

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION APPROVING
SETTLEMENT

OAL DKT. NOS. EDS 16393-19 AND EDS
17304-19
AGENCY DKT. NOS. 2020-30813 AND
2020-30991

J.B. AND C.B. ON BEHALF OF J.B.,

Petitioners,

v.

PENNS GROVE-CARNEY'S POINT
REGIONAL BOARD OF EDUCATION,

Respondent,

and

PENNS GROVE-CARNEY'S POINT
REGIONAL BOARD OF EDUCATION,

Petitioner,

v.

J.B. AND C.B. ON BEHALF OF J.B.,

Respondents.

Jamie Epstein, Esq., for J.B. and C.B. o/b/o J.B., petitioners/respondents

Anne R. Meyers, Esq., and **Alexandra A. Stulpin, Esq.,** for Penns-Grove
Carney's Point Regional Board of Education, respondents/petitioners (Comegno
Law Group, P.C., attorneys)

Record Closed: April 2, 2020

Decided: April 3, 2020

BEFORE **DOROTHY INCARVITO-GARRABRANT, 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 documents.

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 settlement document. The settlement was placed on the record at the Office of Administrative Law, 1601 Atlantic Avenue, Suite 1601, Atlantic City on March 11, 2020. The settlement was subject to approval by respondent/petitioner, Penns-Grove Carney's Point Regional Board of Education at their next regularly scheduled meeting. The settlement and settlement document were approved by respondent/petitioner, Penns-Grove Carney's Point Regional Board of Education, at its regularly scheduled meeting held on March 23, 2020, as evidence by the signatures of respondent/petitioner's authorized members on the attached settlement document.

The settlement document was to be accompanied by the respondent/petitioner's Board Resolution, prior to a final decision being made by this tribunal. Due to the present extraordinary circumstances presented by the Coronavirus, counsel for each of the parties have not received the executed Board resolution memorializing the settlement and authorizing the settlement agreement's execution. A telephone management conference was held on April 2, 2020, during which petitioners'/respondents' counsel and respondent's/petitioner's counsel consented on behalf of their clients to this final decision being issued based on and approving the fully executed settlement agreement and in the absence of the Board's resolution, which formally memorialized the Board's action. Such di minimis modification of the settlement agreement, or ordinary settlement procedures, shall not be interpreted or construed in anyway, whatsoever, to be a mechanism or method to challenge in the future the validity of the settlement agreement, its enforceability, or the approval by respondent/petitioner at its March 23, 2020 meeting.

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. I **FURTHER ORDER** that respondent's/petitioner's counsel shall provide petitioners'/respondents' counsel with the fully executed Board Resolution in a reasonable period of time, under and subject to the extraordinary circumstances presented by the Coronavirus.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019). 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 Policy and Dispute Resolution.

April 3, 2020

DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency:

April 3, 2020

Date Sent to Parties:

/lam

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, New Jersey 08057
(856) 234-4114
(856) 234-4262 Fax
Attorneys for Respondent, Penns Grove-Carneys Point
Regional School District Board of Education

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DL
ALJ

BY: MARK G. TOSCANO, ESQUIRE
ALEXANDRA A. STULPIN, ESQUIRE
ANNE R. MYERS, ESQUIRE

J.B. and C.B. o/b/o J.B. Petitioners, vs. PENNS GROVE-CARNEYS POINT REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION, Respondent.	STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW DOCKET NOS: EDS 16393-19 & 17304-19 AGENCY REF NOS: 2020-30813 & 2020-30991 SETTLEMENT AGREEMENT
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This Settlement Agreement and General Release ("Agreement") is entered into by and between the Board Of Education ("Board") for Penns Grove-Carneys Point Regional School District ("District"), located at 100 Iona Ave., Penns Grove, NJ 08069, New Jersey, and J.B. and C.B on behalf of their son, J.B. ("Petitioners"), who resides in Carneys Point, NJ 08069 (Board/District and Petitioners are collectively referred to as the "Parties"). This Agreement is being entered into by the Parties to resolve and settle all outstanding issues involved in the dispute as follows:

WHEREAS, J.B. is classified as eligible for the provision of special education and related services under 20 U.S.C. §1415 et seq. and N.J.B.C. 6A:14-1.1 et seq.; and

WHEREAS, the Board is the local educational authority with the responsibility of providing a free, appropriate public education to J.B.; and

WHEREAS, a dispute arose as to J.B.'s program and placement for the 2018-2019 and 2019-2020 and school years and Petitioners filed a Petition for Due Process and against District, alleging among other things, that District failed to provide J.B. with a free and appropriate public education ("FAPE"), and seeking an Order providing for compensatory education; and

WHEREAS, the Parties, without alleging or admitting deficiencies in the special education and related services provided/available to J.B. by District are desirous of arriving at an amicable resolution regarding J.B.'s educational program; and

WHEREAS, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties enter into this Agreement to outline their agreement, release claims, and express the full and complete terms of same;

NOW, THEREFORE, THE PARTIES HEREBY AGREE THAT:

1. At this time, the Board agrees it shall:
 - a. Make payment to the Jamie Epstein Attorney Trust Account in the amount of seventy-seven thousand dollars (\$77,000) in satisfaction of the above captioned matter within 30 days of the final decision;
 - b. Pay for TCNJ to conduct an Assistive Technology Evaluation and NJDVR to conduct the Vocational Evaluations and Cooper Pediatric Neurology to conduct a neurological evaluation, at the Board's expense;
 - c. Within eight (8) weeks after this Agreement becomes final, hold an IEP Meeting to update Goals & Objectives, Modifications, Accommodations, Petitioner to be provided a copy of the proposed IEP no later than forty-eight (48) hours before the IEP meeting.

2. Petitioners, individually and on behalf of J.B., hereby forever and fully waive and release Board from all claims that have accrued as of the date of their execution of the Agreement they and/or J.B. have or may have against Board in relation to the educational, special education and/or related services provided and/or offered to J.B., including all legal, contractual, common law, statutory and/or equitable claims under state and/or federal law, including but not limited to claims for and/or under:

- a. compensatory education;
- b. attorneys and other professional fees;
- c. reimbursement related to any unilateral and/or out-of-district placement for J.B., whether known or unknown;
- d. N.J.AC. 6A:14-1.1, et seq.;
- e. Individuals with Disabilities in Education Improvement Act, 20 U.S.C. §1415 et seq.;
- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq.;
- g. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101;
- h. Family Education Rights and Privacy Act, 20 U.S.C. §1232g, et seq.;
- i. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000, et seq.
- j. The Rehabilitation Act of 1973, as amended, 20 U.S.C. §7801, et seq.;
- k. 29 U.S.C. §794(a);
- l. 42 U.S.C. §1983;
- m. 42 U.S.C. §1988; and

n. New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq.

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.

3. Regarding any claims arising prior to the date Petitioners execute this Agreement, Petitioners agrees to indemnify and hold harmless Board, its current and former members, officers, directors, agents, servants, employees, successors, attorneys, assigns and affiliates, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities, and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected or unsuspected, disclosed or undisclosed, initiated by J.B. upon reaching the age of majority, arising out of or in any way related to agreements, events, acts, omissions or conduct which relate in any way or are premised upon this Agreement and/or J.B.'s education and/or unilateral parental placement(s), including but not limited to: any and all such claims and demands directly or indirectly arising from or any way connected with the District's obligation to provide J.B. with an appropriate education; claims pursuant to any federal, state or local laws or causes of action; claims pursuant to federal and state special educational laws including; but not limited to: the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., N.J.S.A. 18A:46-1, et seq., and N.J.B.C. 6A:14-1.1, et seq.

4. In the event that the Board shall be required to defend any such action, based upon any claims arising prior to the date Petitioners execute this Agreement, that is initiated by J.B. upon him reaching the age of majority and for a period of three years thereafter, the Board shall be permitted to hire counsel of its own choice at the sole cost of Petitioners..

5. Except in the event of an enforcement action, neither Party will be considered to be a "prevailing party" for any purpose, and each Party shall be responsible for their own attorneys'

fees, expert costs and any other costs incurred in connection with this matter, except as otherwise provided herein.

6. This Agreement is made without any admission of liability or responsibility by any Party hereto and shall not be construed as an admission by Board that the proposed, offered and/or provided programs for J.B. were not in all respects appropriate.

7. If at any time J.B. is no longer a resident of the District, all of Board's obligations, if any, hereunder shall immediately cease.

8. This Agreement is dispositive of all issues in dispute between the Parties and is intended to constitute a final resolution of the dispute between the Parties up until the date Petitioners execute this Agreement.

9. Petitioners represent that they have sole authority to enter into this Agreement, and that it shall be binding as if entered into by any other parent and/or guardian of J.B. not a party hereto.

10. Petitioners acknowledges that they have read and understand the terms of this Agreement, that they have had the opportunity to have the Agreement reviewed by counsel, that they are satisfied with the advice of their counsel, and that they are entering into this Agreement knowingly, freely, voluntarily, without coercion and not under the influence of anything or anyone.

11. Petitioners agree and acknowledge that this Agreement is subject to approval by the Board during its regularly scheduled meeting scheduled for March 23, 2020. This agreement shall become final upon: (1) execution of the agreement by the parties; (2) approval by resolution of the Board; (3) submission of the executed agreement and resolution to the New Jersey Office of Administrative Law; and (4) the incorporation of this executed Agreement and resolution into a final enforceable decision and order. The Parties agree that this Agreement will be recommended

for approval at the Board meeting scheduled for March 23, 2020. In the event this Agreement is not approved by the Board, the adjudication of the pending petitions shall resume.

12. 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.

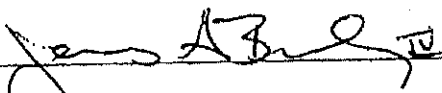
13. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations.

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


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IN WITNESS WHEREOF, the Parties hereto set their hands and seals as of the dates written below.

FOR PETITIONERS:

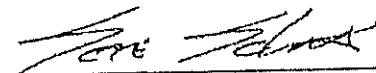
BY: 
J.B., Father

DATED: 3/11/20

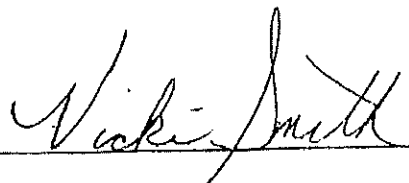
BY: 
C.B., Mother

DATED: 3/11/20


PENNS GROVE-CARNEYS POINT REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION:

BY: 

DATED: 3/11/2020

BY: 

DATED: 3/23/2020

BY: 

DATED: 3/23/2020