

George Latimer  
County Executive

Office of the County Attorney

John M. Nonna  
County Attorney

February 3, 2022

Westchester County Board of Legislators  
County of Westchester  
800 Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

Re: Request for Authorization to enter into a Stipulation of Settlement in the Matter of the Application of J.D.M., by his parents, J.M. and K.M. against Somers Central School District, pursuant to which the County shall make payment to the Somers Central School District in an amount not to exceed \$24,619.00, plus provide compensatory/makeup services to J.D.M.

Dear Honorable Members of the Board:

Attached for your consideration is an Act, which if enacted by your Board, would authorize the County to enter into a Stipulation of Settlement in the Matter of the Application of J.D.M., by his parents, J.M. and K.M. against Somers Central School District ("Stipulation"), pursuant to which the County shall make payment to the Somers Central School District ("School District") in the amount of \$24,619.00.<sup>1</sup>

The name of the infant participant of the Preschool Special Education Program has been deleted from the caption of the action and the initials "J.D.M." appear in lieu thereof to maintain his right to privacy as guaranteed by federal and state law. The names of the parents of J.D.M. have similarly been deleted and replaced with "J.M." and "K.M." in furtherance of maintaining the confidentiality of the child participant.

The above-referenced matter was commenced by the Impartial Hearing Demand of J.M. and K.M. ("J.D.M.'s parents") on behalf of their developmentally disabled son, J.D.M., pursuant to, *inter alia*, the Individuals With Disabilities Education Act ("IDEA"), the New York State Education Law, the Rehabilitation Act, etc. During the 2018-2019 and 2019-2020 school years and summer 2020, J.D.M. was a preschooler and participant in the Preschool Special Education

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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.

Program, a program administered by the School District and funded by the County through its Department of Health (“WCDOH”). The Preschool Special Education program entitles children with developmental disabilities, who are found to be eligible, to many developmental services from the age of three to age five.

J.D.M.’s parents claim that both the School District and WCDOH failed to provide an appropriate Preschool Special Education Program for J.D.M., thereby requiring them to secure and personally fund physical therapy, occupational therapy, speech/language therapy and psychological services.

The impartial hearing in this matter was adjourned to accommodate settlement negotiations between Peter D. Hoffman, Esq., attorney for J.D.M.’s parents, and Richard C. DeMarco, Esq., attorney for the School District. Mr. DeMarco contacted WCDOH in an effort to settle all claims J.D.M.’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, *inter alia*, in consideration of J.D.M.’s parents discontinuing their demand for an impartial hearing, withdrawing their Due Process Complaint Notice dated September 1, 2020 with prejudice, and in full and final satisfaction of any and all claims J.D.M.’s parents may have against the County stemming from J.D.M.’s participation in the Preschool Special Education Program, the County shall pay the sum of \$24,619.00 to the School District, which will in turn pay said amount to J.D.M.’s parents.<sup>2</sup>


Several factors were considered by this office during the course of the negotiations, which include: 1) the amount of \$24,619.00 reflects the total cost of services paid by J.D.M.’s parents (\$2,295.00 to Westchester Therapy Solutions, PLLC for private occupational therapy services), (\$7,500.00 to Developmental Steps, LLC for private physical therapy services), (\$1,200.00 to Mara Gordon, LLC for private physical therapy services), (\$13,239.00 to Talk of the Town, PLLC for private speech/language therapy services), and (\$385.00 to Cross River Psychological Services, PC for private psychological services); 2) the County is statutorily mandated under New York State Education Law §4410 to fund the services included in J.D.M.’s IEP; 3) pursuant to the Stipulation, J.D.M.’s parents agree not to bring any claim or action against the County relating to J.D.M.’s receipt of services from the providers selected by the County for the compensatory education/services/make-up sessions outlined in the Stipulation; 4) in the event J.D.M.’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 5) absent execution of the Stipulation, J.D.M.’s parents would likely bring a civil action alleging, *inter alia*, violations of IDEA and that the County impeded the implementation of J.D.M.’s IEP and discriminated against him in violation of the Rehabilitation Act.

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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 J.D.M.’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.

For the foregoing reasons, I recommend the County enter into the Stipulation in an amount not to exceed \$24,619.00 as well as to provide compensatory/make up services. Sherlita Amler, M.D., Commissioner of the Department of Health, concurs in this recommendation.

Very truly yours,

  
John M. Nonna  
County Attorney

JMN/iwc

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by the Board, would authorize the County to enter into a Stipulation of Settlement in the Matter of the Application of J.D.M., by his parents, J.M. and K.M. against Somers Central School District (“Stipulation”), pursuant to which the County shall make payment to the Somers Central School District (“School District”) in the amount of \$24,619.00.<sup>1</sup>

The name of the child participant of the Preschool Special Education Program has been deleted from the caption of the action and the initials “J.D.M.” appear in lieu thereof to maintain his right to privacy as guaranteed by federal and state law. The names of the parents of J.D.M. have similarly been deleted and replaced with “J.M.” and “K.M.” in furtherance of maintaining the confidentiality of the child participant.

The above-referenced matter was commenced by the Impartial Hearing Demand of J.M. and K.M. (“J.D.M.’s parents”) on behalf of their developmentally disabled son, J.D.M., pursuant to, *inter alia*, the Individuals With Disabilities Education Act (“IDEA”), the New York State Education Law, Rehabilitation Act, etc. During the 2018-2019 and 2019-2020 school years and summer 2020, J.D.M. was a preschooler and participant in the Preschool Special Education Program, a program administered by the School District and funded by the County through its Department of Health (“WCDOH”). The Preschool Special Education program entitles children with developmental disabilities, who are found to be eligible, to many developmental services from the age of three to age five.

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J.D.M.'s parents claim that both the School District and WCDOH failed to provide an appropriate Preschool Special Education Program for J.D.M., thereby requiring them to secure and personally fund physical therapy, occupational therapy, speech/language therapy and psychological services.

The impartial hearing in this matter was adjourned to accommodate settlement negotiations between Peter D. Hoffman, Esq., attorney for J.D.M.'s parents, and Ralph C. DeMarco, Esq., attorney for the School District. Mr. DeMarco contacted WCDOH in an effort to settle all claims J.D.M.'s parents may have against both the School District and the County. On behalf of WCDOH, the County Attorney's 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 state, *inter alia*, that in consideration of J.D.M.'s parents discontinuing their demand for an impartial hearing, withdrawing their Due Process Complaint Notice dated September 1, 2020 with prejudice, and in full and final satisfaction of any and all claims J.D.M.'s parents may have against the County stemming from J.D.M.'s participation in the Preschool Special Education Program, the County shall pay the sum of \$24,619.00 to the School District, which will in turn pay said amount to J.D.M.'s parents.<sup>2</sup>

WCHOH agreed to payment in the amount of \$24,619.00 which reflects the total cost of services paid by J.D.M.'s parents. Those services were in J.D.M.'s IEP for the 2019 and 2020 school years. In addition, the County has agreed to provide additional services in J.D.M.'s IEP

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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 J.D.M.'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.

on a going forward basis. The WCDOH is statutorily mandated under New York State Education Law §4410 to fund the services included in J.D.M.'s IEP. The parents agreed to these terms and signed a release in connection with these services.

Your Committee has carefully considered the subject matter, the settlement proposal, the attached Act and recommends authorizing the County Attorney or his designee to enter into the Stipulation, pursuant to which the County shall make payment to the School District in the amount of \$24,619.00 and provide compensatory/makeup services. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York  
, 2022

COMMITTEE ON

ACT NO. -2022

AN ACT authorizing the County Attorney to enter into a Stipulation of Settlement in the Matter of the Application of J.D.M., by his parents, J.M. and K.M. against Somers Central School District (“Stipulation”), pursuant to which the County shall make payment to the Somers Central School District (“School District”) in the amount of \$24,619.00.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is authorized to enter into a Stipulation of Settlement in the Matter of the Application of J.D.M., by his parents, J.M. and K.M. against Somers Central School District (“Stipulation”), pursuant to which the County shall make payment to the School District the amount of \$24,619.00 and provide compensatory/makeup services to J.D.M.<sup>1</sup>

Section 2. The County Attorney or his designee is hereby authorized and empowered to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

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<sup>1</sup> The Stipulation requires that payment is made by the County to the School District rather than directly to J.D.M.’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.

# FISCAL IMPACT STATEMENT

SUBJECT: JDM Settlement

NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 24,619

Total Current Year Revenue \_\_\_\_\_

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations

Other (Revenue)

Identify Accounts: 101-27-2700-2752-4535

Potential Related Operating Budget Expenses: Annual Amount \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Potential Related Operating Budget Revenues: Annual Amount \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \_\_\_\_\_

\_\_\_\_\_

Next Four Years: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: Michael Dunn

Title: Assistant Budget Analyst

Department: Budget

Date: February 3, 2022

Reviewed By: 

Budget Director

Date: 2/3/22