



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

**FINAL DECISION APPROVING**  
**SETTLEMENT**

OAL DKT. NO. EDS 10843-18

AGENCY DKT. NO. 2018-28405

**K.W. ON BEHALF OF M.G.,**

Petitioners,

v.

**SALEM CITY BOARD OF EDUCATION,**

Respondent.

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**Jamie Epstein, Esq.,** for petitioners

**Michael Pattanite, Esq.,** for respondent (Leneck, Socey, Formidoni, Giordano,  
Cooley, Lang and Casey, attorneys)

Record Closed: December 14, 2018

Decided: December 18, 2018

BEFORE **SARAH G. CROWLEY, ALJ:**

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§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. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018). 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.

December 18, 2018  
DATE

  
SARAH G. CROWLEY, ALJ

Date Received at Agency:

December 18, 2018 (DAG emailed)

Date Sent to Parties:

12-14-18

Attachment

Michael A. Pattanite, Jr., Esq. NJID# 019212010  
LENOX, SOCEY, FORMIDONI, GIORDANO, COOLEY, LANG & CASEY LLC  
136 Franklin Corner Road, Unit B-2  
Lawrenceville, New Jersey 08648  
(609) 896-2000

Attorney(s) for Respondents: Salem City Board of Education

K.W. obo M.W.	STATE OF NEW JERSEY
Petitioners	OFFICE OF ADMINISTRATIVE LAW
v.	AGENCY REF. NO.: 2018-28405
Salem City Board of Education	OAL DKT. NO.: EDS 10843-2018S
Respondents	SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") has been stipulated to and agreed upon by and between K.W. individually, and on behalf of her son, M.G., and the Salem City Board of Education (the "Board" or "District") as a resolution to a controversy submitted in the form of a due process petition that was filed before the Department of Education, Office of Controversies and Disputes, and transmitted to the Office of Administrative Law for a hearing captioned under Agency reference number 2018-28405 and Office of Administrative Law Docket Number EDS 10843-2018S (Petitioner, and the Board, hereinafter the "Parties").

This Agreement is the written form of the material terms of the agreement between the parties to resolve any dispute founded in the referenced due process petition.

1. The District agrees to accept the independent evaluations conducted by evaluators Gail Pieters, Dr. Kathleen Ordi, and Ellen Topiel. M.G.'s new 2018-19 IEP present levels of functioning, accommodations and goals and objectives shall be amended incorporating the reports' findings and recommendations M.G.

2. The District shall provide M.G. With weekly social skills training implemented by a school counselor based on the findings and recommendations of the FBA. *Provide proof of pull out to parent by email weekly.*

3. The parties agree to meet for an IEP meeting to incorporate the terms of this agreement into an IEP for the 2018-2019 school year within thirty (30) days of the Court's Order approving this agreement. The meeting will be held at a mutually agreeable time, and the parent agrees to cooperate in the scheduling of the meeting of the IEP team which includes the parent. The District will provide a copy of the proposed IEP seven (7) calendar days prior to the meeting.

4. The District will incorporate the Behavior Intervention Plan (hereinafter "BIP") created by Dr. Odri into M.G.'s 2018-2019 IEP. The District agrees to pay Dr. Odri for any staff training necessary for the implementation of the BIP.

5. The District agrees to contract with Partners in Learning to provide a Registered Behavior Technician to provide daily 1:1 service for M.G.. The District agrees to pay Partners

in Learning for any staff training relative to M.G.'s 1:1 aide. The proposal for the Partner's in Learning provision of this 1:1 aide is attached hereto as "Exhibit A."

6. The District agrees to contract with Partners in Learning to oversee M.G.'s BIP. The proposal for the Partners in Learning oversight of M.G.'s BIP is attached hereto as "Exhibit B."

7. If M.G. attends an out of district placement that provides the services identified in paragraphs 3, 4 and 5, the District is not obligated to continue the Partners in Learning contracts as set forth in paragraphs three (3), four (4), and five (5) above. The services outlined in M.G.'s IEP and BIP will be administered by a qualified BCBA when necessary, and RBT certified aide on a daily basis during the 2018-2019 school year. M.G.'s 2018-2019 IEP will be amended to include the provision of three (3) monthly group speech sessions for thirty (30) minutes each. One (1) of every six (6) speech sessions will allow for a classroom observation/discussion with M.G.'s service providers and teachers. The District speech therapist will provide M.G.'s speech therapy. M.G.'s 2018-2019 IEP will include a daily 1:1 reading session from a reading specialist for forty-five (45) minutes. This reading session will be conducted by the District's reading specialist.

*The aide selected will meet with M.G. prior to contract.*

8. The independent evaluators have recommended Extended School Year (hereinafter "ESY") for this student, M.G. At the Meeting to discuss the student's IEP meeting the Team will <sup>agree to an</sup> discuss appropriate placements for ESY, <sup>w/transport</sup> as Salem does not offer an appropriate ESY program. M.G. will receive three hundred (300) hours of behavior related compensatory education for the alleged deprivation of a free and appropriate education (hereinafter "FAPE") as stated in the Due Process Petition. The Compensatory Education will be provided by Partners in Learning, who will determine the appropriate staff for this behavior compensatory education. This behavior compensatory education shall <sup>be</sup> consolidated with the compensatory education provided to M.G. under the previous settlement agreement, approved by the Court under OAL Docket Number EDS 00046-2018S and Agency Reference Numbers 2018-27370 and 2018-27450. The prior award of compensatory education is hereby amended and inclusive of the three hundred hours (300) total as set forth in this paragraph. The sum of total compensatory education for M.G. is three hundred (300) hours under this case, and OAL Docket Number EDS 00046-2018S and Agency Reference Numbers 2018-27370 and 2018-27450.

9. The parent is responsible for scheduling the behavior compensatory education services set forth in paragraph eight (8) above. For illustrative example only, one and one half hours a

day, two days a week for one hundred weeks. The District's only responsibility for this behavior compensatory education is to pay the invoices for services provided to M.G. by Partners in Learning. The District is only responsible to pay for three hundred (300) hours of services as behavior compensatory education. The balance of any behavior compensatory education service hours set forth in paragraph eight (8) above will expire within two years of the Date of the Court's approval of this agreement, if not utilized by M.G. prior to two years after the approval date. *This service can be provided whenever and whenever K.W. chooses.*

10. The District agrees to provide M.G. with independent evaluations in the areas of psychiatry, neuro-psychology and occupational therapy. These evaluations will be provided by appropriately certified individuals at the selection of the parent.

11. To obtain the independent evaluations in paragraph ten (10) above, the parent must provide the names and certifications of the individuals to perform these independent evaluations within thirty (30) days of the Court's Order approving this settlement agreement. If the Parent does not meet her obligation to provide the names and resumes of the independent evaluators within thirty (30) days of the Court's Order approving this settlement agreement, the District will choose the appropriately certified evaluators to conduct these

evaluations. The District will provide the Parent with the selected independent evaluators within forty-five (45) days after the start date of the District's right to choose the independent evaluators. *M.W. will provide the names of the selected individuals to the case manager.*

12. Regardless of whether the Parent or District chooses the independent evaluators set forth in paragraphs ten (10) and eleven (11) above, the Parent agrees to comply with the scheduling of the independent evaluations. The Parent further agrees to take M.G. to any scheduled independent evaluation appointment. *As long as M.W. gives them the name of an independent evaluator within 30 days of the Court Approved agreement, this evaluator*

13. The District will evaluate M.G. in the areas of educational, learning, and social update. This agreement will constitute the Parent's consent to these District evaluations. The District will present the evaluations to the parent at an meeting to discuss the evaluations and their impact on the student's program. *must be used.*

14. This agreement further constitutes consent to extend M.G.'s current triennial evaluation date presently set for October 27, 2018. The District evaluations set forth in paragraph fifteen (15) will take place within sixty (60) days of the Court's Order approving this settlement.

15. The Parties agree to reasonably consolidate any eligibility meetings because of receipt of the District



evaluation and Independent Evaluations, as practical under the circumstances.

16. The District agrees to pay M.G.'s independent evaluators, Dr. Odri, Gaye Pieters, and Ellen Topiel, for commuting and attending M.G.'s IEP meeting set forth in paragraph two (2) of this agreement, if these evaluators request or require attendance at the meeting. The evaluators have the option to telephonically attend the meeting where reasonably practical.

17. Prior to the IEP meeting described in paragraph three (3) above, the District will reimburse the independent evaluators for time spent drafting M.G.'s goals and objectives for the 2018-2019 IEP relative to the areas of respective independent evaluation. The Parent understands the goals and objectives must be received from the independent evaluators prior to the IEP meeting for these goals and objectives to be provided prior to the meeting.

18. A communication log will be incorporated as an accommodation in M.G.'s 2018-2019 IEP. The Communication Log will be administered daily by M.G.'s 1:1 aide. The method and content of the communications will also be determined by Dr. Odri. *The daily communication log will be sent home daily with M.G. for K.W.'s review and it will be returned daily.*

19. A cell phone use plan will also be incorporated into M.G.'s 2018-2019 IEP. The cell phone plan will also be overseen

by M.G.'s 1:1 aide and managed by Dr. Odri. The Cell phone plan must be compliant with the District's cell phone use policy and accommodate M.G.'s disabilities. A copy of the District's cell phone use policy will be provided to Dr. Odri within fifteen (15) days of the Court's Order approving this settlement agreement.

20. The District and the Parent hereby make amends of any past acrimony in an effort to move forward in a positive fashion for the education of this student. The Parties agree to fully communicate, cooperate and collaborate regarding this student's education. The District will not hold past events against the parent. The District hereby affirms that a trespassing order is not in effect <sup>as of November 24, 2018</sup>. The Parent agrees to be held by the District's Code of Conduct for parents. A copy of the code of conduct is attached here to as "Exhibit C."

21. The Parties waive and release any administrative (but not civil claims) they may have from the Petition for Due Process filed under Agency reference number 2018-28405 and Office of Administrative Law Docket Number EDS 10843-2018S. This waiver and settlement agreement is made without admission or denial of whether M.G. was provided a free and appropriate education (hereinafter "FAPE") by the District during the 2017-2018 school year. The District does not require the NJOAL to make a determination whether or not the District provided M.G.

with a FAPE in order for Petitioners to reserve their civil claims. The parties agree this settlement has no effect on Petitioner's right to bring any civil claims not raised in this EDS 10843-2018S Petition. The parties further agree this settlement agreement has no effect on any civil claims raised by Petitioners in SLM-L-000097-18.

22. This Agreement is made without any admission of liability or responsibility by any Party hereto and shall neither be construed as an admission by the District that the programs, placements, services and/or supports offered for M.G. were not in all respects appropriate nor an admission by the Parent that the programs, placements, services and/or supports offered for M.G. were in all respects appropriate.

23. The parties agree the District will pay the Petitioner's attorney, Jamie Epstein, Esq., a sum of fifteen thousand (\$15,000.00), in consideration for any prevailing party attorney's fee associated with the instant claim within forty five (45) days of the Court's final decision approving the settlement. This amount encompasses any and all liability to the District stemming from a prevailing party attorney's fee claim associated with this due process petition.

24. The Parties acknowledge they have read and understand the terms of this Agreement, that they have had the opportunity to have the Agreement reviewed by counsel, and that they are

entering into this Agreement knowingly, freely, voluntarily, without coercion and not under the influence of anything or anyone.

25. Petitioner represents as the <sup>3/29/19</sup> ~~sole~~ authority to enter into this <sup>is a Training</sup> ~~Agreement~~ at it shall be binding as if entered into by <sup>Cannot</sup> ~~the~~ <sup>Sch on that</sup> ~~petitioner~~ and/or <sup>Dot</sup> ~~guardian~~ of M.G. not a party hereto.

26. 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.

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

28. This Agreement shall become final upon the ~~ALI's~~ <sup>passage of 2</sup> ~~approving the settlement on the record and incorporating the executed Agreement with the Resolution of Respondent's Board of Education into a final written enforceable decision.~~

<sup>is</sup> which shall thereafter be incorporated into ALJ decision <sup>applying settlement</sup> scheduled for

FOR PETITIONER: 12/12/18, which

BY:

[Redacted Signature]

DATED:

11-26-18

BY:

George Proce

DATED:

12/14/18

91 If the Agreement is not <sup>10</sup> authorized by the Board the Parties may proceed to a hearing which is

Feb 13, 22, March 9th, 27  
Apr 1, 15, 16, 22, 24  
Scheduled for

SALEM CITY SCHOOL DISTRICT

RESOLUTION AUTHORIZING SETTLEMENT WITH Family and Student Identification Number 01250075 PURSUANT TO N.J.A.C. 6A:3-1.13(d)

December 12, 2018

WHEREAS, N.J.A.C. 6A:3-1.13(d) requires that a Board of Education provide a resolution authorizing settlement indicating that the district board of education has consented to the terms of the settlement;

BE IT RESOLVED, that the Board hereby consents to settlement with Family and Student

SALEM CITY SCHOOL DISTRICT

RESOLUTION AUTHORIZING SETTLEMENT WITH Family and Student  
Identification Number 01250075 PURSUANT TO N.J.A.C. 6A:3-1.13(d)

December 12, 2018

WHEREAS, N.J.A.C. 6A:3-1.13(d) requires that a Board of Education provide a resolution authorizing settlement indicating that the district board of education has consented to the terms of the settlement;

BE IT RESOLVED, that the Board hereby consents to settlement with **Family and Student Identification Number 01250075** pursuant to the terms of the Release and Settlement Agreement attached hereto and authorizes the Board of Education President, **Mrs. Yugene Groce** to execute the Agreement on behalf of the Board.

*Motion approved by unanimous voice vote of 8-0-0; Ayes: Adams, Bentley, Colon, Holden, Hoolahan, Livingston, Leflore, and Moore Nays: 0 Abstain: 0*



Herbert Schectman,  
Business Administrator/Board Secretary