

Demystifying Settlement Agreements¹

by

Wyner & Tiffany

SAMPLE SETTLEMENT AGREEMENT

TITLE

COMPROMISE AND RELEASE AGREEMENT

Steven Jones v. Local School District

Office of Administrative Hearings Case No. 08-XXXX

PREAMBLE

This Compromise and Release Agreement (“Agreement”) is entered into by John and Mary Jones (“Parents”), individually and on behalf of their son Steven Jones (“Student”), on the one hand, and the Local School District (“District”), on the other hand, (collectively, “Parties”) with regard to the matter of *Steven Jones v. Local School District*, Case No. XXXXX (“Due Process Proceeding”).

The purpose of this Agreement is to fully and finally settle and resolve all educational claims between the Parties, through the date of this Agreement (“Settled Period”), including all claims that were asserted, or that could have been asserted, in the Due Process Proceeding under the Individuals with Disabilities Education Act (“IDEA”), and concomitant provisions of STATE law enacted in compliance therewith.

SUBSTANTIVE OBLIGATIONS

In consideration of the covenants, agreements and representations hereinafter set forth, the Parties, and each of them, agree as follows:

REIMBURSEMENT

1. Reimbursement Amount. The District agrees to reimburse John and Mary Jones in an amount not to exceed X dollars (\$X) (“Reimbursement

¹ The information in this article is not intended to constitute legal advice or substitute for obtaining legal advice from your own counsel.

Payment”), which shall be mailed to them at their residence address of Street Address, City, State, Zip Code.

2. Reimbursable Educational Expenses. The Reimbursement Payment represents reimbursement for “Educational Expenses” incurred on behalf of Student between XX/XX/XX and the effective date of this Agreement. The phrase “Educational Expenses” shall include, but not be limited to, the following: assessments and evaluations; assistive technology; academic instruction and/or remediation, including tuition and/or tutoring; behavioral interventions and services; social and emotional skills development; training for paraprofessionals, teachers, qualified instructors and “related service” providers, parents, and caregivers; and/or “related services,” within the meaning of 20 U.S.C. § 1401(26), including, but not limited to transportation costs, to be calculated at the rate of X cents per mile.
3. Reimbursement Documentation. The Reimbursement Payment will be paid within X days of the District's receipt of complete documentation evidencing actual payment of the Educational Expenses. Acceptable documentation consists of either (1) copies of cancelled checks (back and front), and/or redacted credit card receipts, or (2) a third party invoice reflecting the amount of, and the dates upon which, the Educational Expenses were incurred, and an original signature of the service provider reflecting that payment was received. This documentation shall be submitted to Director of Special Education, Local School District, Street Address, City, State, Zip Code.

COMPENSATORY EDUCATION

4. Compensatory Educational Services Provided by District Staff. The District agrees to provide Student with X hours of compensatory speech and language therapy services to be delivered in a 1:1 setting by a credentialed speech and language pathologist, for X minutes per session, X sessions per week, through XX/XX/XX. Any services not used by that day shall be forfeited and shall no longer be available to Student.
5. Compensatory Educational Services Provided by Certified Nonpublic Agency. The District agrees to provide Student with X hours of compensatory occupational therapy services to be delivered in a 1:1 setting by ABC OT Agency, for X minutes per session, X sessions per week, through XX/XX/XX. Any services not used by that day shall be forfeited

and shall no longer be available to Student. Such services shall be provided to Student at dates and times chosen by Parents that do not conflict with regular school hours. If ABC OT Agency is unable or unwilling to provide Student with such services, then the District agrees to pay another mutually agreed-upon certified non-public agency to provide such services.

6. Compensatory Educational Services to be Funded by District. The District agrees to reimburse Parents for up to X dollars (\$X) for compensatory, after school tutoring in the area of reading. Such tutoring shall be provided either by a credentialed teacher or by a qualified reading specialist, at the sole discretion of Parents. Reimbursement shall be made consistent with the provisions in paragraph 3 of this Agreement.
7. Compensatory Services are Supplemental to Current Services. The Compensatory Education Services described in paragraphs 4, 5 and 6 shall be supplemental to Student's current special education program.

CURRENT SERVICES AND/OR ACCOMMODATIONS

8. Ongoing Services Provided by District Staff. The District shall provide Student with physical therapy services to be delivered in a 1:1 setting by a credentialed physical therapist, for X minutes per session, X sessions per week, through XX/XX/XX.
9. Ongoing Services Provided by Certified Nonpublic Agency. The District shall provide Student with applied behavioral analysis services to be delivered by Autism Behavioral Agency during non-school hours, in a 1:1 setting at the Agency's clinic or in Student's home, for X minutes per session, X sessions per week, plus X hours per week of supervisory services, through XX/XX/XX. If Autism Behavioral Agency is unable or unwilling to provide Student with such services, then the District agrees to pay another mutually agreed-upon, certified non-public agency to provide such services.
10. Accommodations. The District will provide books on tape or CD for the textbooks for Student's courses ("audio books"). The District will identify the textbooks necessary for Student's classes at least 10 weeks prior to the commencement of the next semester and will undertake to procure the audio books on a timely basis, including from any source identified by the Parents. If the textbooks are not available on tape or CD, the District will

make a request that Reading for Blind and Disabled undertake to convert the book to tape or CD.

11. Development of IEP Addendum. Within five (5) business days of the full execution of this Agreement, the District shall present to Parents an IEP Addendum that includes each of the services and accommodations identified in paragraphs 8-10 of this Agreement.

CONTINUING OBLIGATION TO PROVIDE FAPE

12. Continuing Obligation to Provide FAPE. No provision of this Agreement may be construed as relieving the District of its federal or state obligation to provide Student with special education and/or related services from and after the last day of the Settled Period.

STAY PUT

13. Stay Put Placement and Services. The Parties agree that for purposes of the “stay put” doctrine, Student’s last agreed upon IEP shall be the IEP document to which the Parents consented on XX/XX/XX, as amended by the IEP Addendum described in paragraph 11. Student’s stay put shall not include any services that gave rise to reimbursable Educational Expenses described in paragraph 2, or any compensatory services described 4, 5 and 6 of this Agreement.

ATTORNEYS’ FEES

14. Reimbursement of Parents’ Reasonable Attorneys Fees. Within X days of receipt of a redacted invoice or billing statement for legal services rendered and costs incurred on behalf of Student and his Parents in connection with the Due Process Proceeding, the District will cause a check to be delivered to Parents’ attorney of record in the Due Process Proceeding, made payable to its Attorney Client Trust Account in the aggregate amount of X thousand dollars (\$X,000) (“Attorneys’ Fees Reimbursement”). The Attorneys’ Fees Reimbursement is made in full satisfaction of all claims for reimbursement of reasonable attorneys’ fees pursuant to 20 U.S.C. § 1415(i)(3)(B) through the date of full execution of this Agreement. The Parties agree that the payment of the Attorneys’ Fees Reimbursement is not and shall not be construed as evidence that the Petitioners are a “prevailing party” pursuant to 20 U.S.C. § 1415(i)(3).

MUTUAL RELEASES

15. Claims Released by Student and Parents. Upon receipt of the Reimbursement Payment, and the Attorneys' Fees Reimbursement, Student and his Parents, and each of them, on behalf of themselves, and their respective legal representatives, predecessors, successors, heirs, executors, assigns, agents, and attorneys, and each of them, hereby fully and forever release and discharge the District, and its legal representatives, predecessors, successors, heirs, executors, assigns, officers, agents, employees, directors, shareholders, trustees, insurance companies, joint powers authorities and self-insurance pools, and attorneys, and each of them, from any and all claims, demands, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, attorneys' fees, accounts, damages, losses and liabilities, arising under the IDEA and concomitant provisions of STATE law enacted in compliance therewith, including, but not limited to, any matter or claim which was, or could have been, asserted in the Due Process Proceeding, by reason of any matter, cause or thing whatsoever occurred, done, omitted, or suffered to be done on or before the last day of the Settled Period, which Student and his Parents, or any of them, now owns or holds, or may at any time hereafter own or hold.
16. Claims Released by School District. Upon receipt of a notice filed with the hearing office on behalf of Student and his Parents dismissing the Due Process Proceeding with prejudice, the District, on behalf of itself, and its legal representatives, predecessors, successors, heirs, executors, assigns, officers, agents, employees, directors, shareholders, trustees, insurance companies, joint powers authorities and self-insurance pools, and attorneys, and each of them, hereby fully and forever release and discharge Student and his Parents, and each of them, and their respective legal representatives, predecessors, successors, heirs, executors, assigns, agents, and attorneys, and each of them, from any and all claims, demands, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, attorneys' fees, accounts, damages, losses and liabilities, arising under the IDEA, and provisions of STATE law enacted in compliance therewith, including, but not limited to, any matter or claim which was, or could have been, asserted in the Due Process Proceeding, by reason of any matter, cause or thing whatsoever occurred, done, omitted, or suffered to be done on or before the last day of the Settled Period,

which the District now owns or holds, or may at any time hereafter own or hold.

17. Releases Do Not Affect Enforceability. The releases set forth above do not apply to any disputes that may arise by reason of acts or omissions occurring after the date of execution of this Agreement. It is understood that no aspect of this Agreement shall release, (or is intended to release or waive any right or remedy against) any Party from liability for any post-Agreement new wrongful acts or omissions, including independent torts, unrelated to the provisions of this Agreement.

ENFORCING THE SETTLEMENT AGREEMENT

18. Enforcement of Settlement Agreement Reached at Resolution Session OR Settlement Agreement Reached Through Mediation. This Agreement was reached at a Resolution Session and is enforceable in state or federal court pursuant to 20 U.S.C. § 1415(f)(1)(B)(iii). **OR** This Agreement was reached through mediation and is enforceable in state or federal court pursuant to 20 U.S.C. § 1415(e)(2)(F)(iii).
19. Attorneys' Fees for Enforcing Agreement. In the event that any of the Parties hereto brings any action or proceeding to enforce this Agreement or any provision thereof, the "prevailing party" (as determined by the court) in such action or proceeding will be entitled to recover from the other Party, reasonable attorneys' fees and costs, including court costs, expert witness fees, and other necessary costs, whether or not such action or proceeding is prosecuted to Judgment, as shall be fixed by the court.

CONFIDENTIALITY

20. Confidentiality. The Parties acknowledge and agree that this Agreement is the product of negotiations that took place in connection with a confidential mediation within the meaning of 20 U.S.C. § 1415(e)(2).

[OR]

Confidentiality. The Parties acknowledge and agree that this Agreement and all settlement negotiations have been and shall remain confidential.

- 20.1. All Discussions and Documents Confidential. The Parties acknowledge and agree that all discussions (including, any admission made), and any documents prepared in the course of, or pursuant to,

this Mediation (including, but not limited to, this Agreement), shall be deemed a confidential communication.

- 20.2. Disclosure Prohibited. No Party may disclose any such confidential communication to any person or entity that is not a Party hereto, without the prior written consent to such disclosure signed by all other Parties and signatories hereto.
- 20.3. Right to Prevent Disclosure in Legal Proceedings. Each Party hereto has a privilege to refuse to disclose and to prevent any other Party from disclosing any such confidential communication, whether in an adjudicative proceeding (including, a due process proceeding), civil action, or other proceeding.
- 20.4. Exception for Purposes of Enforcement. Notwithstanding such privilege, the Parties mutually consent to disclosure (but only by a Party hereto), and to the admissibility of this Agreement, under seal in any State court of competent jurisdiction or in a district court of the United States, solely for the purpose of enforcing the terms of this Agreement.
- 20.5. Compliance with Statutory Disclosure Requirements. Nothing contained in this Paragraph 20 regarding confidentiality shall preclude the District from complying with any state law requiring the District, as public agency, to disclose the substantive terms of, or produce a copy of, a public record (“State Sunshine Laws”). Provided, however, if and to the extent that the District must disclose the substance of this Agreement, or provide copies of this Agreement, in compliance with such State Sunshine Laws, before making any such disclosure, the District shall first eliminate and/or redact all references to: Student’s name; Parents’ names; Student’s and Parents’ address; and, the names and addresses of nonpublic schools or agencies identified in the Agreement. The District agrees that from and after the date of such disclosure by the District, Student and his Parents shall also be entitled to make disclosures concerning this Agreement to the full extent of those made by the District.
- 20.6. Duty to Notify Party of Litigation Instituted by a Non-Party to Obtain Copy of Agreement. Within three (3) business days of service of any legal notice upon the District providing notice that a non-Party has instituted litigation against the District to compel the District to produce a copy of this Agreement, if Student or Parents are not

named as a defendant or respondent in such proceeding, the District shall provide Parents with a copy of such legal notice and all accompanying papers, pleadings, motions, and documents filed in any adjudicative proceeding (including, a due process proceeding), civil action, or other proceeding, so that Parents may consult with counsel and determine whether to intervene in such proceeding.

BOARD APPROVAL

21. Board Approval. Within five (5) days of the full execution of this Agreement, the Parties shall request that the Due Process Proceeding be placed off-calendar pending the approval of this Agreement by the District's Board of Education ("Board") on or before XX/XX/XX. Within one (1) day of the Board's consideration of whether to approve this Agreement, the District shall file and serve written notice upon Parents and the hearing office that the Board has either approved this Agreement, or declined to approve this Agreement. If the Agreement is not approved by the Board on or before XX/XX/XX, the Parties shall request that the hearing office place the Due Process Proceeding back on calendar for dates agreeable to the Parties. If the Board approves the Agreement, Parents will voluntarily move to dismiss the Due Process Proceeding with prejudice within five (5) days of their receipt of notice of the Board's approval of the Agreement.

MISCELLANEOUS PROVISIONS

22. Representations and Warranties. Each Party acknowledges, warrants and represents that:

22.1. Each Party has voluntarily executed this Agreement, without any duress or undue influence being imposed upon each such Party;

22.2. Each Party has read this Agreement;

22.3. Each Party was represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or had the opportunity to retain legal counsel;

22.4. The Agreement has been fully explained to them by their respective legal counsel;

22.5. Each Party understands the terms and consequences of this Agreement and of the releases set forth herein;

- 22.6. Each Party is fully aware of the legal and binding effect of this Agreement, and signs the same of their own free will; and,
- 22.7. Each Party who is a signatory hereto is of competent and sound mind.
23. Full Cooperation in Consummating Agreement. Each Party to this Agreement shall cooperate fully in the execution of any and all other documents and the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
24. No Admission of Liability. This Agreement is not, and shall not be construed as, an admission of liability, fault, or wrongdoing of any kind by any Party.
25. No “Prevailing Party.” Except as otherwise provided in this Agreement, the Parties, and each of them, agree to bear their own attorneys’ fees and costs, and no Party shall be deemed to be a “prevailing party.”
26. Interpretation. The language and terms of this Agreement are to be understood in their ordinary sense (except where otherwise defined) and are not to be interpreted in a technical manner so as to unfairly deprive any Party of substantive rights. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural, and vice versa.
27. Not to be Construed as Drafted by One Party. The text of this Agreement is the product of negotiation among all the Parties and is not to be construed as having been prepared by one Party or the other Party, but shall be construed as if all Parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against any one Party.
28. Entire Agreement. This Agreement contains the entire Agreement between the Parties, and supersedes any prior agreements concerning the same subject matter. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto.
29. Modification by Writing Only. This Agreement shall not be modified by any Party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by all of the Parties hereto.

30. Authority to Enter Agreement. Each Party warrants that the person signing this Agreement is authorized and empowered to sign this Agreement on its/his/her behalf, and to bind such Party to the terms of this Agreement.
31. No Prior Assignment of Rights. The Parties, and each of them, represent and warrant that no other person or entity has claimed or now claims any interest in the subject matter of this Agreement, and that each such Party has the sole right and exclusive authority to execute this Agreement, and that they have not sold, assigned, transferred, or otherwise set over to any other person or entity, any claim, lien, demand, cause of action, obligation, damage, or liability covered thereby.
32. Binding Upon Successors and Assigns. This Agreement shall bind the heirs, legal successors, personal representatives, successors, and assigns of each Party, and inure to the benefit of each Party and its/his/her attorneys, agents, directors, trustees, officers, employees, servants, successors and assigns.
33. No Third Party Beneficiaries. This Agreement is not for the benefit of any third party that is not referred to herein and shall not be deemed to give any right or remedy to any such third party.
34. Severability of Terms. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provision of this Agreement.
35. Execution in Counterparts. This Agreement may be signed in counterparts, such that signatures appear on separate signature pages. A copy or original of this document with all signature pages appended together shall be deemed a fully executed Agreement. Copies or facsimiles of signatures are the equivalent of original signatures.
36. Effective Date. This Agreement shall be deemed fully executed and effective when it has been signed by all of the Parties.

SIGNATURES

The undersigned declare that they have read this document consisting of 10 pages (including signature pages, and excluding exhibits) and understand its terms and freely enter into this Agreement.

Dated: _____ By: _____
John Jones, individually, and on
behalf of Steven Jones

Dated: _____ By: _____
Mary Jones, individually, and on
behalf of Steven Jones

Dated: _____ By: _____
Edna Educator, Director of Special Education
Local School District