

Michael Inzelbuch

From: Michael Inzelbuch
Sent: Monday, April 06, 2015 7:40 PM
To: Worthington, John
Cc: 'peggy.mcdonald@doe.state.nj.us'; 'mazzara@piners.org'; 'Marc H. Zitomer'; Sandra Nagl; Michael Inzelbuch; lwinters@piners.org; thomas dambola (tdambola@piners.org); 'htobia@piners.org'
Subject: Enforcement of Final Decision == EDS -- 16575-14
Attachments: 201504061935.pdf

Good evening .

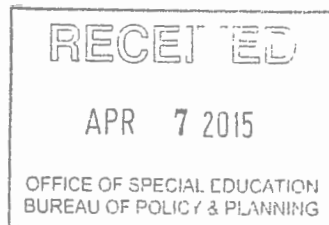
Despite your alleged efforts to thwart a settlement herein , as you are aware , the Board and the State Monitor approved same . (See attached) .

Unfortunately , despite the alleged efforts of the Board counsel , reimbursement has not occurred as to 1- transport and 2- legal fees .

Please see to it that Lakewood complies with its obligations and enforce the settlement herein .

Thanks

Bew ell ,



609-984-
8422

RECEIVED

APR 7 2015

OFFICE OF SPECIAL EDUCATION
BUREAU OF POLICY & PLANNING

NEW JERSEY DEPARTMENT OF EDUCATION

**PARENTAL REQUEST FOR ENFORCEMENT OF A FINAL DECISION
ISSUED BY THE OFFICE OF ADMINISTRATIVE LAW**

Date: 4-6-15

To: **Roberta Wohle, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate

From: Michael E. Frazee
(Name of person submitting the request)

Address: 555 Madison Ave.
Littlewood NJ 07711

Phone: () - - - - - Fax: () - - - - - Email address: _____
732 905 0325 / 732 906 1

Please Note: The Office of Special Education Programs (OSEP) must have a copy of the ALJ's decision before any action can be taken with respect to a request for enforcement.

Is a copy of the final decision (or Order) issued by the Administrative Law Judge (ALJ) included with this request?
 Yes No. If not, is a copy being sent by separate mailing? Yes No

What is the date of the ALJ's decision? 1/29/15

Subsequent to issuance of the decision, have the parties reached any agreements that modify the decision or the terms of the Order? Yes No (If yes, explain below)
N/A

Note: If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.

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Post Doc

When was the action that you are seeking to enforce directed to occur?

Note: A request for enforcement must be made to the OSEP no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement was required to have occurred. If your request is untimely, the OSEP will not enforce the request.

Are you currently involved in, or have you recently requested, mediation, or a due process hearing of a complaint investigation? Yes No

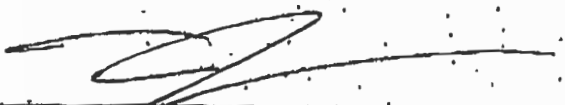
If you have recently requested mediation or a due process hearing, what is the subject of the disagreement?

Briefly state the specific provision (identify the page and paragraph) of the hearing decision that you assert the education agency has failed to implement.

1) District was to reimburse parent for transportation. Has not occurred.

2) District was to reimburse for legal fees. Has not occurred.

Upon a receipt of a request for enforcement, the OSEP will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the OSEP evidence of compliance, whereupon, the OSEP will determine the implementation of the decision; if it is determined that the district has failed to implement the decision, or part of the decision, the OSEP shall order the district to implement the decision or part of the decision, as appropriate.

Signature: 

(Person(s) Submitting Request)

Michael I. Forell, Esq.

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Bassman
DECISION SETTLEMENT
Judge Beavers
January 29, 2015



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION SETTLEMENT

OAL DKT. NO. EDS 16575-14

AGENCY DKT. NO. 2015 21985

M.B. on behalf of S.B.,

Petitioner,

v.

**LAKWOOD TOWNSHIP BOARD OF
EDUCATION,**

Respondent.

Michael I. Inzelbuch, Esq., for petitioner

Katherine Gilfillan, Esq., for respondent (Schenck, Price, Smith & King,
attorneys)

Record Closed: January 29, 2015

Decided: January 29, 2015

BEFORE LISA JAMES-BEAVERS, 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:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document. The agreement provides for a financial settlement for reimbursement, transportation, fees, and continued placement in the current school year until June 2015 at the unilateral placement. The unilateral placement will be the stay-put placement in the event of disagreement over placement for the 2015-2016 school year. The settlement terms do not require that I approve either the unilateral placement, nor do I via this decision. I FIND that the financial settlement between the parties provides a practical and sensible resolution to potentially protracted litigation and is the best interest of the parties, and the public, to whom the Board owes a fiduciary duty.
2. 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.

January 29, 2015

DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

Date Sent to Parties:

mph

Attachment

1-30-15

NOW, THEREFORE, in consideration of the following valuable consideration, it is hereby agreed by and between the parties hereto as follows:

1. For the 2013-2014 school year, the Board agrees to reimburse Petitioner a total of sixty-nine thousand five hundred sixty-six dollars and twenty cents (\$69,566.20) toward the non-sectarian costs associated with S.B.'s educational program at the [REDACTED] School where S.B. was unilaterally placed by Petitioner. Payment for this tuition shall be made to the trust account of Petitioner's attorney, to wit, Michael I. Inzelbuch, Esq. The Board further agrees to reimburse M.B. directly any monies paid for transportation for the 2013-2014 school year a total of twenty-one thousand six hundred dollars (\$21,600).

2. For the 2014-2015 school year, the parties agree that transportation started on November 11, 2014. The Board agrees to reimburse Petitioner three thousand dollars (\$3,000) for transportation paid prior to November 11, 2014.

3. Reimbursement for tuition was contingent upon receipt of documentation that is acceptable to the Board evidencing proof that Board received Petitioner's notification of her intent to unilateral place S.B. at [REDACTED] School for the 2013-2014 and 2014-2015 school years provided by Petitioner and which has been provided to attorney for the Board. Reimbursement herein is further contingent upon proof of payment or obligation to pay by Petitioner (i.e. canceled checks or credit card statements and invoices) the tuition paid to the [REDACTED] School for the 2013-2014 school year and proof of payment by Petitioner or obligation to pay transportation costs, along with S.B.'s attendance records for both years. Reimbursement will be issued to the Petitioner within forty-five (45) calendar days of the Board's approval of the proofs of payment or obligation to pay. The Board will recognize, as proof of an obligation to pay, a legally binding promissory note, commitment, mortgage, debenture, receipt, pledge, security or other

undertaking evincing a legally enforceable promise to pay on behalf of M.B. or S.B. or their agent or assign, along with the associated invoice for services and a copy of S.B.'s schedule for the 2013-2014 school year.

4. For the 2014-2015 school year, the Board agrees to contribute fifty-five thousand seven hundred sixty four dollars and seventy-nine cents (\$55,764.79) toward the non-sectarian educational costs of S.B.'s program at [REDACTED] School. This contribution is subject to the Board's approval of an appropriate contract with [REDACTED] School and receipt of an invoice specifically designating services provided to S.B. under [REDACTED] educational program. This contribution shall be made in equal monthly installments and represent payment for S.B.'s educational program through June 2015. Such payments shall cease if and when S.B. is no longer enrolled at [REDACTED] School for any reason. Payments for the months of September 2014 through December 2014 shall be made to [REDACTED] by than February 28, 2015 provided that a contract has been agreed to between the Board and [REDACTED]. In the event that the Board and [REDACTED] do not agree upon a contract by February 8, 2015; the Board shall make these payments within thirty (30) days of contract approval and thereafter monthly.

5. The Board's obligation to make the payments specified herein is contingent upon S.B.'s continued attendance at the [REDACTED] School, the Board's receipt of all documentation prepared relative to S.B. while a student at [REDACTED] School including, but not limited to report cards, progress reports, therapy notes, anecdotal records and any evaluations completed of S.B. while a student in that placement. By signing this Agreement, Petitioner is providing the requisite parental consent for the District and [REDACTED] School to exchange information relative to S.B. Petitioner further agrees to promptly execute a consent form for the exchange of information between the District and [REDACTED] School if deemed necessary by the District or [REDACTED].

6. By signing this Agreement Petitioner provides the necessary parental consent for the District to complete a reevaluation of S.B. by April 30, 2015. Nevertheless, Petitioner shall immediately execute written consents for these evaluations in order to include the requisite documentation in S.B.'s CST file. Petitioner agrees to make S.B. available for the following evaluations, conducted by an evaluator of the Board's choosing: occupational therapy, speech-language therapy, physical therapy, and educational. It is further agreed that the Board's evaluator will observe S.B. in [redacted] program at [redacted] School and that Petitioner will promptly execute a consent form for same if deemed necessary by the District or [redacted] School. The parties agree that an IEP meeting will be held on or about June 1, 2015 which date shall be mutually agreeable to the parties, to review the evaluation results and develop an IEP for S.B. for the 2015-2016 school year. Petitioner agrees to participate in the IEP meeting which shall be held no later than June 1, 2015 provided that evaluations and observations as set forth above are provided to the Petitioner by April 30, 2015.

7. In the event that the parties do not agree upon a placement for the 2015-2016, S.B.'s "stay-put" placement shall be the [redacted] School at the [redacted] location (determined by [redacted]) as appropriate for S.B.'s then-educational needs.

8. The Board's obligation to make such payments is further contingent upon Petitioner's continued domicile within the Lakewood School District. Should Petitioner move while this Agreement is in effect, she agrees to immediately inform the Board. If Petitioner moves, the Board's financial obligations hereunder shall cease as of the date of same and any outstanding payments owed to Petitioner and/or [redacted] School will be reduced on a *pro rata* basis.

9. Petitioners expressly acknowledge their understanding that the Board's financial contribution to S.B.'s placement at [redacted] School is in full satisfaction of the Board's

responsibility to provide [REDACTED] with a free appropriate public education regardless of any changes or alterations to S.B.'s programming/placement during the year.

MB

10. Petitioner accepts the contribution in Paragraphs 1 and 4 as full and final satisfaction of the District's obligation to provide S.B. with a free appropriate public education under the IDEA and the New Jersey State Constitution. Petitioner waives any entitlement to an Individualized Education Program, evaluations, special education programming, related services or any other services to which S.B. might be entitled through the Individuals with Disabilities Education Act or N.J.A.C. 6A:14-1.1 *et seq.* and any reasonable accommodations to which S.B. would be entitled through Section 504.

MB

11. In the event that S.B. fails to attend [REDACTED] School for any reason, the Board's financial responsibility pursuant to this Agreement shall immediately cease, and any remaining reimbursement and/or tuition payments would be reduced on a *pro rata* basis.

MB

12. All other expenses associated with S.B.'s unilateral placement at [REDACTED] School are and remain the responsibility of Petitioner. These include, but are not limited to, additional tuition, extended school year services (ESY), travel/transportation for S.B. and/or family except as set forth herein, books, expert costs, costs of field trips, clothing, activities fees, and any other costs associated with the placement. Should Petitioner become unable to fulfill these financial obligations, it is agreed that she will not seek further contribution toward the placement from the Board beyond the amount set forth herein. It is explicitly understood and agreed that the Board is not financially responsible for any evaluations privately obtained by Petitioner.

13. The Board agrees to reimburse Petitioner five thousand dollars (\$5,000) for attorney fees incurred as part of this action subject to receipt of documentation acceptable to the Board of proof of payment in excess of such amount to Petitioner's attorney. Such

reimbursement shall be made directly to Petitioner. Any and all other costs and expenses, of whatsoever nature, not specifically addressed herein are and shall remain the sole responsibility of the Petitioner.

14. Petitioner releases and waives any and all other claims which she, whether individually, separately, jointly and/or on behalf of S.B. asserted or could have asserted against the Board, collectively and individually, its past and present Board members, agents, employees, administrators, officers, attorneys, their successors, heirs and assigns, including but not limited to claims under any Federal, State or local law, statute, regulation, or ordinance, to date regarding S.B.'s education in the instant petition for due process, and/or through a complaint investigation. Petitioner further releases and waives any and all claims that could be brought while S.B. is in attendance at [REDACTED] School through this Agreement, including but not limited to compensatory damages, compensatory education, punitive damages, attorney's fees and costs, or any action pursuant to 20 U.S.C.A. §1415 or 42 U.S.C.A. §1983, except as specifically set forth herein.

15. This Agreement represents the entire understanding between the parties and will not be modified in whole or in part except by a mutual subsequent written and signed agreement. The parties acknowledge and agree that they have entered into this Agreement freely, willingly, and voluntarily, without duress or coercion, and that they fully understand its terms and conditions. The parties acknowledge and agree that they were given the opportunity to consult with counsel of their choosing and option, that they understand the contents of this Agreement and how it affects their legal rights. Respondents were, in fact, represented by Katherine Gilfillan, Esq. in connection with this Agreement; they acknowledge they are pleased with her representation and understand how the terms of this Agreement affect their legal rights.

MB
16. Except as explicitly specifically set forth herein, the parties waive any right to seek reimbursement from the other for any costs incurred in conjunction with this matter, including but not limited to expert fees, consultation costs, tuition, related services, private therapies, private counseling, and transportation costs for the time S.B. is in attendance at [REDACTED] School.

MB
17. The terms of this Agreement shall remain confidential to the maximum extent permitted by law. Petitioner agrees that neither she, her attorney, her evaluators, nor anyone under her control shall disclose such terms to anyone at any time, except as may otherwise be necessary to enforce the terms of this Agreement. Petitioner may provide a copy to her attorney and/or accountant if so required in any Court proceeding or in connection with tax issues.

MB
18. This Agreement shall be governed by the laws of the State of New Jersey and constitute a legal release of all claims that were or could have been raised as set forth herein.

MB
19. Nothing herein shall act or serve as an admission by either party that their positions and/or claims regarding the within matter were anything less than legitimate and valid.

MB
20. This Agreement shall not be effective without the specific approval of the Board of Education which shall be recommended by the Board attorney at the next Board meeting which is scheduled for January 14, 2015 provided the Agreement is executed by Petitioner.

MB
21. This Agreement shall be incorporated into a Final Order by the Honorable Lisa James Beavers, the Administrative Law Judge assigned to this matter.

[signatures appear on next page]

MB

Date: _____

X [Redacted] [Redacted] MB
M.B., Individually and o/b/o S.B.

LAKEWOOD TOWNSHIP BOARD OF EDUCATION

Date: 1/14/15

Ada S. Gonzalez
Ada Gonzalez, Board President

STATE OF NEW JERSEY

)
ss:
)

COUNTY OF _____

I CERTIFY that on 1/12, 2015, [Redacted], Individually and o/b/o

S.M personally came before me and acknowledged under oath, to my satisfaction, that they:

- (a) are named in and personally signed this document; and
- (b) signed, sealed and delivered this ~~document as their act and deed.~~

Attorney or Notary Public

Michael J. Trzasko

STATE OF NEW JERSEY
OFFICE OF THE NOTARY PUBLIC

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