of Education**  
**EDS: 4367-14 Agency Ref. #: 2014-20853**

Dear Ms. McDonald:

Please be advised that I represent Mr. and Mrs. P. [REDACTED] L. [REDACTED] and their [REDACTED] M.L. with regard to the provisions of a free and appropriate public education. I am writing to request that the Department of Education enforce a final Decision entered in the above captioned matter.

By way of background, M.L. is a [REDACTED] year old student residing within the Holmdel Public School District. A dispute arose with regard to the appropriate program and placement for M.L. Petitioners filed a Petition for Due Process which was transmitted to the office of Administrative Law for trial. The matter was assigned to The Honorable John R. Futey, ALJ. On the first day of the hearing the parties were able to resolve this matter. The terms of the Stipulation of Settlement were incorporated into a Settlement Agreement which was then incorporated into a Final Order. [REDACTED] er the matter was concluded but before the matter was approved by the Board of Education Judge Futey retired. The Final Order was therefore signed by The Honorable John Schuster. A copy of the Order is attached. Paragraph 1 of the Settlement Agreement provides as follows:

1. The Board agrees to reimburse the parents the total sum of \$30,000 towards M.L.'s therapy costs for the 2013-2014 and 2014-2015 school years payable as follows:

a. \$12,500 for the 2013-2014. Petitioners will submit a Certification signed by the parents certifying that M.L. received counselling during the 2013-2014 school year. In addition, M.L.'s therapist will submit a letter detailing the dates and duration of therapy provided. Within 60 days of receipt of the above, or this agreement being fully executed, whichever occurs later the District will issue payment. Payment will be made payable to Petitioners.

b. \$5000 for the 2014 Extended School Year period. Petitioners will submit a Certification signed by the parents certifying that M.L. received counselling during the 2014 extended school year period. In addition, M.L.'s therapist will submit a letter detailing the dates and duration of therapy provided.

Within 60 days of the submission of the above, the District will issue payment directly to Petitioners.

c. \$12,500 for the 2014-2015 school year. Petitioners will submit a Certification certifying that M.L. received counselling during the 2014-2015 school year period. In addition, M.L.'s therapist will submit a letter detailing the dates and duration of the therapy provided. These documents will be submitted in January 2015 and June 2015. Within 60 days of submission of the above, the District will reimburse Petitioners \$6,250.00 for the January 2015 submission and \$6250.00 for the June 2015 submission. Payment will be made directly to Petitioners.

Under the terms of the Agreement, Petitioners submitted the required information by letter dated October 16, 2014, a copy of which is attached. While the attorney's fees portion has been paid, Respondent is now refusing to reimburse Petitioners under the terms of the agreement. Under the terms of the agreement, Petitioners were to be reimbursed \$12,500 for the 2013-2014 school year and \$5000 for the 2014 ESY. Instead of issuing a voucher for \$17,500, Respondent Board of Education issued a voucher for \$595.00. In denying reimbursement, Respondent is now arguing that it is only required to reimburse Petitioners for therapy services actually provided. This was never the intention of the agreement nor does the language of the agreement support Respondent's position. The language is clear. Petitioners must submit a Certification certifying M.L. received counseling. In addition, M.L.'s therapist must submit a letter detailing the dates and duration of the therapy provided. Once those two conditions are met Petitioners are entitled to reimbursement as outlined in the settlement agreement. Nowhere in the Agreement does it say that reimbursement is limited to actual therapy provided.

Petitioners, through their counsel has been trying to remedy this situation directly with Respondent's counsel. Respondent's original counsel, Carl Tanksley left the first after the matter approved by the Board of Education but before Petitioners submitted the required proofs. Since then Petitioner's counsel has been working with Brett Gorman trying to resolve this matter. The parties are now at an impasse. Pursuant to the Final Order signed by the Administrative Law Judge, if either party believes the Final Decision is not being fully implemented their concern should be forwarded to The Director of Special Education at The NJ State Department of Education. Petitioners are therefore filing this letter in support of their request that the Department of Education compel respondent, Holmdel board of Education to comply with the Final Order and reimburse Petitioners under the terms of the Agreement.

I look forward to hearing from you.

Very truly yours,  
*/s/Staci Greenwald*  
**STACI J. GREENWALD**

SJG/vd

Cc: Brett Gorman, Esq. (via email)  
Mr. and Mrs. I [REDACTED] (via email)



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**DECISION APPROVING**  
**SETTLEMENT**

OAL DKT. NO. EDS 4367-14

AGENCY DKT. NO. 2014 20853

**P.L. AND D.L. ON BEHALF OF**  
**M.L.,**

Petitioners,

v.

**HOLMDEL TOWNSHIP**  
**BOARD OF EDUCATION,**  
Respondent.

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**Staci J. Greenwald, Esq.,** for petitioners (Sussan, Greenwald & Wesler,  
attorneys)

**Carl Tanksley, Jr., Esq.,** for respondent (Parker McCay, attorneys)

Record Closed: September 5, 2014

Decided: September 8, 2014

BEFORE **JOHN SCHUSTER III, ALJ:**

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§1400 to 1482. The parties have voluntarily agreed to resolve all disputed matters and have entered into a settlement as set forth in the attached document.

I have reviewed the terms of settlement and I **FIND**:

The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document.

The settlement fully disposes of all issues in controversy between them and is consistent with the law.

Therefore, I **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

September 8, 2014

DATE



N SCHUSTER III, ALJ

Date Received at Agency:

Date Sent to Parties:

Attachment

/cad



**PARKER McCAY**

RECEIVED

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STATE OF NEW JERSEY  
OFF. OF ADMIN LAW

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www.parkermccay.com  
Carl Tanksley, Jr., Esquire  
ctanksley@parkermccay.com

**SENT VIA FAX AND REGULAR MAIL**

September 4, 2014

File No. 12414-0649

Hon. John Schuster III, A.L.J.  
Office of Administrative Law  
9 Quakerbridge Plaza  
P.O. Box 049  
Trenton, NJ 08625

Re: P.L. and D.L. o/b/o M.L. vs. Holmdel Township Board of Education  
Agency Reference # 2014-20853  
OAL DKT. NO.: EDS 04367-2014S

Dear Judge Schuster:

Please recall that I represent the Holmdel Board of Education in the above referenced matter. Enclosed please find an executed copy of the Settlement Agreement and General Release and the Board's Resolution in this regard.

Respectfully yours,

Carl Tanksley, Jr.

CT/dmc

Enc.

- c: Staci J. Greenwald, Esq. (enc.) (Via Regular Mail)  
Meryl Gill, Director of Special Services (Via Regular Mail)  
Theresa Brewer, Claims Representative (enc.)  
New Jersey School Insurance Group (Via Regular Mail)

**COUNSEL WHEN IT MATTERS.<sup>SM</sup>**

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

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STATE OF NEW JERSEY  
OFFICE OF ADMIN LAW

**SUSSAN, GREENWALD & WESLER**  
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**Fax: 609-409-3505**  
**Staci Greenwald**  
**staci@special-ed-law.com**  
**Attorney for Parents**

PL and DL o/b/o ML,  
PARENTS,

v.

HOLMDEL TOWNSHIP BOARD OF  
EDUCATION  
BOARD.

**SETTLEMENT AGREEMENT AND  
GENERAL RELEASE**

**WHEREAS**, ML 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 Holmdel Township Board of Education (“District” or “Board”) is the local educational authority with the responsibility of providing a free, appropriate public education to ML; and

**WHEREAS**, the Parties, without alleging or admitting deficiencies in the special education and related services provided/available to ML by the Board, are desirous of arriving at an amicable resolution regarding ML’s educational program within the District; 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; and

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

1. The Board agrees to reimburse the parents the total sum of \$30,000 towards ML's therapy costs for the 2013-2014 and 2014-2015 school years payable as follows:

a. \$12,500 for the 2013-2014. Petitioners will submit a Certification signed by the parents certifying that ML received counselling during the 2013-2014 school year. In addition, ML's therapist will submit a letter detailing the dates and duration of therapy provided. Within 60 days of receipt of the above, or this agreement being fully executed, whichever occurs later the District will issue payment. Payment will be made payable to Petitioners.

b. \$5000 for the 2014 Extended School Year period. Petitioners will submit a Certification signed by the parents certifying that ML received counselling during the 2014 extended school year period. In addition, ML's therapist will submit a letter detailing the dates and duration of therapy provided. Within 60 days of the submission of the above, the District will issue payment directly to Petitioners.

c. \$12,500 for the 2014-2015 school year. Petitioners will submit a Certification certifying that ML received counselling during the 2014-2015 school year period. In addition, ML's therapist will submit a letter detailing the dates and duration of the therapy provided. These documents will be submitted in January 2015 and June 2015. Within 60 days of submission of the above, the District will reimburse Petitioners



\$6,250.00 for the January 2015 submission and \$6250.00 for the June 2015 submission.

Payment will be made directly to Petitioners.

2. It is expressly acknowledged and understood that the payments made above are in lieu of therapy provided by the district and are in no way to be attributed to the cost of ML's education at [REDACTED]. Any and all costs over and above the District's contribution toward therapy as set forth herein shall be the sole responsibility of the Petitioners.

3. The Board agrees to reimburse Petitioners the sum of \$14,701.00 towards their attorney's fees. An itemized certification of services will be submitted. Within 60 days of receipt of the Certification a reimbursement check will be issued made payable to The Trust Account of Sussan, Greenwald & Wesler.

4. Effective the date of this Agreement, Petitioners will withdraw ML from the District. At that time, ML will be considered a nonpublic school student placed unilaterally in a private program by the Petitioners. As a nonpublic student, the District shall have no educational responsibility for ML. For the time period outlined above, The District shall not develop an I.E.P. The District's sole responsibility regarding ML is the financial contribution specified above.

5. Petitioners acknowledge that the District has no control over the program offered at [REDACTED], the staff, or the provision of services at the placement. Therefore, Petitioners, individually and on behalf of ML, hereby agree to release and forever hold harmless the District, its members, officers, employees, administrators, agents, servants, and assigns for any liability of any kind for the appropriateness of the placement(s), the services offered, and for

any losses, damage, personal injury, emotional distress or property destruction suffered by ML while enrolled at [REDACTED] during the 2013-2014 and 2014-2015 school years.

6. If at any point during the 2014-2015 school year, Petitioners determine that their chosen school, [REDACTED] is not appropriately meeting ML's educational needs, Petitioners have the right to re-enroll ML in the District. If that were to occur, the District's financial responsibility as set forth above will immediately cease and the District's financial responsibility would be pro-rated based on when ML was re-enrolled in the District. Within 30 days of ML being re-enrolled the parties would meet to discuss alternative placements.

7. Petitioners reserve the right to re-enroll ML in the District on or about May 1, 2015 to plan a program and placement for the 2015-2016 school year. A meeting will be convened within 30 days of the receipt of Petitioners letter.

8. The Parties have reached this compromise to avoid the expense, inconvenience, and potential acrimony of a due process hearing under the special education laws. It is understood that the execution of this Agreement does not constitute an admission by the District. The District specifically disclaims any liability to ML except as set forth in this Agreement.

9. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final Agreement on any and all issues.

10. This Agreement shall be governed by the laws of the State of New Jersey.

11. If, during the term of this Agreement, a specific clause of this Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of this Agreement shall not be affected by such a ruling and shall remain in full force and effect.

12. 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 this Agreement in detail with their counsel or representative and fully understand its requirements and limitations.

13. In consideration of the above, Petitioners, individually and on behalf of ML, hereby fully and completely release the Board, its members, officers, administrators, agents, servants, employees, or assigns from any and all claims they have or may have accrued against the Board as of the date of this Agreement, under any law, regulation, or legal theory, and including, without limitation, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), §705(8), the Family Education Rights and Privacy Act, 20 U.S.C. §1232g, *et seq.*, 29 U.S.C. §794(a), 42 U.S.C. §1983, 42 U.S.C. §1988, 29 U.S.C. §705(20), the Individuals with Disabilities In Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §12132, *et seq.*, the Rehabilitation Act of 1973, 20 U.S.C. §7801, Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, *et seq.*, N.J.A.C. 6A:14-1.1, *et seq.*, N.J.A.C. 6A:14-3.7, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §621, *et seq.*, all as amended, any statutes of New Jersey including but not limited to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.*, or any other claims which have been or could have been asserted by ML or █████ parents on behalf of ML, in any forum arising out of or connected with ML’s education by the Board, including but not limited to, claims for attorney’s and other professional fees and costs, reimbursement related to any unilateral and/or out-of-district placement for ML, whether known or unknown, or

to the extent permitted by applicable law through the date this Agreement is executed.

14. This Agreement is dispositive of all issues in dispute between the Parties hereto, and is intended to constitute a final resolution of the dispute between the Parties.

15. This Agreement shall remain confidential to the maximum extent permitted by law and Parents shall not disclose its form or contents to any third parties. If the Parents breach this or any other provision of this Agreement, this Agreement shall be immediately rendered null and void.





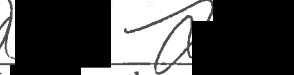



16. The Parents represent that they have sole authority to enter into this Agreement, and that it shall be binding as if entered into by any other parent and/or guardian of ML not a party hereto.

17. Petitioners 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.

18. Except as set forth in Paragraph 3 above, the Parties mutually waive any claims for attorney's fees with the understanding that each party shall be responsible for their own fees and costs, including physicians', experts', and attorneys' fees and costs, incurred in connection with this dispute, to the extent applicable. No party shall be deemed a "prevailing party."

19. 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.

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

  
P  I  -fath   
D   
D  L  -mother 

Date: 7/11/14

Date: 7/11/14

ON BEHALF OF THE HOLMDEL BOARD OF EDUCATION

  
Ana Vander Woude- Board President

Date: 08-07-2014

  
Michael Petrizzo - Bus.Admin/B/S

Date: 7/31/14

REGULAR PUBLIC BUSINESS MEETING JULY 30, 2014

63. Approval of Resolution of the Holmdel Township Board of Education with Student # [REDACTED]

WHEREAS, the Board of Education of Holmdel Township has the statutory duty to provide eligible students residing within the school district with a free and appropriated public education; and

WHEREAS, a dispute has arisen between the Holmdel Board of Education and the parents of the above referenced student who claim entitlement to a free and appropriate education on behalf of their minor child; and

WHEREAS, litigation has been initiated within the New Jersey Department of Education, Office of Special Education which has culminated in a written settlement agreement.

NOW THEREFORE, BE IT RESOLVED that the Board of Education hereby:

1. Approves the settlement agreement between the parties;
2. Directs and authorizes the board president to execute same; and
3. Directs the Holmdel Township administrators who have educational responsibility over the subject of the litigation to fully implement the terms of the settlement agreement.

MOTION: Mrs. Wetmore SECOND: Ms. Garrity VOTE: 7-1  
NAY: Mr. Pavlik  
Absent: Mr. Sockol

I do hereby certify that the foregoing is a true and exact copy of a resolution adopted by the Holmdel Board of Education

on 7/30/14

  
Board Secretary/Business Administrator

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STATE OF NEW JERSEY  
OFFICE OF ADMIN LAW