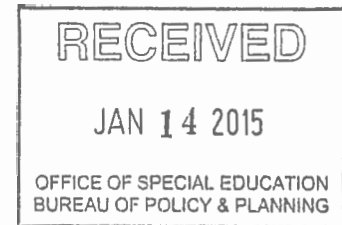


# REQUEST FOR SETTLEMENT AGREEMENT ENFORCEMENT

**From:** [REDACTED]  
**To:** Peggy.mcdonald@doe.state.nj.us  
**Date:** Wed, 14 Jan 2015 7:54 AM



Dear Dr. McDonald,

The South River School District has failed to comply with the terms of our settlement agreement and I would like OSEP to enforce the terms.

--

e.1 to 1 Instruction – For the 2014-15 school year, Student will receive 1 to 1 instruction in the resource room and self-contained classroom as well as in regular education classes using a push-in approach from a teacher who is certified in special education, has experience with children with [REDACTED], and has training in applied behavior analysis. The 1 to 1 teacher shall engage in data collection on Student's behavior, social, and academic IEP goals throughout the school day. At times when the teacher is on lunch or a prep period, Student shall be accompanied by a trained paraprofessional who will assume those duties. Data collection will be monitored under a data collection plan created and supervised by the BCBA identified in (e), and reviewed at monthly parental meetings.

b.Resource room – Student will be placed in the resource room for 1:1 instruction utilizing the complete general education curriculum in language arts and math, starting at Student's current academic baseline levels and working towards meeting or exceeding grade-level standards, with probe-based data collection in each area in which Student requires modified instruction to make progress.

During the recorded monthly meeting it came to light that the Resource Room teacher has been teaching my [REDACTED] and [REDACTED] 1:1 teacher has been "prompting" [REDACTED] and acting as an aide. [REDACTED] 1:1 teacher should be instructing [REDACTED] in the entire [REDACTED] grade general education curriculum which should be individualized for [REDACTED]. It also came to light during the meeting that district has permanently placed several children in the resource room and A [REDACTED] is doing 1/8 of the group classroom work that the other children are doing. A [REDACTED] is not required to keep pace with [REDACTED] peers or do the work that they are doing. The district is required to give [REDACTED] intensive 1:1 instruction in all [REDACTED] Grade content areas to compensate [REDACTED] for not having access to grade appropriate work, a general curriculum, or appropriate behavioral supports, for [REDACTED] entire academic career. The teacher is also required to take data on behavior, social, and academic IEP goals and share the results with me at the monthly meetings. No data was presented to me at the meeting.

f.BCBA Oversight – A BCBA with a background in [REDACTED] disorders will oversee Student's program. Specifically, the BCBA will oversee data collection, graph and monitor all goals, train teachers who work with Student, and consult with teachers 2X/week to ensure the fidelity of the program. BCBA will also observe a home therapy session during which Student is receiving grade level work and will collaborate as necessary with Michele Havens or other expert designated by the Parents as to monitoring and accountability of the programming for Student. An annual review meeting will be held in May 2015 to discuss Student's progress and make recommendations for future programming and plan for Student's program for ESY and 2015-16. If Student is successful and moves to the [REDACTED] school for 2015-16, the IEP team will consider whether Student should be accompanied by a trained 1 to 1

paraprofessional rather than a special education teacher during the school day. The District shall re-evaluate Student in the Fall of 2015.

During the monthly meeting several disturbing comments were made that I felt showed the District's lack of understanding in what best practices are for educating an [REDACTED] child with a high IQ and whose behaviors have always interfered with [REDACTED] learning. I asked the case manager how many hours per week the BCBA was in district working directly with [REDACTED] and [REDACTED] various teachers and service providers. Her reply was [REDACTED]. I then informed the case manager that her reply was inappropriate and I would like her to be more specific, she then told me to ask the BCBA. I sent Ms. Holmes, the BCBA, an email asking her the above questions which she never replied to. It would appear to any reasonable person that Ms. Holmes is not in district working directly with [REDACTED] and staff for the minimum best practice of two hours per week nor is consulting with teachers 2xs per week nor overseeing [REDACTED] program in any meaningful way.

A hard copy of this will be faxed to your office on this date.

[REDACTED] S [REDACTED]



*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
33 Washington Street  
Newark, NJ 07102  
(973) 648-6008

**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties  
on NOV - 3 1984**



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

**DECISION APPROVING**

**SETTLEMENT**

OAL DKT. NO. EDS 03706-14

AGENCY DKT. NO. 2014-20812

**T.S. AND J.S. ON BEHALF OF A.S.,**

Petitioners,

v.

**SOUTH RIVER BOARD OF  
EDUCATION,**

Respondent.

---

**Kevin Golembiewski, Esq.,** for petitioners (Law Offices of David J. Berney)

**Cherie L. Adams, Esq.,** for respondent (Adams, Gutierrez & Lattiboudere, LLC,  
attorneys)

Record Closed: October 31, 2014

Decided: October 31, 2014

**BEFORE MUMTAZ BARI-BROWN, 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.

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.

October 31, 2014  
DATE

Mumtaz Bark Brown  
MUMTAZ BARK BROWN, ALJ

Date Received at Agency:

10-1-14  
Leena Sarkis  
DIRECTOR AND

Date Sent to Parties:

NOV - 3 2014

dr

CHIEF ADMINISTRATIVE LAW JUDGE

Attachment

**ADAMS GUTIERREZ & LAFFITBOUDERE, LLC**  
 1037 Raymond Boulevard, Suite 900  
 Newark, New Jersey 07102  
 (973) 735-2742  
 Attorneys for Respondent,  
 South River Board of Education

J.S. and T.S. obo A.S.,  
  
 Petitioners,  
  
 v.  
  
 SOUTH RIVER BOARD OF EDUCATION,  
  
 Respondent

OFFICE OF ADMINISTRATIVE LAW  
  
 AGENCY REF. NO.: 2014-20812  
 OAL DOCKET NO.: EDS 03706-2014 N  
  
**SETTLEMENT AGREEMENT**

J.S. and T.S. o/b/o A.S., Petitioners ("Parents") and the South River Board of Education ("Board" or "District") Respondent, parties to the above matter, hereby agree in full resolution of the above captioned due process petition to the following terms, reserving their respective positions and without any admission of liability.

- For the 2014-15 school year, A.S. ("Student") will return to an in-district program. [REDACTED] shall transition into the District program from [REDACTED] by attending the District program one day per week from November 3 through November 26, 2014. From December 1, 2014 through December 12, 2014, Student shall attend the District program for two days per week. From December 15, 2014 through December 23, 2014, Student shall attend the District program three days per week. As of January 5, 2015, A.S. shall attend the District program full-time. Implementation of the transition shall be coordinated by the District's child study team with input from all IEP team members, including Parents. During the transition period, the District

shall provide Student with access to general education curriculum materials, such as textbooks and worksheets, for Student's use in [REDACTED] home program.

2. For the 2014-15 school year, Student's in-district educational program during and as of the completion of the transition period shall include the following components:

a. General Education Curriculum - Student will have access to the entire [REDACTED] Grade general education curriculum for math, language arts, social studies, and science. If Student requires modified instruction to make progress in an area of the general education curriculum, data-based goals including weekly probes will be created to evaluate [REDACTED] progress towards meeting general curriculum standards. Accommodations and modifications for the Student to be engaged in the general curriculum will be used.

b. Resource room - Student will be placed in the resource room for 1:1 instruction utilizing the complete general education curriculum in language arts and math, starting at Student's current academic baseline levels and working towards meeting or exceeding grade-level standards, with probe-based data collection in each area in which Student requires modified instruction to make progress.

c. The [REDACTED] grade self-contained classroom will serve as Student's homeroom and Student shall receive science and social studies instruction using the general education curriculum in that classroom. Student will be with regular education students for lunch, recesses, school trips, assemblies and activities, as well as specials, as put forth below.

d. Related Services - Student will receive pull out related services at the level in the proposed IEP dated April 7, 2014, subject to review of the updated evaluations at an IEP meeting to be held in October, 2014.

e. 1 to 1 Instruction – For the 2014-15 school year, Student will receive 1 to 1 instruction in the resource room and self-contained classroom as well as in regular education classes using a push-in approach from a teacher who is certified in special education, has experience with children with [REDACTED], and has training in applied behavior analysis. The 1 to 1 teacher shall engage in data collection on Student's behavior, social, and academic IEP goals throughout the school day. At times when the teacher is on lunch or a prep period, Student shall be accompanied by a trained paraprofessional who will assume those duties. Data collection will be monitored under a data collection plan created and supervised by the BCBA identified in (e), and reviewed at monthly parental meetings.

f. BCBA Oversight – A BCBA with a background in [REDACTED] disorders will oversee Student's program. Specifically, the BCBA will oversee data collection, graph and monitor all goals, train teachers who work with Student, and consult with teachers 2X/week to ensure the fidelity of the program. BCBA will also observe a home therapy session during which Student is receiving grade level work and will collaborate as necessary with Michele Havens or other expert designated by the Parents as to monitoring and accountability of the programming for Student. An annual review meeting will be held in May 2015 to discuss Student's progress and make recommendations for future programming and plan for Student's program for ESY and 2015-16. If Student is successful and moves to the [REDACTED] school for 2015-16, the IEP team will consider whether Student should be accompanied by a trained 1 to 1 paraprofessional rather than a special education teacher during the school day. The District shall re-evaluate Student in the Fall of 2015.

g. Specials – Student will be placed in the general education classroom with Student's 1 to 1 teacher for specials, including music, art, library, PE, computers, science, and Spanish. Behavior



data will be collected by the 1 to 1 teacher or paraprofessional and reviewed by the BCBA to adapt the inclusion program for Student's success.

h. There will be a monthly meeting with the IEP team, including the 1:1 teacher, the consulting BCBA, and the parent, where data on all behavior, social, and academic goals will be reviewed and revised as necessary

i. Social Skills – Student will participate in a social skills program with nondisabled peers 1X per week. The social skills activities will be facilitated by the speech and language therapist running the activity. Student will be provided social skills goals and [REDACTED] 1:1 teacher will collect data on such goals as set forth above.

j. Daily Checklist – The BCBA will create behavioral and academic daily checklists that will be sent home with Student each day as a means of communication with Parents about Student's progress and level of functioning.

k. FBA/Behavior Plan - An FBA will be conducted at school by the consulting BCBA. A Positive Behavior Support Plan will be developed based upon the FBA. The Positive Behavior Support Plan will include daily data collection, consistent with the principles of ABA.

l. Transportation – The District will provide transportation to and from school for Student for 2014-15..

3. Additional Educational/Behavioral Services - School District shall reimburse Parents upon receipt of appropriate documentation, for privately provided educational services in the total amount of no more than \$10,000. "Appropriate documentation" shall consist of an invoice from an educational provider for its service and proof of payment when Parents seek reimbursement. These services will be arranged directly by the Parents and may include home

programming, including but not limited to Student's ABA home program; related services as that term is defined by the Individuals with Disabilities Education Act ("IDEA") and its implementing regulations, including but not limited to speech, occupational therapy, and physical therapy; tutoring; social skills instruction; or similar educational services provided prior to or after the execution of this Agreement. The District shall reimburse the Parents on an ongoing basis within 30 days of the submission of acceptable proof of payment of services rendered to the Board of Education. This provision shall not be a part of the IEP but is a one-time financial contribution in resolution of this petition and past claims and the reimbursement shall be available to Parents only until the \$10,000 maximum has been reached. The District continues to maintain its position that its proposed program is appropriate for A.S. and that additional services are not required for A.S. to receive a free and appropriate public education.

5. **Communication between Parents and District** - The point of communication between the parties shall be the case manager. Any non-emergency communication by email or phone will receive a response within 5 days. If there is an emergency, Parents may contact the District case manager or Director. Nothing in this agreement shall preclude Parents from engaging in the same activities as the parents of non-disabled students, including but not limited to parent-teacher conferences, school parties, parent-teacher organizations, assemblies, and parent information sessions. Furthermore, nothing in this agreement shall preclude Parents from engaging in routine communications with District staff that parents of non-disabled students engage in, including but not limited to discussions about field trips, reasons for Student absences, and Student's physical health.

6. **IEP Meetings** - School District will provide a "Draft" IEP to Parents at the IEP meeting. The consulting BCBA will be invited to IEP meetings. At the conclusion of an IEP meeting,

School District shall give the Parents a copy of the IEP. If Parents are incapable of personally attending the IEP meeting and participates by telephone, a copy of the IEP will be mailed to the Parents.

7. IEPs - School District will reference in Student's IEP (a) Student's February 2014 Woodcock Johnson Test Of Achievement scores; (b) Dr. Natalie Nageeb's February 2014 IQ test results along with her statement that [REDACTED]; (c) Dr. Laura Galasso-Coons' March 2014 diagnoses of [REDACTED] Disorder, once a copy is provided to the District; (d) Ms. Judith Sloop's and Ms. Jennifer Wajngold's March 2014 OT and PT findings of [REDACTED] issues.

8. Attorneys Fees and Costs - The District insurance carrier shall reimburse Parents' Counsel the sum of Fifty-Four Thousand Dollars (\$54,000.00) in attorneys' fees and costs, subject to the submission of a Certification of Fees and Costs. In consideration of the above, Petitioners, individually and on behalf of A.S. hereby fully and completely release the Board, its agents and representatives, from any and all claims they have or may have as of the date of this Agreement under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, § 705(8), the Family Education Rights and Privacy Act, 20 U.S.C. § 1232 g, 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 Education Act ("IDEA"), 20 U.S.C. § 1400 et seq., the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq, N.J.A.C. 5A: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

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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 A.S. or [REDACTED] parents on behalf of A.S. in any forum arising out of or connected with A.S.'s education, including but not limited to, claims for additional attorney's fees and other professional fees and costs, compensatory education, damages, reimbursement related to any unilateral and/or out-of-district placement for A.S., whether known or unknown, or to the extent permitted by applicable law through the date this Agreement is executed. 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 nor shall it limit Parents' rights to seek additional attorney's fees and costs incurred to enforce this Agreement.

9. Neuro-diversity training will be offered by a trained and experienced professional (social worker, counselor or psychologist) on an annual basis to students in the regular education classroom(s) that Student will be attending, emphasizing accepting differences and endorsement of inclusion.

10. Duty to Provide FAPE – Nothing in this agreement shall constitute a waiver of Student's right to FAPE going forward.

11. This Agreement resolves all claims that were or would be made by Petitioners or A.S. in connection with the above due process petition. Aside from the terms outlined in this Agreement, and excepting attorneys' fees and costs, the Petitioners and A.S. specifically waive and release the South River School District/Board of Education from any and all claims for further damages, compensation, education, or other expenses, and/or claims under the IDEA (20 U.S.C. § 1400, et seq.), Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq.), the Civil Rights Act of 1966 (42 U.S.C. § 1981 et seq.) or any other state or federal law or regulation, regardless of the forum through the date of the Agreement.

12. This Agreement is made without any admission of liability and the Board does not waive its position that an appropriate program was made available to student at all relevant times.

13. This Agreement constitutes the full and complete agreement of the parties and is binding upon all parties and their successors in interest. The parties have had the opportunity to discuss the terms with legal counsel and enter into it voluntary with full understanding of its meaning.

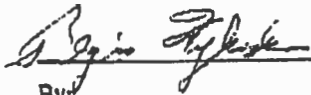
14. This Agreement is contingent upon A.S. remaining domiciled in the South River School District. With the exception of the "additional educational services" referenced in paragraph 3 above, should A.S. or Parents move outside of the District at any time during the term of this Agreement, this Agreement shall become void and the District shall have no further responsibility, including financial responsibility, from that point forward.

15. This Agreement and its terms are confidential and shall not be disclosed by either party to third parties except for counsel or as required by law or for implementation of the terms. Notwithstanding the above, the Parties may disclose information about the Agreement to their counsel, accountants, financial consultants, tribunals and courts of law.

16. This Agreement shall be subject to approval of the South River Board of Education. The parties hereby acknowledge their agreement to the terms set forth above by signing below.

17. The parties agree to incorporate this Agreement into a Final Order/Consent Decree.


SOUTH RIVER BOARD OF EDUCATION


  
By: \_\_\_\_\_

10/24/14  
Date



PETITIONERS

  
\_\_\_\_\_  
J.S., Parent

  
\_\_\_\_\_  
T.S., Parent

10/23/14  
Date

10/23/14  
Date



# South River Board of Education

15 Montgomery Street, South River NJ 08882  
Tel: 732-613-4000 Fax: 732-238-8415

Regis Wyluda..... President  
Cynthia Urbanik..... Vice-President  
John Budzin Kevin J. Nielsen  
Kelly Cruz Anthony Razzano  
Elizabeth Lell Shenetta Turner-Smith

Mr. Michael J. Pfister  
Superintendent; Ext. 223

Kenneth J. Kokoszka  
Business Administrator/  
Board Secretary; Ext. 227

## MINUTES OCTOBER 20, 2014 SPECIAL MEETING

### PRESIDENT OF THE BOARD

Motion by Razzano and seconded by Neilson and unanimously approved by roll-call vote following:

#### 1. Approve - Special Education Settlement

Upon recommendation of the Superintendent of Schools and Special Education Counsel, the South River Board of Education hereby approves the terms and conditions of the Settlement Agreement for student # [REDACTED] on file with the Board Secretary.

I, Kenneth J. Kokoszka, SBA/Board Secretary of the South River Board of Education of the county of Middlesex and the State of New Jersey, do hereby certify that the above is a true copy of a resolution adopted at a meeting of the Board on October 20, 2014.

  
SBA/Board Secretary

RECEIVED  
2014 OCT 1 A 11:30  
STATE OF NEW JERSEY  
OFFICE OF THE SUPERINTENDENT OF  
EDUCATION