



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION APPROVING

SETTLEMENT

OAL DKT. NO. EDS 9086-16

AGENCY DKT. NO. 2016-24519

E.Z. ON BEHALF OF D.Z.,

Petitioner,

v.

AUDUBON BOARD OF EDUCATION,

Respondent.

Jamie Epstein, Esq., for petitioner

Andrew W. Li, Esq., for respondent (Parker, McCay, PA, attorneys)

Record Closed: August 22, 2016

Decided: September 14, 2016

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:**

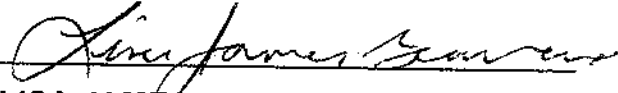
1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document.

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 (2016). 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 Programs.

September 14, 2016
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency:

9/14/16

Date Sent to Parties:

9/14/16

Attachment
cmo

J-1
8/8/16

File No. 05528-0003
Law Offices
PARKER McCAY P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, New Jersey 08054
Attorneys for Respondent, Audubon Board of Education

E.Z. o/b/o D.Z.,

Petitioners,

v.

DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION

OAL Docket No.: EDS 07613-2016S
Agency Ref. No.: 2016-24519

AUDUBON BOARD OF EDUCATION, and
HAMPTON ACADEMY,

Respondents.

E.Z. o/b/o D.Z.,

Petitioners,

v.

OAL Docket No.: EDS 09213-2016S
Agency Ref. No.: 2016-24736

**SETTLEMENT AGREEMENT AND
GENERAL RELEASE**

AUDUBON BOARD OF EDUCATION, and
HAMPTON ACADEMY,

Respondents.

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("the Agreement" or "this Agreement") is entered into this 8th day of August, 2016, by and between Petitioners E.Z. o/b/o D.Z. (hereinafter "Petitioners"), Respondent, the Audubon Board Of Education (the "Board"), and Respondent, Hampton Academy ("Hampton"), as parties (collectively, the "Parties") to the above-caption matters.

WHEREAS, E.Z. is the parent of D.Z., who is a student who is classified as eligible for

special education based upon multiple disabilities, including emotional, psychiatric and behavioral issues; and

WHEREAS, the Board¹ is the local educational agency responsible for the operations of the Audubon School District (the "District"), a K-12 public school district serving students who reside within the Borough of Audubon, Camden County, New Jersey; and

WHEREAS, D.Z. is currently placed at Hampton Academy², an approved private school for students with disabilities, in order to provide D.Z. with a free and appropriate public education and the greater degree of emotional and psychiatric support needed to address his disabilities.

WHEREAS, on or about May 17, 2016, Petitioners filed a Request for Emergent Relief and Petition for Due Process, under OAL Docket No. EDS 7613-16, seeking D.Z.'s return to his placement at Hampton Academy, compensatory education for the time period during which D.Z. was not at Hampton Academy, and compensatory education for an alleged denial of a free and appropriate education from "11/18/14 to 12/10/14"; and

WHEREAS, on or about June 14, 2016, the Court issued a decision as to the Request for Emergent Relief under OAL Docket No. EDS 7613-16, directing:

Since I FIND Hampton Academy is an unnamed indispensable party and the stay put standard does not apply I ORDER the emergent application filed in this matter be DISMISSED and further ORDER the relief requested be DENIED.

¹ As used in this Agreement, the term "Board" means: the Audubon Board of Education, its current or former elected or appointed officials, administrators, employees, attorneys, agents, servants, representatives, predecessors and successors, insurance carriers, and all other persons or entities for whom any of the above have been or may be legally responsible.

² As used in this Agreement, the term "Hampton Academy" means: Hampton Academy, its current or former elected or appointed officials, administrators, employees, attorneys, agents, servants, representatives, predecessors and successors, insurance carriers, and all other persons or entities for whom any of the above have been or may be legally responsible.

and

WHEREAS, on or about June 20, 2016, Petitioners filed a second Request for Emergent Relief and an underlying Petition for Due Process under OAL Docket No. EDS 09213-16/OAL Docket No. EDS 09086-16, which named both the Board of Education and Hampton Academy as Respondents and sought D.Z.'s return to his placement at Hampton Academy, compensatory education for the time period during which D.Z. was not at Hampton Academy, and compensatory education for an alleged denial of a free and appropriate education from "11/18/14 to 12/10/14"; and

WHEREAS, on or about July 13, 2016, the Court issued a decision as to the Request for Emergent Relief under OAL Docket No. 9213-16 directing:

For the foregoing reasons, I ORDER that Audubon return D.Z. to Hampton Academy. Although compensatory education is not generally granted on a request for emergent relief, here, the decision is based on violations of the IDEA and stay-put rather than a showing of emergent relief factors. Therefore, I ORDER that Audubon convene an IEP team meeting with E.Z. and a representative from Hampton Academy to determine services that can be provided over the summer of 2016 to begin to compensate D.Z. for his over fifty days of removal from his education program so that he will not be as far behind in September 2017.

and

WHEREAS, the claim asserted by Petitioners for compensatory education for the period "11/18/14 to 12/10/14" also remained unresolved and thus was scheduled for a hearing under OAL Docket No. EDS 7613-16; and

WHEREAS, the Parties hereto wish to avoid the time and expense associated with a due process hearing and amicably resolve their differences in their mutual best interests and those of D.Z.; and

WHEREAS, pursuant to Emergent Order, the Parties convened a meeting on July 22,

2016 to address providing compensatory education to D.Z. for the time period he was not at his placement at Hampton Academy and, during said meeting, further engaged in lengthy settlement discussions to resolve the remaining claims of compensatory education for the April 20, 2016 to June 14, 2016 and "11/18/14 to 12/10/14" time periods; and

NOW, THEREFORE, the Parties desiring to settle the Due Process proceedings in an amicable way, they hereby agree as follows:

1. The Board will provide D.Z. with thirty (30) total days of compensatory education with respect to his claim for compensatory education for time period from April 20, 2016 to June 14, 2016, during which D.Z. was not at his placement at Hampton Academy in the following manner:

- a. D.Z. will and has returned to his placement at Hampton Academy, beginning with his attendance for the final week of half days (July 25, 2016 through July 29, 2016) of Hampton Academy's extended school year program;
- b. The Board will and has provided transportation by taxi for D.Z. to and from Hampton Academy for the final week (July 25, 2016 through July 29, 2016) of extended school year program;
- c. The Board will and has provided three (3) additional hours of compensatory education each day from July 25, 2016 through July 29, 2016.
- d. The Board will provide D.Z. with six (6) hours daily of compensatory education by a certified special education teacher from August 1, 2016 to September 2, 2016 (excluding weekends).

2. The Board will provide D.Z. with eighteen (18) total days of compensatory education with respect to his claim for compensatory education for the "11/18/14 to 12/10/14" time period in the following manner:

- a. The Board will provide six (6) hours daily of compensatory education by a certified special education teacher at the Audubon High School on September 23, 2016; October 7 and 28, 2016; December 9, 26, 27, 28, 29, and 30, 2016;

January 13, 2017; March 3, 10, 17 and 24, 2017; and April 17, 18, 19 and 20, 2017.

3. The Board will also pay for a total of twenty-six (26) individual therapy sessions for D.Z. with Dr. Mitchell Liss, the therapist chosen by Petitioners, which therapy sessions will be conducted as close as is practicable, subject to availability of appointments, on a twice (2x) per week basis.

4. For the above compensatory education and therapy referenced in Paragraphs 1 through 3, both his teachers and therapist shall follow D.Z.'s Individualized Education Plan to the maximum extent possible, including the documentation requirements set forth therein.

5. The Board will place D.Z. in the 2016-2017 extended school year program at Hampton Academy, *beginning July 2017. This will be reflected in D.Z. IEP. [Signature]*

6. D.Z. shall be provided with compensatory education in the manner and on the dates set forth above; except in the event of an excused absence by D.Z., any missed day(s) of compensatory education shall be provided on the next reasonably practicable day(s).

7. This Agreement shall fully resolve all administrative issues between the Parties that were raised in the Due Process Petitions filed by the Petitioners. This Agreement does not resolve any civil claims and claims for attorney's fees and costs. Upon final execution of this Agreement by the Parties, Petitioners or their counsel shall execute a Stipulation of Dismissal with Prejudice, and said Stipulation shall be furnished to the New Jersey Office of Special Education Programs, thus dispensing with and forever dismissing the matters of E.Z. o/b/o D.Z. v. Audubon Board of Education, OAL Docket No. EDS 7613-16 and E.Z. o/b/o D.Z. v. Audubon Board of Education and Hampton Academy, OAL Docket No. EDS 9213-16 and EDS 09086-16. Petitioners fully agree to take any additional action that may be necessary to ensure the dismissal/withdrawal with prejudice of the aforementioned litigation and/or due

process petitions with the New Jersey Office of Special Education Programs.

8. This Agreement represents the compromise of disputed claims and shall never be treated as an admission of liability by either party for any purposes whatsoever. This Agreement cannot be construed or interpreted as an admission on the part of the Board and/or Hampton Academy that the Board and/or Hampton Academy failed to provide D.Z. with a free and appropriate public education.

9. Petitioner E.Z. represents that she has the authority, as D.Z.'s parent, to enter into this Agreement.

10. The undersigned counsel for Respondent Hampton Academy represents that he has the authority, as legal counsel for Hampton Academy, to enter into this Agreement.

11. This Agreement is subject to formal approval by the Audubon Board of Education, following full execution and approval by Petitioners and Hampton Academy. In the event the Board thereafter approves the Agreement, it shall be executed forthwith by the Board and shall become effective immediately. A copy of the formal approval resolution by the Board will be provided to the Administrative Law Judge for incorporation into any final decision.

12. The Parties acknowledge that they have read and understand the terms of this Agreement, that they had an opportunity to have the Agreement read 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.

13. The Parties may produce or disclose this Agreement as required by and in accordance with operation of law or lawful subpoena or order of court or pursuant to official discovery proceedings.

REGULAR
AT THE NEXT MTG OF AUDUBON BOE
J.G.


14. 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 Party. The Parties agree and acknowledge that this Agreement is the product of mutual draftsmanship and any rule of law requiring that it be construed against the drafter shall not apply.

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

16. This Agreement may be executed in multiple counterparts, and it shall be fully valid, legally binding, and enforceable whether executed in a single document or in such counterparts.

IN WITNESS HEREOF, the Parties have set their hands this 8th day of July 2016.


Petitioners



E.Z., individually and on behalf of D.Z.

Respondent

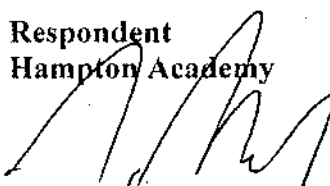
Audubon School District



Jeanne Opeit-Kernoschak
Director of Special Services
Audubon School District

Respondent

Hampton Academy



Timothy R. Bieg, Esq.
Attorney for Hampton Academy

- 45. Motion to approve the following staff for new or re-certification in Safe and Positive Approached training on August 25, 2016 for 6.5 hours presented by Brett DiNovi and Associates.

AEA Non-Instructional Rate: \$30.00 per hour

Stephanie Lewis-Deacon Cara Novick Simone Miliareisis Jillian Malysik

Hourly Rate:

Nikole Zane David Baldino

- 46. Motion to approve the following requests to attend workshops/conferences for the 2016-2017 school year:

School	Cost	Staff Member	Date of Conference	Name of Conference
HS	\$175.00	Jessica Mellwig	9/1/16, 9/2/16, 10/11/16, 1/17/17	Sheltered Instructional in English

STUDENTS:

MOTION TO APPROVE ITEMS 1-3.

Motion by Ms. Brown seconded by Ms. Osinski to approve the following items

1. Motion to approve a parent's request for senior privilege for student ID#00079 for the 2016-2017 school year.
2. Motion to affirm that the Audubon Board of Education is in receipt of the district Harassment, Intimidation and Bullying monthly report as presented by the superintendent, and is in agreement with all actions taken in regard to the incidents reported at the June 2016 meeting of the Board of Education.
3. Motion to approve the settlement agreement between E.Z. o/b/o D.Z. and the Audubon Board of Education effective retroactive to August 8, 2016.

VOTE FOR ITEMS 1-3

Motions approved by unanimous voice vote for these items

BUILDINGS AND GROUNDS:

1. Motion to approve the following requests for use of facilities:

AHS - C111- Audubon Cheerleading Booster Club, Parents meeting, September 9, 2016 and November 9, 2016 from 6:30pm to 8pm. Contact: Kim Pfefferle

AHS Lower Field - Audubon Soccer Youth Association, August 2016 to October 2016 from Monday through Thursday, from 6 to 8pm. Contact: John Graham

AHS Auditorium - MAS PTA Talent Show, April 28, 2017 from 4 to 9pm and April 28, 2016 from 3:30 to 5:30pm. Contact: Melissa McCloskey

AHS Caf /Kitchen - Audubon Band Boosters, Fundraiser breakfast, October 22m 2016 from 6:30am to 1pm. Contact : Christi Vllardo

HAS Library - MAS & HAS PTA, Meetings as per attached forms. Contact: Melissa McCloskey

MAS Library - MAS PTA Holiday Shop, December 5-8, 2016, from 12-2pm and 6-8pm. Contact: Melissa McCloskey

MAS Playground - MAS PTA Blacktop playground area, May 25, 2016 with raindate June 2, 2016 from 2pm to 4:30pm. Contact: Melissa McCloskey

This is a true and correct copy of the Minutes of the Meeting of the Audubon Board of Education of August 17, 2016.  Robert Delengowski, Business Administrator/Board Secretary