

Petition for Rulemaking - Office of Administrative Law

May 9, 2015

Office of Administrative Law  
P.O. Box 049  
Trenton, NJ 08625-0049  
via e-mail only to NJRfilings@oal.state.nj.us

Please accept this as my petition for rulemaking submitted in accordance with N.J.A.C. § 1:31-2.1. Following are the required elements of my petition.

**1. The full name and address of the petitioner:**

John Paff, 1605 Amwell Rd, Somerset, NJ 08873, paff@pobox.com, voice 732-873-1251.

**2. The substance or nature of the rulemaking which is requested:**

Consideration of an amendment to N.J.A.C. § 1:6A-18.2(a) that will more vigorously protect the identifies of children and their parents in the written decisions of Administrative Law Judges.

Subsection (a) of that rule states:

*In a written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.*

**3. The reasons for the request:**

Petitioner seeks a uniform method for the identities of students and parents involved in special education matters to be disclosed or suppressed from public view. In order to illustrate that the current method is not uniform, Petitioner has attached a 15-page PDF file containing the following exhibit pages:

- March 5, 2015 Open Public Records Act (OPRA) request to the Millburn Township (Essex County) Board of Education. (Exhibit page 1.)
- Redacted Stipulation of Settlement in the case bearing OAL Docket No. EDS-18665-02013N OAL Docket No. 2014-20539 furnished by the Millburn Board in response to my March 5, 2015 OPRA request. (Exhibit pages 2-5.)
- March 27, 2015 Open Public Records Act (OPRA) request to the Millburn Township (Essex County) Board of Education in which I seek more narrowly redacted versions of the documents furnished in response to my initial request. (Exhibit pages 6-7.)

- A more narrowly redacted Stipulation of Settlement in the case bearing OAL Docket No. EDS-18665-02013N OAL Docket No. 2014-20539 furnished by the Millburn Board in response to my March 27, 2015 OPRA request. (Exhibit pages 8-11.)
- April 7, 2015 letter from Millburn Board that accompanied the more narrowly redacted Stipulation of Settlement with the relevant portion highlighted. (Exhibit pages 12-13.)
- Decision approving settlement in the case bearing OAL Docket No. EDS-18665-02013N OAL Docket No. 2014-20539 that Petitioner later received from the Office of Administrative Law (OAL). (Exhibit pages 14-15.)

Based on the highlighted parts of its April 7, 2015 letter, Millburn believes that identifying students and parents by using their initials, as expressly required by N.J.A.C. § 1:6A-18.2(a), may still reveal their identities "given the nature of the Millburn Township School District community." Accordingly, Millburn refused to provide Petitioner with the parents' and students' initials even though that information was specifically requested in Petitioner's March 27, 2015 OPRA request.

Petitioner notes, however, that all any member of the public needs to do in order to defeat Millburn's redaction of the parents' and students' initials is to submit an OPRA request to the OAL for the final order arising out of the same contested case. As noted, Petitioner submitted such an OPRA request and obtained a document from the OAL (Exhibit pages 14-15) that discloses both the parents' and the students' initials.

Petitioner has no strong feelings one way or the other as to whether the OAL's procedure (identifying students and parents by their initials) or Millburn's procedure (suppressing even the initials of students and parents) best serves the public's interest. Petitioner's interest in filing the instant petition is to bring Millburn's position to the OAL's attention and to invite the OAL to reevaluate whether the procedure in N.J.A.C. § 1:6A-18.2(a) adequately protects students' and parents' identities. If Millburn's procedure is ultimately determined to be the better one, then the OAL's rules ought to emulate it. To do otherwise allows anyone to access students' and parents' initials by way of an OPRA request to the OAL. If the OAL ultimately determines that using parties' initials is sufficient, local districts such as Millburn should respect that policy decision and disclose the students' and parents' initials when responding to OPRA requests.

**4. The statutory authority under which the Office of Administrative Law may take the requested action.**

N.J.S.A. 52:14F-5(e), (f) and (g).

Very truly yours,



John Paff &lt;opengovtissues@gmail.com&gt;

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**Records request: Millburn school district**

1 message

**John Paff** <paff@pobox.com>

Thu, Mar 5, 2015 at 5:40 AM

To: steven.digeronimo@millburn.org

Please accept this e-mail/fax as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to [paff@pobox.com](mailto:paff@pobox.com). Thank you.

**Background:**

I'd like to write an article on the Millburn school district similar to the one I wrote [here](#) about Sea Girt's.

**Records requested:**

For each Individuals with Disabilities Education Act (IDEA) case that was a) filed against the Millburn school district on or after January 1, 2012 and b) has been settled, I'd like a copy of the settlement agreement.

*John Paff  
P.O. Box 5424  
Somerset, NJ 08875  
Voice: 732-873-1251  
Fax: 908-325-0129  
e-mail: [paff@pobox.com](mailto:paff@pobox.com)*



**LINDABURY, McCORMICK, ESTABROOK & COOPER**  
 A Professional Corporation  
 53 Cardinal Drive  
 P.O. Box 2369  
 Westfield, New Jersey 07091  
 (908) 233-6800  
 Attorneys for Respondent, Millburn Township Board of Education

\_\_\_\_\_,  
 o/b/o \_\_\_\_\_,

Petitioners,

-vs.-

**MILLBURN TOWNSHIP BOARD OF  
 EDUCATION AND** \_\_\_\_\_

Respondents.

: STATE OF NEW JERSEY  
 : OFFICE OF ADMINISTRATIVE LAW  
 : OAL DOCKET NO.: EDS 18665-2013 N  
 : AGENCY REF. NO: 2014-20539

: **STIPULATION OF SETTLEMENT**

WHEREAS, \_\_\_\_\_ is an educationally disabled student as defined in *N.J.A.C. 6A:14-1.1 et seq.*, and eligible for special education and related services under the category of \_\_\_\_\_ and \_\_\_\_\_

WHEREAS, the Millburn Township Board of Education ("Respondent" or "District") was previously the local educational authority with the responsibility of providing a free, appropriate public education to \_\_\_\_\_; and

WHEREAS \_\_\_\_\_ and \_\_\_\_\_

WHEREAS, \_\_\_\_\_

██████████  
██████████  
WHEREAS, in or about October 2012, ██████████  
██████████

WHEREAS, there is a dispute between Petitioners and the District regarding ██████████  
██████████

██████████ and

NOW THEREFORE, the parties, having a desire to settle the above matter in an amicable way, hereby agree as follows:

1. The District agrees to reimburse Petitioners five thousand dollars (\$5,000) toward the educational costs of ██████████ for November 2011 through October 2012. The reimbursement shall be provided to the Parents within 30 days of receipt of invoices, ██████████ and proof of payment. Any and all costs over and above this financial contribution from the District shall be the sole responsibility of Petitioners.
2. Petitioners waive their right to any reimbursement for transportation.
3. Petitioners waive their right to any attorney's fees.
4. Petitioners waive their right to reimbursement for any independent evaluations.
5. The parties have reached this compromise to avoid the expense, inconvenience, and potential acrimony of a due process hearing under the special education laws.
6. It is understood that the execution of this Agreement does not constitute an admission by the District. The District specifically disclaims any liability to ██████████ except as set forth in this Agreement.
7. In consideration of the settlement of the captioned matter, the Parties shall release one another from any and all past, present and future claims; rights; and liability; including but not limited to any and all past, present, and future claims for attorney's fees, compensatory education, money damages, civil liability, relating to any purported incidents of harassment, intimidation or bullying or any other equitable or legal relief.
8. In consideration of the settlement of the captioned matter, the Parties waive their right to take any action against one another, including but not limited to, administrative actions, civil actions, complaint investigations, OCR investigations or

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any other action through the date of this Agreement, except as same may relate to the enforcement of this Agreement.

9. If [REDACTED] or [REDACTED] legal representative initiates any legal proceeding to invalidate or set aside all or any portion of this Stipulation of Settlement, [REDACTED] will hold the District harmless and will indemnify the District for any liability, judgment, legal fees, or other costs or expenses arising from such legal proceedings. [REDACTED]'s liability shall be joint and several.
10. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final Agreement on any and all issues.
11. This Agreement shall be governed by the laws of the State of New Jersey.
12. If, during the term of this Agreement, a specific clause of the Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.
13. The parties have entered into this Agreement freely and voluntarily with a full understanding of their rights and the contents of this Agreement. The parties acknowledge that they had the opportunity to consult with legal counsel or a representative of their choice and that they reviewed the Agreement in detail with their counsel or representative and fully understand its requirements and limitations.
14. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that, following the full execution of this Settlement Agreement, neither Petitioners, Respondent District, Respondent District's staff, nor either parties' attorneys will take any action to publicize the terms and nature of this Settlement Agreement, except that disclosure is permitted: (1) as necessary with regard to any proceedings for the enforcement of the Settlement Agreement; (2) to the student's immediate family, attorneys, agents and pertinent Respondent District staff, who shall agree not to disclose the facts of or any of the terms of this Settlement Agreement as if they were a party to it; (3) as may be required by any court of agency of competent jurisdiction; and (4) as may be required by law.
15. This Agreement disposes of any and all claims that were raised or could have been raised in the captioned petition for due process.
16. This Agreement shall be incorporated into a Final Order by the Honorable Barry E. Moscovitz, A.L.J.
17. This Agreement is subject to ratification by the Millburn Township Board of Education.

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Date: 5/8/14

Date: 5/8/14

ON BEHALF OF THE MILLBURN TOWNSHIP BOARD OF EDUCATION

*[Handwritten Signature]*

Date: 5-13-14



John Paff &lt;opengovtissues@gmail.com&gt;

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**(no subject)**

1 message

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**John Paff** <paff@pobox.com>

Fri, Mar 27, 2015 at 8:09 PM

To: Steven DiGeronimo &lt;steven.digeronimo@millburn.org&gt;

Steven DiGeronimo

Please accept this e-mail/fax as my request under the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records to me via e-mail to [paff@pobox.com](mailto:paff@pobox.com). Thank you.

**Background:**

In response to a recent OPRA request, I received several redacted settlement agreements of IDEA educational matters. Typical is the one that is attached which resolved a case bearing OAL Docket No. EDS-18665-2013-N. Even though your March 27, 2015 letter which accompanied the settlement agreement indicates that "the redacted portions . . . constitute confidential identifiable student information," it appears that the redactions were applied much more broadly than that. For example, it would appear that disclosure of the second defendant, as listed in the settlement agreement's caption, would not identify the student. It would also appear that the nearly total redaction of the 3rd, 4th, 5th and 6th "Whereas" clauses is not necessary to shield the student's identity. Finally, captions of OAL matters typically shield the students' identities by identifying the students and their parents by their initials instead of their full names. It appears that you have gone so far as to redact the initials, which, in my view is overkill.

**Records Requested:**

1. More narrowly redacted copies of each of the settlement agreements provided to me on or about March 27, 2015. This time, please redact only the information necessary to protect a recognized exemption and, for each redacted element, please describe the information that you've

Exhibit page 6 of 15



suppressed so as to give me enough information so that I can judge the reasonableness of your decision to redact.

2. Judge Barry E. Moscovitz's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-18665-2013-N.

3. Judge Caridad F. Rigo's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-17524-2013-N.

4. Judge Leslie Z. Celentano's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-10065-2013-N.

5. Judge Carol Cohen's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-11884-2014-N.

6. Judge Carol Cohen's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-12594-2014-N.

7. Final order by Judge Ellen Bass in the case settled by the agreement beginning at page 9 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

8. Final order by Judge Robert J. Giordano in the case settled by the agreement beginning at page 28 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

9. Final order by Judge Richard McGill in the case settled by the agreement beginning at page 32 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

*John Paff*  
*P.O. Box 5424*  
*Somerset, NJ 08875*  
*Voice: 732-873-1251*  
*Fax: 908-325-0129*  
*e-mail: paff@pobox.com*

LINDABURY, McCORMICK, ESTABROOK & COOPER  
A Professional Corporation  
53 Cardinal Drive  
P.O. Box 2369  
Westfield, New Jersey 07091  
(908) 233-6800  
Attorneys for Respondent, Millburn Township Board of Education

\_\_\_\_\_ and \_\_\_\_\_ o/b/o \_\_\_\_\_,  
Petitioners,  
-vs.-  
MILLBURN TOWNSHIP BOARD OF  
EDUCATION AND \_\_\_\_\_,  
Respondents.  
: STATE OF NEW JERSEY  
: OFFICE OF ADMINISTRATIVE LAW  
: OAL DOCKET NO.: EDS 18665-2013 N  
: AGENCY REF. NO: 2014-20539  
: STIPULATION OF SETTLEMENT

WHEREAS, \_\_\_\_\_ is an educationally disabled student as defined in *N.J.A.C. 6A:14-1.1 et seq.*, and eligible for special education and related services under the category of \_\_\_\_\_; and

WHEREAS, the Millburn Township Board of Education ("Respondent" or "District") was previously the local educational authority with the responsibility of providing a free, appropriate public education to \_\_\_\_\_; and

WHEREAS, after the 2009-2010 school year, \_\_\_\_\_ and \_\_\_\_\_ ("Parents" or "Petitioners") disenrolled \_\_\_\_\_ from the District and placed \_\_\_\_\_ at \_\_\_\_\_; and

WHEREAS, the Parents re-enrolled \_\_\_\_\_ in District in 2011 in order that \_\_\_\_\_ receive a free, appropriate public education; and

WHEREAS, in or about October 2012, \_\_\_\_\_

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[REDACTED], Petitioners moved from [REDACTED], New Jersey to [REDACTED];

WHEREAS, in or about October 2012, [REDACTED] became the local educational agency responsible for providing [REDACTED] with a free, appropriate public education.

WHEREAS, there is a dispute between Petitioners and the District regarding [REDACTED]'s program and placement from November 2011 through October 2012; and

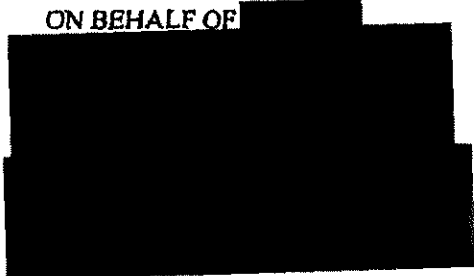
NOW THEREFORE, the parties, having a desire to settle the above matter in an amicable way, hereby agree as follows:

1. The District agrees to reimburse Petitioners five thousand dollars (\$5,000) toward the educational costs of [REDACTED] for November 2011 through October 2012. The reimbursement shall be provided to the Parents within 30 days of receipt of invoices, proof of attendance, and proof of payment. Any and all costs over and above this financial contribution from the District shall be the sole responsibility of Petitioners.
2. Petitioners waive their right to any reimbursement for transportation.
3. Petitioners waive their right to any attorney's fees.
4. Petitioners waive their right to reimbursement for any independent evaluations.
5. The parties have reached this compromise to avoid the expense, inconvenience, and potential acrimony of a due process hearing under the special education laws.
6. It is understood that the execution of this Agreement does not constitute an admission by the District. The District specifically disclaims any liability to [REDACTED] except as set forth in this Agreement.
7. In consideration of the settlement of the captioned matter, the Parties shall release one another from any and all past, present and future claims; rights; and liability; including but not limited to any and all past, present, and future claims for attorney's fees, compensatory education, money damages, civil liability, relating to any purported incidents of harassment, intimidation or bullying or any other equitable or legal relief.
8. In consideration of the settlement of the captioned matter, the Parties waive their right to take any action against one another, including but not limited to, administrative actions, civil actions, complaint investigations, OCR investigations or

any other action through the date of this Agreement, except as same may relate to the enforcement of this Agreement.

9. If [REDACTED] or [REDACTED]'s legal representative initiates any legal proceeding to invalidate or set aside all or any portion of this Stipulation of Settlement, [REDACTED] and [REDACTED] will hold the District harmless and will indemnify the District for any liability, judgment, legal fees, or other costs or expenses arising from such legal proceedings. [REDACTED] and [REDACTED]'s liability shall be joint and several.
10. This Agreement contains the entire Agreement and understanding between the parties and constitutes a full and final Agreement on any and all issues.
11. This Agreement shall be governed by the laws of the State of New Jersey.
12. If, during the term of this Agreement, a specific clause of the Agreement is determined to be illegal or in violation of any Federal or State law, the remainder of the Agreement shall not be affected by such a ruling and shall remain in full force and effect.
13. The parties have entered into this Agreement freely and voluntarily with a full understanding of their rights and the contents of this Agreement. The parties acknowledge that they had the opportunity to consult with legal counsel or a representative of their choice and that they reviewed the Agreement in detail with their counsel or representative and fully understand its requirements and limitations.
14. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that, following the full execution of this Settlement Agreement, neither Petitioners, Respondent District, Respondent District's staff, nor either parties' attorneys will take any action to publicize the terms and nature of this Settlement Agreement, except that disclosure is permitted: (1) as necessary with regard to any proceedings for the enforcement of the Settlement Agreement; (2) to the student's immediate family, attorneys, agents and pertinent Respondent District staff, who shall agree not to disclose the facts of or any of the terms of this Settlement Agreement as if they were a party to it; (3) as may be required by any court of agency of competent jurisdiction; and (4) as may be required by law.
15. This Agreement disposes of any and all claims that were raised or could have been raised in the captioned petition for due process.
16. This Agreement shall be incorporated into a Final Order by the Honorable Barry E. Moscovitz, A.L.J.
17. This Agreement is subject to ratification by the Millburn Township Board of Education.

ON BEHALF OF




Date: 5/8/14

Date: 5/11/14

ON BEHALF OF THE MILLBURN TOWNSHIP BOARD OF EDUCATION

Jeff M

Date: 5-12-14



**Millburn Township Schools**  
434 MILLBURN AVENUE, MILLBURN, NJ 07041  
www.millburn.org

Office of the Business Administrator  
Telephone 973-376-3600 x156  
FAX 973-376-2363

April 7, 2015

Mr. John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Dear Mr. Paff:

The Millburn Township Board of Education is in receipt of your Open Public Records Act (OPRA) request dated March 27, 2015, sent at 8:09 p.m. You requested the following:

1. More narrowly redacted copies of each of the settlement agreements provided to me on or about March 27, 2015. This time, please redact only the information necessary to protect a recognized exemption and, for each redacted element, please describe the information that you've suppressed so as to give me enough information so that I can judge the reasonableness of your decision to redact.
2. Judge Barry E. Moscovitz's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-18665-2013-N.
3. Judge Caridad F. Rigo's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-17524-2013-N.
4. Judge Leslie Z. Celentano's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-10065-2013-N.
5. Judge Carol Cohen's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-11884-2014-N.
6. Judge Carol Cohen's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-12594-2014-N.

7. Final order by Judge Ellen Bass in the case settled by the agreement beginning at page 9 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

8. Final order by Judge Robert J. Giordano in the case settled by the agreement beginning at page 28 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

9. Final order by Judge Richard McGill in the case settled by the agreement beginning at page 32 of the 37-page PDF you sent me. That settlement agreement does not set forth an OAL docket number.

Enclosed please find the records responsive to your request, subject to the following issues:

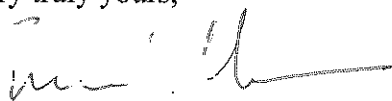
Neither the Board nor its attorneys have received nor possess Judge Barry E. Moscovitz's Final Order entered in a case against the Millburn Township Board of Education bearing OAL Docket No. EDS-18665-2013-N.

The Board is in the process of locating the Final Order by Judge Richard McGill in the case settled by the agreement beginning at page 32 of the 37-page PDF sent to you. The Board requests an extension to respond to this request by April 13, 2015.

The redacted portions of the settlement agreements and Final Orders constitute confidential identifiable student information and student records in accordance with the Family Educational Rights and Privacy Act, the Individuals with Disabilities Education Act, New Jersey law and regulation, and N.J.S.A. 47:1A-9. While the District understands that captions of OAL matters typically shield student identities by identifying student and parents by their initials, given the nature of the Millburn Township School District community, it is the District's position that the provision of student and parent initials may reveal their identities.

Thank you.

Very truly yours,



Steven DiGeronimo, SBA/BS



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**DECISION APPROVING**

**SETTLEMENT**

OAL DKT. NO. EDS 18665-13

AGENCY DKT. NO. 2014-20539

**P.A. AND J.Z. ON BEHALF OF A.A.,**

Petitioners,

v.

**MILBURN TOWNSHIP BOARD OF  
EDUCATION AND MADISON BOARD  
OF EDUCATION,**

Respondents.

---

**Jayne M. Wesler**, Esq., for petitioners (Sussan, Greenwald & Wesler, attorneys)

**Athina Cornell**, Esq., for respondent Millburn Board of Education (Lindabury,  
McCormick & Estabrook, attorneys)

**Caitlin Pletcher**, Esq., for respondent Madison Board of Education (Comegno  
Law Group, P.C., attorneys)

Record Closed: June 26, 2014

Decided: July 1, 2014

BEFORE **BARRY E. MOSCOWITZ**, ALJ:



This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§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 document.

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 document.
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.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012). 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.

July 1, 2014 \_\_\_\_\_

DATE

  
\_\_\_\_\_  
**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency

July 1, 2014 \_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

dr

Attachment