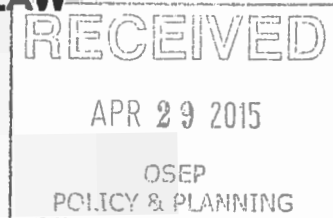


33 TOTAL
PAGES FAXED

**NEW JERSEY DEPARTMENT OF EDUCATION
PARENTAL REQUEST FOR ENFORCEMENT OF DECISION ISSUED
BY THE OFFICE OF ADMINISTRATIVE LAW**

Date: 4-29-2015



To: **Peggy McDonald, 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: B S
(Name of person requesting enforcement)

Address: [REDACTED]
KED BANK, NJ 07701

Phone: [REDACTED] Fax: () - - Email address: [REDACTED]

Please note: the Office of Special Education (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? APRIL 3, 2014

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 decision.

When was the action that you are seeking to enforce directed to occur? APRIL 3, 2014

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?
___ Yes X No

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

N/A

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

PLEASE SEE ATTACHED NARRATIVE (6 PAGES)

Upon 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: [Redacted Signature]
(Person(s) Submitting Request)

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

This is Guardians third request for enforcement of OAL DKT #EDS 06018-13 over the course of the 2014-15 school year.

The first request was transmitted to OSEP on September 16, 2014.

The second request was transmitted to OSEP on November 12, 2014.

The Red Bank School District has violated page 4, paragraph 2 of the Settlement Agreement of OAL DKT #EDS 06018-13 as follows:

A. Page 5 of the Individualized Education Program which reads:

Parent Involvement

Weekly Behavior Charts which will be sent home to grandparents via e-mail on the end of the day on Monday of the following week.

The District has unilaterally discontinued Parent Involvement by refusing to provide guardians Weekly Behavior Charts since December 2014.

B. Page 6 of the Individualized Education Program which reads:

Supports for School Personnel

- Professional Development through educational seminars and specialized workshops specific to M [REDACTED]'s disability.

The District has not provided adequate training to school personnel to support M [REDACTED]'s specific disability as school personnel have failed to use appropriate strategies to deal with M [REDACTED]'s [REDACTED] disabilities.

- Enforce zero tolerance of student/staff bullying M [REDACTED], as outlined in the student code of conduct as specified in the Harassment Intimidation and Bullying law.

District Administrative Officers and Staff have continuously, throughout the 2014-15 school year, engaged in a clear pattern of targeted harassing, intimidating and bullying behavior towards M [REDACTED] due to [REDACTED] Disabled Student status through the following series of events:

1. At the District's request, attorney Eric Harrison sent certified letters on July 18, 2014 and again on August 21, 2014 to Guardian R [REDACTED] S [REDACTED] requesting documentation of guardianship in regards to OAL DKT#EDS06018-2013 (the subject case at issue).

This is clearly harassment of M [REDACTED]'s guardian by the District as Mr. Harrison was fully aware that OAL DKT#EDS06018-2013 was settled and closed by Judge James-Beavers on April 8, 2014, and that the mutually agreed upon Settlement Agreement ordered by Judge James-Beavers clearly states in paragraph 3:

“WHEREAS, R [REDACTED] S [REDACTED] (“Petitioner”, “Parent,” or “R.S.”) is the guardian of M.S. and for the purposes of this agreement and the Individualized Education Program (“IEP”) for M.S. is the “Parent”;

2. In September 2014, The District informed guardian R [REDACTED] S [REDACTED] of unilateral changes to M [REDACTED]'s IEP that the District would implement in late September. Guardian had to file a Request for Enforcement thru OSEP to prevent the District's unilateral action.
3. In October 2014, The District unilaterally and without M [REDACTED]'s IEP team's consent (which includes guardian R [REDACTED] S [REDACTED]) suspended M [REDACTED] on two separate occasions. Guardian had to again file a Request for Enforcement thru OSEP to prevent further suspensions in violation of M [REDACTED]'s IEP.
4. On November 26, 2014, The District received notification of harassing, bullying and intimidating activity towards M [REDACTED] by a

staff member. M [REDACTED] reported to [REDACTED] grandfather, M [REDACTED] E [REDACTED] that Mrs. Bankowski (Math Teacher) had scolded MS for writing about her (the teacher) in M [REDACTED]'s private journal.

Page 1 of MS's Behavioral Intervention Plan, listed under **Antecedent Manipulations** states "*Allow M [REDACTED] to write feelings in a personal, private journal. Neither teaches or school staff, or administrators is permitted to read contents of M [REDACTED]'s journal*" The District performed a cursory and perfunctory HIB investigation which led to exonerating the staff member of harassing, intimidating and bullying M [REDACTED].

5. On December 2, 2014, The District received notification of harassing, bullying and intimidating activity towards M [REDACTED] by a staff member. M [REDACTED] reported to [REDACTED] grandfather that Ms. Kluck (Language Arts Teacher) blocked the doorway exiting the room and refused to let M [REDACTED] leave the class – at one point using her body to trap M [REDACTED] between her body and the door frame. The District again performed a cursory and perfunctory HIB investigation which led to exonerating the staff member of harassing, intimidating and bullying M [REDACTED].
6. On December 9, 2014, The District was notified of harassing, intimidating and bullying activity towards M [REDACTED] by staff members. M [REDACTED] detailed that on a regular basis Mrs. Bankowski (Math Teacher) and Mr. Clark (Vice-Principal) were hanging over [REDACTED] shoulder despite [REDACTED] objections, and criticizing [REDACTED] in class for everything [REDACTED] did. The District again performed a cursory and perfunctory HIB investigation which led to exonerating the staff member and District Administrator of harassing, intimidating and bullying M [REDACTED].
7. In December 2014, The District provided first marking period grades showing M [REDACTED] (a previously high achieving Honor Roll student) had failed all academic classes. Requests by Guardians for a review and re-evaluation of M [REDACTED]'s first period grades due to prior violations of [REDACTED] IEP were repeatedly dismissed by the District.

8. On December 15, 2015, Superintendent Jared Rumage suggested that guardians find another school for M [REDACTED] to attend and that he would offer suggestions. Guardians rejected the Superintendent's unsolicited offer.
9. On December 24, 2014, under the pre-text of M [REDACTED] being a imminent threat and a danger to staff and students, The District filed a Petition for Emergent Relief with OSEP (OAL DKT #EDS 00723-15) as retaliation for:
 - 9.1. Guardians repeated requests for a review and re-evaluation of M [REDACTED]'s first marking period grades.
 - 9.2. Guardians refusal to agree to transfer M [REDACTED] to another school, and
 - 9.3. Guardian R [REDACTED] S [REDACTED] speaking before the Red Bank Board of Education at the December 16, 2014 Board meeting in which guardian complained of harassment by school staff and administrators and the failure of the District to support M [REDACTED]'s disability via the court-ordered IEP and BIP.
10. The District withdrew the Petition for Emergent Relief on January 15, 2015 despite OSEP scheduling a hearing date of January 20, 2015 as the District was unable to support the pre-textual argument used as the basis for the Petition.
11. In February & March 2015 Superintendent Rumage made it known on different occasions that M [REDACTED] would not be allowed to participate in school sponsored [REDACTED] grade class end-of-year activities or participate in the graduation ceremony.
12. On March 11, 2015, Guardians were made aware by the District that M [REDACTED] had been written up regarding an incident where M [REDACTED] allegedly threw textbooks across a room and cursed several times at Mr. Clark (Vice-Principal) and Mr. Pierson (Athletic Director).

13. On March 17, 2015, MS spoke before the Red Bank Board of Education addressing the March 11, 2015 incident and denying the charges asserted by the Mr. Clark and Mr. Pierson in the write up, further explaining that [REDACTED] had been kept in the room against [REDACTED] will by Mr. Clark and Mr. Pierson. M [REDACTED] also asked the Board of Education to step in and stop the teachers and staff from bullying [REDACTED]. M [REDACTED] stated to the Board that [REDACTED] just wanted to be left alone.
14. On March 22, 2015 Guardian R [REDACTED] S [REDACTED], via email, filed a HIB report regarding the March 11, 2015 incident and Mr. Clark and Mr. Pierson's forcibly holding M [REDACTED] against [REDACTED] will in the classroom. Guardian had to file the HIB by email because M [REDACTED] had been thwarted by the HIB investigator Ms. Ali in [REDACTED] attempts to acquire the HIB reporting form. Once again, the District performed a cursory and perfunctory HIB investigation which led to exonerating the male staff member and male Administrator of harassing, intimidating and bullying M [REDACTED].
15. An April 21, 2015 appeal of the District's HIB finding by resulted in the discovery that the District's own investigatory documents revealed that almost all of the allegations asserted by Mr. Clark and Mr. Pierson concerning the events of March 11 were fabrications that conflicted with the rest of the evidence. Superintendent Rumage was shown the contradictory evidence contained in the Districts HIB file. The Superintendent summarily dismissed this creditable evidence that supported M [REDACTED]'s HIB report and let stand the wrong decision of non-HIB as well as the factually untrue March 11, 2015 write up against M [REDACTED].

Guardians maintain that viewed collectively, the factual incidents listed above demonstrate District staff and Administrators have engaged in systemic, deliberate and unlawful harassment, intimidation and bullying behavior continuously throughout the 2014-15 school year.

C. Page 3 of Behavioral Intervention Plan:

How Will Rewards System Work:

- Items A – H lays out a clear, unambiguous and mutually agreed upon rewards system designed to help modify and reduce unacceptable behavior by M [REDACTED]. The District unilaterally abandoned the Rewards System and denied M [REDACTED] the opportunity to benefit from this part of [REDACTED] IEP.

The Red Bank School District has violated page 2, paragraph 5 of the Settlement Agreement of OAL DKT #EDS 06018-13, which reads:

“The District shall include a notation on all disciplinary records dated within two years of the date on which the due process petition was filed and all future disciplinary records indicating that the behavior may have been related to M.S.’s current special education classification.”

The District has failed to adhere to these terms and conditions of the Settlement Agreement and none of M [REDACTED]’s records have been notated as required.

If requested, Guardian is willing and able to provide supporting documentation for any and all allegations made herein.

(1)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION APPROVING

SETTLEMENT

OAL DKT. NO. EDS 06018-13

AGENCY DKT. NO. 2013 19585

R.S. ON BEHALF OF M.S.,

Petitioner,

v.

RED BANK BOARD OF EDUCATION,

Respondent.

Kevin E. Daniels, Esq., for petitioner (Daniels and Davis-Daniels, attorneys)

Caitlin W. Lundquist, Esq., for respondent (Methfessel and Werbel, attorneys)

Record Closed: March 25, 2014

Decided: April 3, 2014

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.

OAL DKT. NO. EDS 06018-13

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- 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.

April 3, 2014
DATE
Attachment

Lisa James Beavers
LISA JAMES-BEAVERS, ALJ

Date Mailed to Parties:

cmo

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Caitlin Lundquist - ID #020422009
METHFESSEL & WERBEL, ESQS.
2025 Lincoln Highway, Suite 200
PO Box 3012
Edison, New Jersey 08818
(732) 248-4200
+1(732) 248-2355
lundquist@methwerb.com
Attorneys for Red Bank Board of Education
Our File No. 77606 CAL

2014 MAR 25 P 3:23

R.S. O/B/O MINOR CHILD, M.S.

Petitioner,

V.

RED BANK BOARD OF EDUCATION

Respondent.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW
OAL DOCKET NO.: EDS 06018-2013S
AGENCY REF. NO.: 2013-19585

SETTLEMENT AGREEMENT

WHEREAS, M.S. is an educationally disabled student as defined in N.J.A.C. 6A:14-1.1 et seq.; and

WHEREAS, the Red Bank Board of Education ("Board" or "District") is the local educational authority with the responsibility of providing a free, appropriate, public education to M.S.; and

WHEREAS, R. S. ("Petitioner," "Parent," or "R.S.") is the guardian of M.S. and for purposes of this Agreement and the Individualized Education Program ("IEP") for M.S. is the "Parent"; and

WHEREAS, M.S. is a student residing within the District who is eligible to receive special education and related services under the classification of ; and

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WHEREAS, a dispute existed with regard to M.S.'s educational program for the 2012-2013 school year, culminating in the filing of a petition for due process which was assigned Agency Reference Number 2013-19585, and OAL Docket Number EDS 06018-13 following its transmittal to the Office of Administrative Law; and

WHEREAS, the parties, each having a desire to amicably settle any and all claims arising from the aforementioned due process petition, now hereby agree as follows:

1. The terms of this Agreement shall cover the 2012-2013 school year up and to including the date on which M.S. graduates from the District and/or is no longer the educational responsibility of the District.

2. This Agreement hereby incorporates by reference the attached Individualized Education Program ("IEP") and Behavior Intervention Plan ("BIP") signed by Petitioner on February 10, 2014.

3. To the extent that the terms of this Agreement conflict with any existing Section 504 Plan regarding M.S., the terms of this Agreement shall control.

4. The Board agrees to reimburse Petitioner for attorney's fees in the amount of \$5,000.00 (five thousand dollars) within 30 days of ratification of this Agreement by the Board.

5. The District shall include a notation on all disciplinary records dated within two years of the date on which the due process

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petition was filed and all future disciplinary records indicating that the behavior may have been related to M.S.'s current special education classification.

6. The District shall fully comply with the provisions of N.J.A.C. 6A:32-7.1 et seq. with respect to M.S.'s student records.

7. It is expressly understood and agreed that the parties reserve the right to bring a claim before any tribunal of competent jurisdiction to enforce their rights under the terms and conditions of this Agreement.

8. The terms of this Agreement represent the compromise of disputed claims between the parties. It shall not be treated as an admission on the part of the Board that it has not offered M.S. an appropriate program and placement for any school year or that the Board has failed to act in accordance with the law.

9. Except as specifically provided in Paragraph 4 of this Agreement, the parties agree to bear their own attorney's fees and costs for all matters relating to M.S. through the date of execution of this Agreement.

10. The parties recognize that they sign this Agreement as their own voluntary act and deed, and that they fully understand the duties and obligations enumerated herein. The drafting and negotiation of this Agreement have been participated in by each of the parties and their respective counsel and, for all purposes, this Agreement shall be deemed to have been drafted jointly by each of the parties. No ambiguity shall be

(5)

resolved against any party based upon authorship. The parties hereby acknowledge that they have been represented by counsel throughout the settlement of the above-referenced matter, throughout the negotiation of this Agreement, and at the execution of this Agreement, and have read and consulted with counsel regarding this Agreement.

11. This Agreement shall be governed by the laws of the State of New Jersey and federal law, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., as well as its implementing regulations, 34 C.F.R. §§ 300.1 to -754.

12. Neither party shall be deemed a "prevailing party" under state or federal law on account of the relief provided by this Agreement.

13. This Agreement shall be governed by the laws of the State of New Jersey and constitutes a complete legal release of any and all claims that were or could have been raised by Petitioner, based upon the facts within her knowledge as of the date of this Agreement, against the Board regarding M.S. from the time M.S. became a student in the District until execution and/or entry hereof.

14. This Agreement shall be subject to ratification by the Board at its next scheduled meeting on March 11, 2014 and is without prejudice to either party if the terms are not ratified. Petitioner is not bound by this Agreement until it has been ratified by the Board. Upon ratification of this Agreement, the Board shall cause a copy of the relevant resolution to be forwarded to Petitioner.

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AP

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15. This Agreement, which incorporates the attached IEP and BIP, contains the entire agreement between the parties hereto and is intended to resolve any and all disputes and issues between them as of the date of execution of this Agreement.

16. R.S., on her own behalf and on behalf of M.S., releases and discharges the Board, its/their officers, employees, administrators, agents and servants from any and all claims arising out of events within her knowledge as of the date of this Agreement, including but not limited to claims for damages, liabilities, losses or injuries to person or property or both, and/or claims relating to the provision of an educational program and related services to M.S.

17. This Agreement shall become effective upon entry of a Final Decision incorporating its terms by the Administrative Law Judge assigned to this matter.

WITNESS:


R. S. _____
R.S. O/B/O M.S.

DATED: _____

DATED: 3/10/14

WITNESS:

 _____

Red Bank Board of Education

By:  _____

DATED: 3/20/14

DATED: 3/20/14

From: 1(732)246-2355 To: Judge Page: 4/9 Date: 3/25/2014 2:43:41 PM

Red Bank Borough Schools
76 Branch Avenue -- Red Bank, NJ 07701 -- 732 758 1507
www.rbk.k12.nj.us
Quality Learning By All...Whatever It Takes!

(8)

Harold Reid
Interim Superintendent

Debra Pappagallo
School Business Administrator/ Board Secretary

March 19, 2014

The following is an excerpt from the minutes of the March 18, 2014 meeting of the Red Bank Borough Board of Education:

I. ACTION AGENDA

Ms. Roseman motioned, seconded by Ms. Carrie Ludwikowski, to approve the following:

BUSINESS – 3000

BE IT RESOLVED by the RED BANK BOROUGH BOARD OF EDUCATION that upon the recommendation of the Superintendent the following FINANCE resolution(s) are approved as indicated:

3412. SETTLEMENT AGREEMENT

RESOLVED by the Red Bank Board of Education (hereinafter referred to as the "Board") that the terms, stipulations and conditions as established in the Settlement Agreement between the Board and R.S. on behalf of M.S., which is annexed to this Resolution, are hereby adopted and approved by the Board. The Board President and Business Administrator/Board Secretary are hereby authorized and directed to execute the Settlement Agreement, and any other documents necessary to effectuate the settlement.

ROLL CALL VOTE:

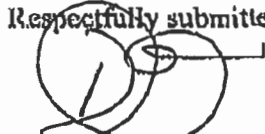
AYES: Mrs. Burden, Mr. Forest, Ms. Jones, Miss Lowe, Ms. Ludwikowski, Ms. Roseman, Dr. Stone, Ms. Viscomi,

NAYS: None **ABSTENTIONS:** None

ABSENT: Mr. Noble

I certify that the preceding is a true and accurate excerpt from the minutes of the March 18, 2014 meeting of the Red Bank Borough Board of Education.

Respectfully submitted,



Debra Pappagallo
Business Administrator/Board Secretary

RECORDED
2014 MAR 25 P 3 23
TATE OF NEW JERSEY
OFFICE OF ADMINISTRATION