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May 4, 2010

To: Honorable Members of the  
Board of Acquisition and Contract

From: Robert F. Meehan  
County Attorney

Re: Request for Authorization to enter into a stipulation in the Matter of the Application of DJ, by his parents, LJ and AJ against Katonah-Lewisboro Union Free School District, pursuant to which the County shall make payment to the Katonah-Lewisboro School District in an amount not to exceed \$25,273.00.

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Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize settlement in the Matter of the Application of DJ, by his parents, LJ and AJ against Katonah-Lewisboro Union Free School District ("Stipulation"), pursuant to which the County shall make payment to the Katonah-Lewisboro School District ("School District") in the amount of \$25,273.00.<sup>1</sup>

The above-referenced matter was commenced by the Impartial Hearing Demand of LJ and AJ ("DJ's parents") on behalf of their developmentally disabled son, DJ, pursuant to, *inter alia*, New York Education Law, Americans with Disabilities Act, Civil Rights Act, Rehabilitation Act and No Child Left Behind Act. During the 2008-2009 school year and summer 2009, DJ was a pre-schooler and participant in the Preschool Special Education Program, a program regulated by the New York State Department of Health and administered locally by the Westchester County Department of Health ("WCDOH"). The Preschool Special Education Program entitles children with developmental disabilities, who are found to be eligible, to a myriad of developmental services from the age of three to age five. While in the Preschool Special Education Program, DJ received physical and occupational therapy from Care Point Services, LLC ("Care Point"), an organization under contract with the County. In November, 2009, the owner of Care Point was arrested and charged with Grand Larceny, 2nd Degree, a Felony, for employing unlicensed therapists. Care Point provided therapy to DJ from in or about September 2008 to March 2009.

DJ's parents claim that both the School District and WCDOH failed to provide an appropriate Preschool Special Education program for DJ, thereby requiring them to secure and fund physical and occupational therapy services. Additionally, DJ's parents allege to have incurred expenses for obtaining services after pre-school for which the School District is responsible and that the School District seeks to settle by way of the Stipulation.

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<sup>1</sup> The use of initials herein is to maintain the confidentiality and privacy of the Preschool Special Education Program participant and members of the participant's family.

The impartial hearing in this matter was adjourned to accommodate settlement negotiations between Peter D. Hoffman, Esq., attorney for DJ's parents, and Richard C. DeMarco, Esq., attorney for the School District. Mr. DeMarco contacted WCDOH in or about November 2009 in an effort to settle all claims DJ's parents may have against both the School District and the County. On behalf of WCDOH, this office participated in the settlement negotiations and assisted in drafting the Stipulation, specifically, those portions relating to the County.

Subject to the approval of your Honorable Board, the Stipulation states that in consideration of DJ's parents discontinuing their demand for an impartial hearing, and in full and final satisfaction of any and all claims DJ's parents may have against the County stemming from DJ's participation in the Preschool Special Education Program, the County shall pay the sum of \$25,273.00 to the School District, which will in turn pay said amount to DJ's parents.<sup>2</sup>

Several factors were considered by this office during the course of the negotiations, which include: 1) the amount of \$25,273.00 reflects the total cost of services Care Point was to provide DJ while he was a participant in the Preschool Special Education Program pursuant to DJ's Individual Education Program ("IEP") that was authorized through the School District by the Committee on Preschool Education; 2) the County is statutorily mandated under New York Education Law §4410 to fund the services included in DJ's IEP and maintained Care Point on its list of qualified providers; 3) the County paid Care Point approximately \$18,673.00 for services rendered pursuant to DJ's IEP until March, 2009, at which time Care Point ceased providing services to DJ and the DJ's parents claim to have retained private providers to replace Care Point; 4) in the event the pending criminal action against the owner of Care Point does not result in restitution paid to WCDOH, the County intends to pursue any and all available civil remedies against Care Point for providing services not in compliance with DJ's IEP; 5) WCDOH has reviewed and approved the terms of the stipulation of settlement and will seek to have some or all of the funds paid under the terms of this stipulation reimbursed by the New York State Department of Health; 6) pursuant to the Stipulation, DJ's parents specifically agree not to bring any claim or action against the County relating to DJ's receipt of services from Care Point; 7) in the event DJ's parents did not settle this matter and substantially prevailed at an impartial hearing, they would be seeking attorneys' fees in an amount that may well exceed the reimbursement they seek from the County, which the School District may then seek from the County; and 8) absent execution of this agreement, DJ's parents would likely bring a civil action alleging, *inter alia*, violations of IDEA and that the County impeded the implementation of DJ's IEP and discriminated against him in violation of the Rehabilitation Act.

For the foregoing reasons, I recommend the County enter into the stipulation of settlement in an amount not to exceed \$25,273.00. Cheryl Archbald, M.D., Acting Commissioner of the Department of Health, concurs in this recommendation.

RFM/gr

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<sup>2</sup> The Stipulation requires that payment is made by the County to the School District rather than directly to DJ's parents, since the County, in the usual course, remits payment to the School District for the Preschool Special Education Program and the School District administers the funds.

RESOLUTION

Upon the communication of the County Attorney, it is hereby

RESOLVED, that the County Attorney is hereby authorized to enter into a stipulation in the Matter of the Application of “DJ”, by his parents, “LJ” and “AJ” against Katonah-Lewisboro Union Free School District, pursuant to which the County shall make payment to the Katonah-Lewisboro School District in an amount not to exceed \$25,273.00, and it is further

RESOLVED, that the County Attorney or his designee is authorized to execute any documents necessary to implement this resolution.

Account to be Charged/credited

Fund	Agency	Capital Project Org	Object/ Sub Object	Trust Account	Activity	Dollars
101	27	2700	4536		4000	<b>\$25,273.00</b>

Budget Funding Year(s) 2009 Start Date 9/ 2008 End Date 8/2009  
 (must match resolution)

Funding Source	Tax Dollars	%	
	40.5	%	<b>\$ 10,236.00</b>
State Aid	59.5%		<b>\$ 15,037.00</b>
Federal Aid			
Other			

APPROVED BOARD OF ACQUISITION & CONTRACT - 6-3-2010 - JOMARY VEIRA, SECRETARY