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STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS 25 EDC 00873

COUNTY OF PASQUOTANK

RR by and through her guardian BT Petitioner,

v.

Elizabeth City-Pasquotank County Schools Board of Education Respondent. FINAL DECISION BY CONSENT UNDER SEAL

THIS MATTER is before this Tribunal for entry of an Order based upon the Parties' resolution of the Contested Case (25 EDC 00873) during a Settlement Conference with the Honorable Administrative Law Judge Stacey Bice Bawtinhimer. Upon reviewing the submissions of counsel, the Undersigned finds the Parties jointly entered into a consent decision resolving this Contested Case. Therefore, the Undersigned enters this Final Decision in conformity with the Parties' Joint Proposed Final Decision by Consent Under Seal:

APPEARANCES

For Petitioners: Nataleigh Knaak

Gahagan Paradis, PLLC

3326 Durham Chapel Hill Boulevard

Suite 210-C

Durham, NC 27707

For Respondent: Rachel B. Hitch

Poyner Spruill LLP

301 Fayetteville Street, Suite 1900

Post Office Box 1801 Raleigh, NC 27602-1801

PROCEDURAL HISTORY

1. On March 11, 2025, Petitioner, R.R., by and through her guardian, B.T., filed a Petition for Contested Case Hearing in the above-captioned matter alleging violations against the Elizabeth City-Pasquotank Public Schools of the Individuals

with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§ 1400 et seq. ("IDEA") and N.C. Gen. Stat. §§ 115C-109.6 et seq.

- 2. Respondent was served with the Petition on March 12, 2025.
- 3. On March 20, 2025, the Undersigned issued an Order Setting Hearing calendaring the hearing to begin on April 21, 2025.
- 4. On March 21, 2025, Petitioner filed a Notice of Previously Requested Secured Leave, indicating counsel for Petitioner previously obtained secured leave for the week of April 21, 2025.
- 5. Respondent's Counsel entered her Notice of Appearance on March 21, 2025, and filed a Motion for Extension of Time to Respond to the Petition.
- 6. On March 24, 2025, this Tribunal issued an Order Extending Time to Respond to Petition through April 4, 2025.
- 7. On March 27, 2024, Respondent's counsel filed her Notice of Secure Leave for the week of May 25, 2025.
- 8. On March 28, 2025, the Parties filed a Joint Motion to Continue Hearing, indicating that the Parties agreed to waive resolution and mediate this matter.
- 9. On April 3, 2025, the Undersigned issued an Order Continuing Hearing and setting the hearing to begin June 23, 2025.
- 10. On April 23, 2025, Petitioner filed a Motion for Protective Order and Proposed Protective Order.
- 11. On May 2, 2025, the Parties participated in mediation, which was unsuccessful.
- 12. On May 5, 2025, Respondent filed its Proposed Protective Order in response to Petitioner's Motion.
 - 13. On May 9, 2025, Respondent filed a Motion for Settlement Conference.
- 14. On May 13, 2025, Petitioner filed a Response to the Motion for Settlement Conference.

- 15. On May 14, 2025, the Honorable Donald Robert van der Vaart, Chief Administrative Law Judge appointed the Honorable Stacey B. Bawtinhimer as the ALJ to conduct the settlement conference.
- 16. On June 6, 2025, the Parties filed their second Joint Motion to Continue Hearing Deadlines, which was granted on June 11, 2025, following a notice of Rescheduled Settlement Conference filed on June 10, 2025.
- 17. On June 17, 2025, the Parties participated in the Settlement Conference.
- 18. The Honorable Stacey B. Bawtinhimer filed a Notice of Settlement Report on June 27, 2025, indicating the Settlement Conference was successful, the Board approved the Settlement Agreement on June 26, 2025, the Parties would file a Motion to Seal, and that the Settlement Agreement would be incorporated into a Final Decision by Consent.
- 19. On July 11, 2025, the Parties filed a Joint Motion to Seal and Proposed Consent Order, which was granted on July 14, 2025.
- 20. On July 25, 2025, the Parties filed a Motion for Entry of Final Decision and attached a fully executed settlement agreement, entitled "Final Decision by Consent Under Seal."

Based upon the agreed upon Final Decision by Consent Under Seal, it is hereby **ORDERED** that the Final Decision by Consent Under Seal, which was fully executed by all Parties on July 3, 2025, and is the basis of this Final Decision, is hereby incorporated into this Final Decision verbatim.

The Notice of Hearing for August 4-8, 2025, is **VACATED** and this contested case is **DISMISSED WITH PREJUDICE**.

NOTICE OF APPEAL RIGHTS

Pursuant to the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision. Although the parties have waived those rights as part of this consent decision, a Notice of Appeal Rights is included herein in accordance with N.C. Gen. Stat. § 115C-109.6.

Any party aggrieved by the findings and decision of an Administrative Law Judge may under N.C. Gen. Stat. § 115C-109.6 institute a civil action in State court within thirty (30) days after receipt of the notice of the decision or under 20 U.S.C. §

1415 a civil action in federal court within ninety (90) days after receipt of the notice of the decision.

Because the Office of Administrative Hearings may be required to file the official record in the contested case with the State or federal court, a copy of the Petition for Judicial Review or Federal Complaint must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely preparation of the record.

STAY OF FINAL DECISION

This Final Decision is immediately enforceable by the State Board of Education. This Final Decision remains in effect until the party aggrieved moves the reviewing court for a Stay of the Final Decision and the reviewing court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

IT IS SO ORDERED.

This the 28th day of July, 2025.

Samuel K Morris

Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

Nataleigh N Knaak Gahagan Paradis, PLLC nknaak@ncgplaw.com Attorney For Petitioner

Rachel Blevins Hitch
Poyner Spruill
rhitch@poynerspruill.com
Attorney For Respondent

Teresa Silver King NC Department of Public Instruction due_process@dpi.nc.gov Affiliated Agency

This the 28th day of July, 2025.

Rebecca Wilson

Preces R WURDY

Paralegal

N. C. Office of Administrative Hearings 1711 New Hope Church Road Raleigh, NC 27609-6285

Phone: 984-236-1850

STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS 25 EDC 00873

PASQUOTANK COUNTY

FINAL DECISION BY CONSENT UNDER SEAL

This FINAL DECISION BY CONSENT UNDER SEAL ("Consent Becision") is made and entered into this _____ day of June 2025 by and between Brandy Talley ("B.T."), on behalf of her granddaughter, R.R., for whom B.T. is the legal guardian and the Elizabeth City-Pasquotank County Board of Education.

WHEREAS, R.R., by and through her grandmother and legal guardian, B.T., ("Petitioner") filed a Petition for a Contested Case Hearing on March 11, 2025, claiming ElizabethCity-Pasquotank County Board of Education ("Respondent") violated the procedural and substantive requirements of the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §§ 1400 et seq., and the N.C. special education statutes, N.C. Gen. Stat. §§ 115C-106 et seq. with regard to B.T. and

WHEREAS, Respondent contends it provided R.R. with a free and appropriate public education and that it has not violated any federal or state law with respect to the educational program of R.R.; and

WHEREAS, Petitioner maintains Respondent has violated the requirements of the statutes set forth above; and

WHEREAS, the Parties have agreed in good faith to resolve this contested case and to settle the issues in contention to prevent protracted litigation; and

WHEREAS, the Parties wish to settle all disputes as of the date of this Consent Decision related to Petitioner's claims against Respondent pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §§ 1400 et seq., any other Federal or State disability law including, but not limited to the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. (ADA) and Section 504 of the Rehabilitation Act, N.C. special education statutes, and N.C. Gen. Stat. §§ 115C-106 et seq.

NOW, THEREFORE, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Independent Educational Evaluations (IEEs).

a. Respondent agrees to fund the following IEEs with Respondent's total financial obligation not to exceed \$3,500.00:

- i. A comprehensive psychoeducational evaluation including an adaptive behavior evaluation;
- ii. An occupational therapy (OT) evaluation with motor and sensory processing evaluations; and
- iii. A speech and language evaluation.
- b. Respondent agrees to conduct the following evaluations:
 - i. An assistive technology (AT) evaluation and
 - ii. A functional behavior assessment (FBA).
- c. Petitioner retains her right to request an IEE at public expense for the AT and FBA conducted by the District.
- d. Within ten (10) calendar days of the execution of this Consent Decision, Petitioner agrees to provide Respondent with a list of names of proposed independent evaluators for each evaluation area for Respondent's review. Petitioner will provide at least two (2) names for each evaluation. Within ten (10) calendar days of receiving the names, Respondent shall either agree to each of Petitioner's proposed evaluators or provide Petitioner a list of a maximum of three (3) names of different evaluators for a given evaluation area. If Respondent and Petitioner are unable to agree on an evaluator for an evaluation area, the parties agree that Petitioners may choose an evaluator with extensive classroom experience and who has credentials equivalent or better to those of Respondent's evaluators. Petitioners agree that any independent evaluator selected by Petitioners will have substantial experience implementing their area of expertise in elementary school classrooms. If the Parties are unable to agree, the final evaluator shall be selected from Respondent's proposed list of evaluators.
- e. Copies of the reports generated by each independent evaluator shall be provided to both Parties.
- f. Respondent agrees to request each independent evaluator include specific recommendations for IEP goals and supports and accommodations within the domain/area evaluated in their evaluation reports, if the evaluator deems it appropriate to do so.
- g. Respondent agrees to offer contracts to the agreed-upon independent evaluators before the beginning of the 2025-2026 school year If Respondent is unable to contract with a specific independent evaluator, Respondent shall reach out to a Petitioner to select a new evaluator.
- h. Respondent agrees to invite and pay for the attendance of the independent evaluators at the IEP meeting in Paragraph 4 to discuss their reports. Any independent evaluator whose office is more than 25 miles from Northside Elementary School will participate virtually. Local independent evaluators may be in-person, telephonically, or virtually. Petitioners agree that each independent evaluator will only be required to be present for the presentation of their report, recommendations, and questions related to either their report or recommendations.

2. One-on-One Aide for R.R.

- a. Respondent agrees to provide R.R. with a designated one-on-one aide ("1:1") throughout the school environment and at all times throughout the school day for the 2025-2026 and 2026-2027 school years to provide direct individualized support for R.R. unless the Petitioner and Respondent agree that the 1:1 is no longer necessary. The purpose of the 1:1 is to provide R.R. support for use of her leg braces, activities of daily living, and issues related to toileting and eating.
- b. The 1:1 will support R.R. during all times R.R. attends Respondent's schools during the 2025-2026 and 2026-2027 school year.
- c. If the 1:1 is absent, then Respondent will ensure that another designated adult is in the classroom with R.R. who has received the training in Paragraph 3.
- d. The 1:1 is responsible for providing support to R.R. and is to accompany R.R. outside of the classroom.
- e. The 1:1 will not be employed in another position or capacity during time when R.R. is at school and the 1:1 is designated to serve as 1:1.
- f. Prior to working with R.R., the 1:1 will receive sufficient training on R.R.'s specific needs, including eating support, toileting support, and orthopedic leg brace donning and doffing application.
- g. Respondent will not attempt to limit the 1:1 from communicating with B.T. so long as there is equal communication of any concerns to Respondent.

3. Training

- a. By September 30, 2025, Respondent will provide staff training at Northside Elementary School for all staff members to include training in the following areas:
 - 1. The effects of cerebral palsy;
 - 2. The effects of hydrocephalus; and
 - 3. Behavior intervention techniques.
- b. B.T. will sign a release for each of R.R.'s treatment providers. Prior to August 26, 2025, either the treatment provider or Respondent's therapy providers will provide training to teaching staff and paraprofessionals in R.R.'s grade during the 2025-2026 and 2026-27 school year at Northside Elementary School in the following areas:
 - 1. R.R.'s needs with regard to activities of daily living in the school environment;
 - 2. Toileting, feeding and eating needs; and
 - 3. R.R.'s orthopedic devices.
- c. Training will also be provided to substitute teachers and aides who work with R.R. for the 2025-26 and 2026-27 school years. To the extent any is

received, training will include information received from R.R.'s private treatment providers.

d. Respondent will conduct these trainings again prior to the first day of

school for the 2026-27 school year

4. <u>IEP Meeting.</u> Within five (5) days of receiving all of the evaluations described in Paragraph 1, but no later than November 15, 2025, Respondent will contact Petitioner and propose dates for an IEP meeting to be scheduled at a mutually agreeable time.

- a. At the IEP meeting, the IEP Team will consider the results of each evaluation described in Paragraph 1, and to the extent the reports have been received, make any necessary and appropriate adjustments to R.R.'s IEP, taking the findings and recommendations of such reports into consideration.
- b. The IEP Team will specifically consider adding the following services to R.R.'s IEP in an amount and frequency to be determined by the IEP Team after receipt of the related report and substantive discussion:
 - i. Speech-language therapy;
 - ii. Occupational therapy;
 - iii. Physical Therapy;
 - iv. Adaptive Behavior;
 - v. Assistive Technology;
 - vi. Objectively measurable present levels and goals based on data collected by the independent evaluators, school evaluators, and the IEP Team; and
 - vii. A weekly communication log between B.T. and R.R.'s educators.
- c. The IEP Team will consider development of a Behavior Intervention Plan for R.R. based upon the results of the FBA.
- d. Respondent will provide Petitioner a copy of a draft IEP at least three (3) business days in advance of the IEP Meeting.
- e. Any recommendations of the independent evaluators described in Paragraph 1 that are requested by Petitioner but not adopted by the IEP Team shall be documented in the Prior Written Notice as a refusal, and the rationale for such refusal shall be documented.

5. Compensatory Education.

a. Respondent agrees to provide B.T. one hundred ninety-two (192) total hours of compensatory education in the following areas: behavior, adaptive behavior, written expression, occupational therapy, speech/language therapy, and physical therapy. Petitioners can designate the proportion of the total compensatory education for each area of service. The services will be provided during summer sessions in the summers of 2025, 2026, and 2027. Respondent agrees to provide a minimum of 64 hours each summer until the 192 hours have been reached. Respondent will select the instructor(s) to provide the

- compensatory education. Respondent agrees the instructor(s) will be a licensed speech pathologist, occupational therapist, licensed special education teacher(s) or general education teacher(s) licensed in the content area they are teaching, which may be Respondent's employees.
- b. As long as R.R. continues to reside in the Elizabeth City-Pasquotank County Schools/Board of Education service area, Respondent agrees to provide the compensatory education provided for in this paragraph, even if R.R. is homeschooled or attends a private or charter school.
- c. The compensatory education will be individualized based on R.R.'s present level of performance and focus on R.R.'s IEP goals.
- d. Respondent agrees to track the hours provided in each area and provide Petitioner access to this information. Upon Petitioner's request, Respondent will advise Petitioner how many compensatory hours remain.
- e. Any compensatory education sessions canceled by Respondent due to inclement weather or teacher absence will be made up. In rescheduling a session missed by the instructor(s), Petitioner will cooperate in good faith with the instructor(s).
- f. Scheduled sessions missed due to the student's absence without 24 hours' notice will not be made up, unless the student's absence is unforeseen, and prior notice is not possible. No more than six (6) sessions cancelled without 24 hours' notice will be made up unless by mutual consent. Any make-up session may be scheduled during the school year.
- g. The compensatory education hours will begin no later than July 10, 2025, and expire at the conclusion of the summer of 2027. Unless such instruction is terminated earlier through Petitioner notifying Respondent that R.R. will no longer participate in the instruction offered under this Consent Decision. Any hours of compensatory education not delivered by the end of the summer 2027 shall be deemed waived.
- 6. <u>Settlement Amount and Disbursement Terms.</u> In settlement of all outstanding disputes between the Parties outlined in the Petition, inclusive of Petitioner's attorneys' fees and reimbursement of costs/fees incurred related to the dispute, Respondent agrees to pay \$21,000.00. Payment shall be by check made payable to the Trust Account of Gahagan Paradis, PLLC, within thirty (30) days of receipt of a W-9. Petitioner expressly recognize and agree that this amount constitutes adequate and binding consideration for the purposes of this Consent Decision.
- 7. Release of Claims. Petitioner, her heirs, successors, guardians, and assigns, hereby forever discharge and release the Respondent, its board members, administrators, teachers, staff, officers, employees, successors and assigns from any and all allegations, claims, lawsuits, liabilities, demands, actions or

causes of action of any kind or character whatsoever, including damages (including compensatory damages), attorneys' fees and costs, whether at law or equity, known or unknown, that have been, could have been or may be brought against Respondent pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., any other Federal or State disability law including, but not limited to ADA and Section 504 of the Rehabilitation Act, N.C. special education statutes, and N.C. Gen. Stat. §§ 115C-106 et seq., which the Petitioner has, may have or may ever had, now or in the past, arising out of or on account of the Petition filed at OAH Docket No. 25-EDC-00873 through the date of this Consent Decision. Petitioner also expressly waives any Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §§ 1400 et seq., any other Federal or State disability law including, but not limited to ADA and Section 504 of the Rehabilitation Act, N.C. special education statutes, and N.C. Gen. Stat. §§ 115C-106 et seq. arising out of the same set of facts as those set forth in the Petition. This waiver includes any such claims that existed on or before the date of execution of this Consent Decision which could have been brought at the North Carolina Office of Administrative Hearings or elsewhere.

- 8. <u>Non-Disparagement</u>. Respondent will not disparage Petitioner and Petitioner will not disparage Respondent or any of its current or previous board members, administrators, teachers, staff, officers, employees, successors and assigns regarding the claims released in this Consent Decision.
- 9. No Admission of Fault or Liability. It is agreed and understood by Petitioner and Respondent that the execution of this Consent Decision shall not constitute an admission of fault or liability on the part of Respondent, its members, officers, administrators, employees or agents, or an admission of any specific fact related to the issues raised by the Petition filed at OAH Docket 25 EDC 00873.
- 10. Confidentiality. Petitioner and Respondent agree not to disclose the terms of this Consent Decision except to one another, their attorneys, Respondent's employees (for implementation purposes only), and the North Carolina Department of Public Instruction, for purposes of meeting the terms of this Consent Decision, or except as allowed or required by law or as necessary to implement this Consent Decision. All discussions that occurred during the mediation process will remain confidential and will not be used as evidence in any subsequent due process hearing or civil proceeding. Petitioner and Respondent agree not to discuss the terms of this Consent Decision and agree that any responses to inquiries or any other comments about the terms of the Consent Decision by either party shall be limited solely to a statement that the case has been resolved. This provision is not meant to limit the freedom of speech of the Petitioner but is meant to only limit disclosure of the terms of the Consent Decision in exchange for the consideration contained herein.

Petitioner and Respondent agree not to disclose the contents of any settlement document, in whatever format, received from one another as part of the above-captioned action. The Parties agree to file a joint motion to seal the entire record and all documents therein in the above-captioned matter.

- 11. <u>Severability</u>. The provisions of this Consent Decision are severable, and if any part of this Consent Decision is found to be unenforceable, the other parts shall remain fully valid and enforceable.
- 12. No Prevailing Party. Neither Party shall be deemed a "prevailing party" for any purpose, including any statutory or contractual claim based upon "prevailing party" status with respect to the Petition filed at OAH Docket 25 EDC 00873.

13. General Terms.

- (a) This Consent Decision is binding upon Petitioner for herself and on behalf of R.R., and on behalf of her successors, heirs, guardians and assigns, and the Respondent, its members, officers, administrators, employees, successors, and assigns.
- (b) This Consent Decision shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
- (c) This Consent Decision has been pre-audited in the manner required by the School Budget and Fiscal Control Act.
- (d) This Consent Decision is entered into voluntarily by the Parties after conferring with competent counsel, and with full knowledge of any potential constitutional, statutory, or other rights each may have.
- (e) In entering into this Consent Decision, all Parties have relied upon the advice of their competent attorneys, who are attorneys of their own choice, concerning the legal consequence of this Consent Decision, and the terms of this Consent Decision have been explained to the Parties by their respective attorneys, and the Parties agree that the terms of this Consent Decision are fully understood and voluntarily accepted by the Parties.
- (f) This Consent Decision constitutes the entire agreement between the Parties. It supersedes any prior understanding or agreement between them respecting the subject matter. There are no representations, arrangements, understandings, or agreements, oral or written, relating to the subject matter of this Consent Decision, except those fully expressed herein. No changes, amendments, alterations, modifications, additions, or qualifications to the terms of this Consent Decision shall be made or be binding unless made in writing and signed by both of the Parties.
- (g) This Consent Decision may be signed by each Party's respective duly authorized representative in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one single agreement between the Parties hereto. Once

signed, any reproduction of this Consent Decision made by reliable means (for example photocopy or facsimile) is considered an original.

(h) The text of this Consent Decision is the product of negotiation among the Parties, and their competent counsel, 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 Consent Decision, and any uncertainty or ambiguity shall not be interpreted against any one party.

(i) If a dispute arises out of or relates to this Consent Decision, or the breach of this Consent Decision, and if the dispute cannot be settled through informal negotiation, including through mediation by the North Carolina Department of Public Instruction ("NCDPI"), the Parties agree that this Consent Decision is a legally binding agreement under 20 U.S.C. § 1415(e)(2)(F)(3) and the Parties may seek enforcement consistent with the enforcement provisions for such agreements under the IDEA and state law and N.C. Gen. Stat. § 115C-109.6(h1).

(j) Petitioner agrees to provide written notice to Respondent's Director of Exceptional Children of any alleged breach of this Consent Decision and allow Respondent twenty-one (21) calendar days to cure the alleged deficiency or provide written documentation that the deficiency is caused by events beyond its reasonable control before seeking enforcement of this Consent Decision.

(k) All discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(1) This Final Decision has been consented to after approval by Respondent Board of Education.

(m) Both Parties agree to waive any appeal rights to this Consent Decision.

WHEREFORE, the Parties have entered into this Consent Decision as of the day and year first set forth above.

Brandy Talley

06 / 19 / 2025

Date

Individually and on behalf of R.R.

FOR PETITIONER:

CONFIDENTIAL SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 06/19/2025 Nataleigh Knaak Date Attorney on behalf of Petitioner FOR RESPONDENT: 06/20/2025 Keith Parker Date Superintendent On behalf of Elizabeth City-Pasquotank Board of Education ~ Rachel B. Hitch Attorney on behalf of Elizabeth City-Pasquotank County Board of Education PRE-AUDIT CERTIFICATE This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

06/20/2025 Date

Cany W. Silly

Finance Officer Candy Tilley