

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GWINNETT COUNTY BOARD EDUCATION,)	
)	
Appellant,)	
vs.)	APPEAL NO. 1988-51
)	
MATT O.,)	Decision of State Hearing
)	Officer Consented to by
Appellee.)	the Parties.

This matter having come before the State Hearing Officer on appeal from the decision of the Regional Hearing Officer and the parties hereto having reached a written settlement (a copy of which is annexed hereto) in which they resolved all disputed issues, said written settlement is hereby incorporated by reference; and by consent of the parties, it is made the Decision of the State Hearing Officer in this matter.

This 21st day of April, 1989.

L. O. Buckland
State Hearing Officer

The within and foregoing decision having been consented to by the parties this 18th day of April, 1989.

Consented to by:

GWINNETT COUNTY BOARD OF EDUCATION

By _____
Daniel Parks, Chairman

By _____
Alton C. Crews, Secretary

George I. Otwell, Individually
and on behalf of Matthew Otwell,
his minor child.

By _____ [SEAL]
Linda Otwell, individually and on behalf of Matthew Otwell, her
minor child.

STATE BOARD OF EDUCATION

STATE OF GEORGIA

**GWINNETT COUNTY BOARD
EDUCATION,**

Appellant,

vs.

MATT O.,

Appellee.

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)

APPEAL NO. 1988-51

SETTLEMENT AGREEMENT

THIS AGREEMENT made effective as of April 18, 1989 is by and between George Otwell together with his wife Linda Otwell (hereinafter "the Otwells") on behalf of themselves and their minor child Matthew Otwell (hereinafter "the Student") and the Gwinnett County Board of Education (hereinafter "the LEA").

WHEREAS, the Otwells reside in Gwinnett County, Georgia; and WHEREAS, the Student is subject to all the rights and privileges of a free appropriate public education available to children residing with their parents in Gwinnett County, Georgia; and

WHEREAS, the Student is a handicapped child as defined by 20 USC § 1401 et seq. (hereinafter referred to as the "EHA"); and

WHEREAS, the Student is entitled to a free appropriate public education under the terms and conditions established by the ERA; and

WHEREAS, a dispute has arisen between the Otwells and the LEA over the Student's individual educational plan (hereinafter "IEP") and appropriate educational placement for the 1988-89 school term along with related procedural matters; and

WHEREAS, the Otwells commenced the administrative hearing process available under the El-IA to resolve the aforementioned disputes; and

WHEREAS, the Student's educational placement was the self-contained classroom for the seriously emotionally disturbed at Shiloh High School in Gwinnett County, Georgia at the time the dispute arose; and

WHEREAS, the Otwells unilaterally placed the Student at the Meridell Achievement Center in Austin, Texas during the pendency of the hearing process; and

WHEREAS, the LEA has steadfastly maintained the appropriateness of its IEP; its self-contained day school placement; and its challenged procedures; and

WHEREAS, the administrative hearing process and its available appeals have not been exhausted; and

WHEREAS, the parties hereto are desirous of concluding the administrative hearing process in the interest of devoting themselves exclusively to the task of developing an appropriate IEP and placement for the Student for the 1989-1990 school term; and

WHEREAS, the parties hereto have agreed to settle and compromise their disputes upon the terms hereinafter set forth without continuing the administrative process;

NOW THEREFORE, in consideration of these premises, the promises and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto, wishing to be legally bound, mutually agree as follows:

1.

The parties hereto agree that the LEA shall pay to the Otwells the amount of TWENTY-EIGHT THOUSAND FIVE HUNDRED (\$28,500.00) DOLLARS for the purpose of resolving the dispute over the Student's appropriate educational placement and IEP during the period between August 1, 1988 and August 31, 1989 and certain procedural matters that arose incidentally thereto. The parties agree that this payment to the Otwells by the LEA shall satisfy any claim for payment of attorneys' fees; any claim for payment of expert witness fees; any

claim for payment of costs associated with the due process proceeding; any claim for payment of books, supplies, tuition and related services to education; any claim for payment of room and board; any claim for payment of travel reimbursement; and any other claim for payment of money arising prior to August 31, 1989 that the Otwells or others on behalf of the Student might assert against the LEA. The Otwells and the Student further agree and hereby acknowledge full, final and complete satisfaction of all claims of whatever kind, character and description they may have against the LEA on account of the LEA'S obligation to provide the Student a free appropriate public education for any term prior to August 31, 1989 and that the aforementioned payment represents payment in full by the LEA to the Otwells and the Student.

2.

The parties hereto agree that in exchange for the LEA's agreement to pay the Otwells the amount of TWENTY-EIGHT THOUSAND FIVE HUNDRED (\$28,500.00) DOLLARS, the Otwells agree to indemnify and hold forever harmless the LEA and its members, officers, employees, and successors from and against any claim, action, or demand which may hereafter be brought or instituted against the LEA, its members, officers, employees, and successors by any person or entity who acted or is acting in behalf of the Otwells or the Student because of or in any manner arising from or on account of the parties' dispute and the Otwells' placement of the Student at the Meridell Achievement Center; or the LEA'S obligations to provide the Student a free appropriate public education prior to August 31, 1989 including without limitation costs for books, supplies, tuition, services related to education, room and board, travel expense, expert witness fees, and attorneys' fees.

3.

The parties hereto agree that the decision of the Regional Hearing officer from the hearing requested by the Otwells and which commenced on or about August 2, 1988 is of no

legal or binding effect as to the parties hereto except insofar as the decision established that the Otwells and the Student were afforded the appropriate hearing rights pursuant to the ERA. Accordingly, the parties agree that the Student's current educational placement is the self-contained classroom for the emotionally disturbed at Shiloh High School in Gwinnett County, Georgia.

4.

For purposes of any future disputes between the parties or anyone acting in behalf of the Student about the Student's educational placement, the Student's IEP, or any other aspect of the Student's education to which the ERA applies, the Student's current educational placement shall be considered the self-contained day school program for seriously, emotionally disturbed students at Shiloh High School until the parties hereto agree otherwise or an order of a Court of competent jurisdiction changes the educational placement.

5.

The Otwells agree to make the Student and all documentary material reasonably necessary for LEA officials to develop an IEP and an appropriate placement for the Student for the Fall 1989 school term available at LEA offices in a timely manner so that the Student's Fall 1989 IEP and placement can be developed.

6.

This agreement is to compromise a disputed claim and for no other purpose. The Otwells agree and acknowledge that the LEA does not recognize, admit, or acknowledge that its educational placement for the Student in the self-contained classroom for the seriously emotionally disturbed at Shiloh High School, Gwinnett County, Georgia was inappropriate. Moreover, the Otwells agree and acknowledge that the LEA does not recognize, admit, or

acknowledge that residential placement including residential placement at Meridell Achievement Center in Austin, Texas was necessary in order to provide the Student in the 1988-1989 school term with a free appropriate public education under the EHA. The Otwells further agree and acknowledge that the LEA does not recognize, admit, or acknowledge that the Otwells acting for themselves or on behalf of the Student have any cognizable claim under the provisions of the ERA against the LEA, its members, officers, employees or successors, all such liability being expressly denied.

7.

The Otwells hereby acknowledge full, final and complete settlement and satisfaction of all claims of whatever kind, character, and description which they or the Student may have against the LEA, its members, officers, employees and successors by reason of the LEA's obligation to provide the Student a free appropriate public education and any other matter related thereto which arose, existed or could have been asserted prior to the development of the Student's Fall Term 1989 IEP.

IN WITNESS WHEREOF, the parties set their hands and seals.

George I. Otwell, Individually
and on behalf of Matthew Otwell,
his minor child.

By _____ [SEAL]

Linda Otwell, individually and on behalf of Matthew Otwell, her
minor child.

GWINNETT COUNTY BOARD OF EDUCATION

By _____

Daniel Parks, Chairman

By _____
Alton C. Crews, Secretary

