PR. App. 1

20-2433 & 21-1502

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

A.W. o/b/o N.W.,

Plaintiffs-Appellants/Cross-Appellees

v.

PRINCETON PUBLIC SCHOOLS BOARD
OF ED. AND MICKI CRISAFULLI,
individually and in her official capacity
as Director of Special Education,

Defendants-Appellees/Cross-Appellants

ON APPEAL FROM ORDER OF JULY 10, 2020
AND CROSS-APPEAL FROM ORDER OF
FEBRUARY 21, 2021 BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
NEW JERSEY IN CASE NO. 3:18-13973

**BRIEF OF APPELLANTS/
CROSS-APPELLEES A.W. AND N.W.
AND PLAINTIFFS' APPENDIX
VOLUME I: PAppx - 1-101**

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On March 6, 2018, A.W. wrote a letter to Gorman asking for corrections and confirming there were "time constraints involved when the issues were discussed and papers drafted" (Pa223). Regarding paragraph 4, she wrote:

> Paragraph 4. Upon review, the terms of paragraph 4 are unclear. Specifically, petitioners objected to the request that N. W. had to disenroll from the District for the duration of the agreement. You agreed that petitioners could, if they chose, request that N.W. be re-enrolled in district and in such event, the district would provide evaluations and offer an IEP, which is stated in the agreement. However, the impact on remaining terms is not clear. For example, you stated, expressly, that if this option were invoked, the agreement would be void. . . . However, this is not stated in the agreement. Upon review, we request that this term be included in the agreement as otherwise, it is vague as to this option of re-enrollment.. . . . [Pa223].

In this letter, A.W. provided notice that she contacted TLS about a payment plan but was informed Mrs. Lewis could not approve a plan but rather, approval was required from TLS's Board (Pa223; Pa258). She explained if there was no payment plan, Plaintiffs may re-enroll N.W. in district underscoring the need to ensure paragraph four aligned with Defendants' representations on May 2, 2018 (Pa223). A.W. concluded: "To preserve our rights, we are invoking 20 U.S.C.

1415(f)(iv), to void the stipulation of settlement dated 3/2/2018 subject to these very limited requests for clarification" (Pa223).

* * *

[29] **ARGUMENT**

I. THE DISTRICT COURT ERRED IN HOLDING THAT THE INSTRUMENT DOES NOT VIOLATE PUBLIC POLICY

A. Standard of review

Whether a contract violates public policy is a legal question subject to plenary review. *Williams v. Medley Opportunity Fund*, 965 F.3d 229, 238 (3d Cir. 2020). Legal questions in IDEA matters are subject to plenary review. *Lester H. v. Gilhool*, 916 F.2d 865, 871 (3d Cir. 1990).

B. Prospective Waivers of Minors' Statutory Rights Violate New Jersey and Federal Public Policy

Here, the Instrument states it is governed by New Jersey law (Pa89, ¶ 20). It broadly waives future claims of N.W. under New Jersey educational statutes and any statutes of New Jersey for one year, through June 30, 2019 (Pa85, ¶ 6). Then, pursuant to its literal terms, it terminates "all of [PPS's] obligations under any law" including the NJ Law Against Discrimination (LAD), on June 30, 2019 (Pa84, ¶ 2). Principles of New Jersey law and public policy govern this contract. *Colliers*

Lanard & Axilbund v. Lloyds of London, 458 F.3d 231, 236-237 (3d Cir. 2006).

Federal public policy is implicated, as well, as school districts are not free to pursue settlements that violate federal public policy or federal statutes. *D.R*, 109 F.3d at 902, n. 1 (citing *Miller Tabak Hirsch v. Comms'r of Internal Rev.*, 101 F.3d 7, 10 (2d Cir. 1996)). The Instrument waives claims into the future for one year and [30] then permanently severs N.W.'s rights under the IDEA, Section 504, and the ADA (Pa84, ¶ 2, Pa85, ¶ 6). The federal statutes create a floor, and New Jersey is free to enact laws providing greater protections for minors than required by the IDEA, and it has done so. *Geis v. Board of Ed. of Parsippany-Troy Hills*, 774 F.2d 575, 583 (3d Cir. 1985).

To hold the Instrument does not violate New Jersey or federal public policy, the district court stated: "The cases Plaintiff cites in support of this proposition are unpersuasive as they are not IDEA cases dealing with similar waiver provisions. Rather, the Court finds that agreements that waive claims arising under the IDEA are enforceable." (Pa37) (citing *D.R.*, 109 F.3d at 896 and *M.P. v. Penn-Delco Sch. Dist.*, No. 15-2446, 2015 WL 7430010, at *4 (E.D. Pa. Nov. 20, 2015) (Pa95)).

The district court's decision violated *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). *Klaxon* requires that a federal court adjudicating a state law issue apply the law of the forum state. *System Operations, Inc. v. Scientific Games Develop. Corp.*, 555 F.2d

1131, 1136 (3d Cir. 1977). The duty to follow state law applies in diversity cases and to pendent state law claims. *Id.* Contrary to *Klaxon*, the district court flouted its duty to honor decisions of the New Jersey Supreme Court on an issue of state law and slighted them as "unpersuasive" (Pa37). Plaintiffs had cited *Hojnowski v. Vans Skate Park*, 187 N.J. 323 (2006), *McCarthy v. NASCAR, Inc.*, 48 N.J. 539 (1967), and *Carvalho v. Toll Bros. & Developers*, 143 N.J. 565 [31] (1996) (Pa31 1). Each of these decisions instruct that the Instrument is unenforceable as its prospective waivers violate New Jersey public policy.

For example, *Hojnowski* held that protecting the best interests of minors under the *parens patriae* doctrine is an important public-policy interest calling for considerable protections for minor children. *Id.* at 387. *Hojnowski* emphasized that "[e]xculpatory agreements have long been disfavored in the law as they encourage a lack of care." *Id.* at 386. Based on the protections New Jersey "historically has afforded to a minor's claims" and its policy disfavoring exculpatory agreements, *Hojnowski* struck down, as against public policy, a release knowingly executed by a parent that waived her child's future tort claim. *Id.* at 389. *McCarthy* held New Jersey public policy will deny enforcing a contract seeking a release from statutorily-imposed duties. 48 N.J. at 542. *Carvalho* struck down an exculpatory agreement with a township on grounds of unequal-bargaining power. 143 N.J. at 578-79. In *Gershon v. Regency Diving Center*, 368 N.J. Super. 237 (App. Div. 2004), the court summarized this precedent and explained that no

exculpatory release will be enforced in New Jersey if *any one* of four criteria applies: if it adversely affects the public interest; *or* the exculpated party is under a legal duty to perform; *or* a public utility or common carrier is involved; *or* it grows out of unequal bargaining power or is otherwise unconscionable. *Id.* at 248.

Then, in *Rodriguez v. Raymours Furniture Co.*, 225 N.J. 343 (2016), the Court [32] struck down a waiver provision seeking to shorten the statute of limitations for filing a claim under the LAD as against public policy. *Id.* at 365. The Court explained that the LAD furthers an important public-policy interest that overrides the private right to contract. *Id.* at 354. *See also Vitale v. Schering-Plough Corp.*, 231 N.J. 234 (2017) (waiver of prospective Workers' Compensation claim violates public policy). Here, the Instrument waives N.W.'s prospective rights under the LAD for a year and then terminates PPS's obligations under the LAD as of June 30, 2019, which alone require voiding of the Instrument under *Rodgriguez* (Pa84-85).

Moreover, New Jersey public policy does not permit school districts to extract waivers from parents of minors' future educational rights, disavowing statutory obligations owed to disabled children including rights to receive IEPs and FAPE. Not only are these basic statutory obligations owed to children in furtherance of important public-policy interests (20 U.S.C. 1400 (d)), but unequal bargaining power is self-evident with the balance of power heavily tilting in favor of the school district with each day that it delays and denies services over which it has exclusive control. *M.R.*, 744

F.3d at 123 ("Without interim financial support, a parent's 'choice' to have his child remain in what the state has determined to be an appropriate private school placement amounts to no choice at all").

* * *

[35] 802 F.3d 601, 604, 608 (3d Cir. 2015). Having received federal funding to implement the IDEA, school districts should not be permitted to demand that parents release them from prospective statutory obligations as a condition of securing educational placements for their children as this frustrates the broad remedial purposes of the IDEA (*id.* at 614), and is overreaching particularly considering school districts' unequal bargaining power and exclusive control over access to educational services. *See Rena C. v. Colonial Sch. Dist.*, 890 F.3d 404, 418 (3d Cir. 2018) (school districts should not use ten-day offer letters to force parents to "choose between securing an appropriate placement for their child and obtaining the attorney's fees to which they would otherwise be entitled").

Accordingly, Plaintiffs' motion for partial summary judgment seeking a ruling that the Instrument is unenforceable should have been granted.[7]

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[7] On severability, *see Williams*, 965 F.3d at 243 (prospective waiver of statutory rights not severable); *MacDonald v. Cashcall, Inc.*, 883 F.2d 220, 230 (3d Cir. 2018) (invalid forum selection clause rendered entire agreement unenforceable). Defendants argued against severability below, stating "no agreement would ever have been reached" without the waivers (Pa257).

[36] **II. THE DISTRICT COURT ERRED IN HOLDING THE INSTRUMENT IS ENFORCEABLE WHEN UNDISPUTED FACTS OF RECORD ESTABLISH EQUITABLE FRAUD**

A. Standard of review

This Court's "review of the grant or denial of summary judgment is plenary" applying "the same standard as the district court." *Mylan Inc. v. SmithKline Beecham Corp.,* 723 F.3d 413, 418 (3d Cir. 2013).

Summary judgment is appropriate where, after drawing all reasonable inferences in favor of the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

B. The District Court Erred In Applying the Summary Judgment Standard to Enforce The Instrument

While settlement of litigation ranks high in public policy, the law favors only those settlements that are executed freely, without deception or coercion and with full understanding of one's rights. *Complaint of Bankers Trust Co.*, 752 F.2d 874, 885 (3d Cir. 1985). A settlement agreement must be set aside if it "is achieved

through coercion, deception, fraud, undue pressure, or unseemly conduct." *Peskin v. Peskin*, 271 N.J. Super. 261, 276 (App. Div. 1994) (citing *Newton v. A. C. & S., Inc.*, 918 F.2d 1121 (3d Cir. 1990)). Basic fraud principles apply to settlement agreements. *Slotkin v. Citizens Cas. Co.*, 614 F.2d 301 (2d Cir. 1980).

* * *

Additionally, the undisputed facts of record reflect imposition in the execution resulting in completion of the Instrument contrary to A.W.'s authorization. On March 2, 2018, when A.W. was assured of a three-day review period as three copies were presented for her signature, she did not realize the significance of subtle changes and omission of an implied term as departing from what had been promised (Pa190, Pa300). This was excusable in the circumstances.[8] Upon developing concern, on March 6, 2018, A.W. voided the Instrument and conditioned her authorization for Board approval upon insertion of a phrase that had been promised but omitted from the writing (Pa223). Nonetheless, on March 26, 2018, Defendants executed the Instrument contrary to their authorization (Pa90). There was an imposition-in-the-execution that resulted in an Instrument deviating from Plaintiffs' authorization warranting equitable remedies.

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[8] Even attorneys can overlook changes not brought to their attention. *See* U.S. District Court Local Rules, Appendix R, *Guidelines for Litigation Conduct*, Lawyer's Duties to Other Counsel (March 15, 2019), ¶¶ 6, 7 (requiring the drafting of written Instruments in accordance with oral promises and use of track changes to bring modifications to counsel's attention).

The district court nonetheless rejected any fraud or equitable remedies on summary judgment stating: "Plaintiff's claims and concerns regarding the waivers [40] in the March 2 Agreement are not credible" (Pa33). The district court surmised that A.W.'s legal training, coupled with an alleged lack of objection during her questioning on March 2, 2018 that defense had omitted a phrase when summarizing the agreement earlier, "undermine[d] her claims that she believed the waivers would be void upon certain events occurring" (Pa33).

The district court erred in several respects. First, the district court overlooked that Plaintiffs had conditionally voided the Instrument on March 6, 2016 in exercising their legal rights to protect N.W.'s interests in accordance with the NJOAL's assurance of a three-day-review period and its decision of November 2, 2017, holding Board approval is critical to form an agreement (Pa549-550). What A.W. may have believed on March 2, 2018 was not germane to those facts. Second, the district court blamed A.W., doubting her beliefs, but Defendants are "not permitted to say that [they] should not have been believed or trusted." *Kero*, 6 N.J. at 370. Third, under Federal Rule of Civil Procedure 56(a), "a district court may not make credibility determinations or engage in any weighing of the evidence." *Paladino v. Newsome*, 885 F.3d 203, 209-210 (3d Cir. 2018) (quoting *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004)). The district court contravened that rule and made credibility findings on summary judgment. Fourth, the district court's inference was based upon "speculation or conjecture [which] does

not create a material factual dispute sufficient to defeat summary judgment." *Halsey*

* * *

III. THE DISTRICT COURT ERRED IN DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT BECAUSE THE KNOWING AND VOLUNTARY TEST OF *MATULA* CANNOT BE MET BASED ON THE UNDISPUTED FACTS OF RECORD

A. Standard of review

Review of a summary judgment decision is plenary. *Mylan*, 723 F.3d at 418. Typically, the question of waiver presents a mixed question of law and fact. *Roe v. Operation Rescue*, 920 F.2d 213, 217 (3d Cir. 1990). When the facts are undisputed, review is plenary. *Id.* Subsumed within the knowing and voluntary test is the question whether the instrument is ambiguous, "an issue of law subject to plenary review." *Mylan*, 723 F.3d at 419.

B. The Six Factors of the *Matula* Knowing and Voluntary Test Weigh in Plaintiffs' Favor

Under *Matula's* heightened standard, a waiver of rights under the IDEA must be "knowing and voluntary" to be enforceable considering the totality of the circumstances. 67 F.3d at 497. This test includes six factors:

> [w]hether (1) the language of the agreement was clear and specific; (2) the consideration given in exchange for the waiver exceeded the relief to which the signer was already entitled by law; (3) the signer was
>
> * * *

Moreover, the issue of what is an adequate reflection period implicates legal questions but the district court's conclusion finds no support under the IDEA or analogous knowing and voluntary standards. The IDEA provides that a settlement can be revoked within three days of execution by both parties (20 U.S.C. 1415 (f)(iv)), reflecting Congressional intent on this being a necessary reflection period. In comparison, the ADEA requires twenty-one days for review for a release to be considered "knowing and voluntary" (*Ruehl v. Viacom, Inc.*, 500 F.3d 375, 380-81 (3d Cir. 2007)), a time constraint considered "strict" and "unqualified." *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 426-27 (1998).

Significantly, the district court's conclusion on reflection time also ignored the undisputed facts of record as to how the Instrument was negotiated, altered, and presented to A.W. (Pa36-37). If A.W. had the Instrument on her desk for a month or weeks, or if there was, in fact, an exchange of drafts when she could make changes, or if there was a negotiation on the written document after it had been drafted and printed, such circumstances would be indicative of voluntariness as [50] explained in *Livingstone*, 12 F.3d at 1212-1213. But the circumstances here where the agreement was subtly altered and presented to sign in triplicate

with assurances of later negotiation, then rebuked, is indicative of fraud, not voluntariness. *Connors*, 30 F.3d at 493; *Kero*, 6 N.J. at 368-370.

Lastly, on the sixth factor, the district court concluded that A.W. allegedly understood, upon signing, that she committed to the Instrument as written with waivers applying in public school because she said on March 2 that she "understood" (Pa36). Obviously in saying she understood on March 2 can only mean she thought she understood what was transpiring based on the facts and circumstances known to her at the time.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

A.W. o/b/o N.W.,	:	Civil Action No.
Plaintiffs,	:	3:18-cv-13973-MAS-TJB
v.	:	**RETURN DATE:**
PRINCETON PUBLIC SCHOOLS BOARD OF EDUCATION AND MICKI CRISAFULLI,	:	**MAY 20, 2019**
Defendants.	x	

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTON FOR PARTIAL SUMMARY JUDGMENT PURSUANT TO *FED. R. CIV. P.* 56 (A) FOR AN ORDER VACATING THE DECISIONS OF THE N.J. OFFICE OF ADMINISTRATIVE LAW ISSUED SEPTEMBER 28, 2017, MAY 17, 2018 AND JUNE 20, 2018

(Filed Apr. 26, 2019)

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[17] ¶¶ 122). Due to the importance of this issue, the parent expressly voided the March 2 Instrument pursuant to 20 U.S.C. 1415 (f)(iv), subject to clarification to comport the written agreement with what had been expressly promised on March 2, 2018 (Ja641). The parent asked for this clarification and that they work together cooperatively to resolve this issue (Ja641). In response, defendants refused to make any amendments but made various representations, such as "the things you requested clarity on have already been placed in the agreement" (Ja642), and "your concerns are still set forth in the agreement which does not require an amendment" (Ja644). As to placement, defendants stated, *inter alia*, that the agreement meant the District "will not pay any more money for [N.W.'s] attendance [*at TLS*] for any grade level other than what is in the agreement" but N.W. was "welcome to

return to the District at any time" (Ja853; ECF 35-2, Exh. A, Ja839).

The parent never withdrew her objections or voiding of the March 2 instrument; yet, defendants had the agreement approved by its Board and submitted it to the N.J. OAL on March 29, 2019 for approval, representing that "the parties maintained their consent to the agreement" and that both parties requested it be entered into a final order (Ja622, ECF 8-1, ¶¶ 136-137).

On April 3, 2018, plaintiffs made a formal application to the N.J. OAL seeking equitable reformation of the March 2 Instrument (Ja635). Specifically, plaintiffs requested that the N.J. OAL reform the March 2 Instrument to explicitly

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[21] **POINT II: THE MARCH 2 INSTRUMENT IS VOID AS AGAINST NEW JERSEY LAW AND PUBLIC POLICY AND THE IDEA**

The March 2 Instrument expressly states it is governed by the laws of New Jersey (Ja630, ¶ 20). However, the March 2 Instrument contains broad waivers of N.W.'s *future* statutory rights under the IDEA and any other educational statute (Ja625, ¶ 2, Ja626, ¶ 6). This violates New Jersey law and public policy. New Jersey public policy has long abhorred prospective exculpatory clauses where, as here, they attempt to extinguish future rights of a minor (*Hojnowski v. Vans Skate Park*, 187 N.J. 323 (2006)); seek release from statutorily-imposed duties (*McCarthy v. NASCAR, Inc.*, 48

N.J. 539, 542 (1967)); or grow out of unequal bargaining power. *Carvalho v. Toll Bros. & Developers*, 143 N.J. 565, 578-79 (1996) (striking down exculpatory agreement with township and developer); *Gershon v. Regency Diving Center*, 368 N.J. Super. 237 (App. Div. 2004) (striking down exculpatory release).

Gershon explained that no exculpatory release will be enforced under New Jersey law if it meets *any one* of four criteria, namely: if it adversely affects the public interest; *or* the exculpated party is under a legal duty to perform; *or* it involves a public utility or common carrier; *or* it grows out of unequal bargaining power or is otherwise unconscionable. *Gershon*, 368 N.J. Super. at 248. In *Hojnowski*, the New Jersey Supreme Court further held that public policy includes protection of children under the *parens patriae* doctrine, whereby a minor's future [22] rights may not be contracted away by a parent but will by protected by the courts invoking their *parens patriae* oversight. 87 N.J. at 387.[11]

Applying these principles, the March 2 Instrument must be declared void. Not only does New Jersey's public policy protect minors from releases of their

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[11] While *Hojnowski* involved a waiver of future tort claims, a blanket waiver of future rights under the IDEA is even more compelling than waiver of a future tort claim: the existence of a tort claim is a mere possibility, whereas a disabled minor's need for an education is an absolute certainty, implicating federal and state statutory mandates. *See also A.W.*, 435 N.J. Super. at 120 ("Unless judicial approval is obtained pursuant to [R. 4:44-3], a minor is not bound by his parent's settlement of his cause") (citing Pressler & Verniero, cmt. 1 on R. 4:44–3); *ante*, p. 20, n. 10.

future rights (*Hojnowski*), but there is strong public interest in holding school districts – public entities – to their statutorily-imposed duties to educate disabled children under state and federal law. This strong public policy was recently reinforced by *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, ___ U.S. ___, 137 S. Ct. 988, 999 (2017), where the Court imposed a "markedly more demanding" standard on school districts to provide our nation's disabled children with a FAPE, ruling school districts must provide each child with services "reasonably calculated to enable [the] child to make progress appropriate in light of the child's circumstances." 137 S.Ct. at 1000. And, New Jersey law provides a higher standard of services for disabled children than under the IDEA. *Lascari v. Board of Educ.*, 116 N.J. 30, 48 (1989); *Geis v. Board of Educ.*, 774 F.2d 575, 583 [23] (3d Cir.1985) (New Jersey school districts must provide educational services based on a standard of how the student can best achieve success in learning).

School districts receive billions of dollars in federal funding every year to carry out their statutorily-imposed duties to educate our nation's disabled students, in addition to public tax dollars.[12] It is contrary

[12] The IDEA is one of the federal government's largest grant programs, with the U.S. Department of Education reporting 12.9 billion dollars in grants to states under the IDEA for fiscal year 2018, and another 16.2 billion toward education for the disadvantaged. U.S. Dept. of Ed., *FY 2018 Agency Financial Report* (Nov. 15, 2018), at pp. 14-15, 35 (available at: www2.ed.gov/about/reports/annual/2018report/agency-financial-report.pdf.) (last visited April 17, 2019).

to public policy and unconscionable for school districts receiving this federal grant money to extract waivers from parents of minors' future rights so they can intentionally disown disabled children in their districts, disavowing their basic rights to have IEPs.

Releases extracted by school districts of their statutorily-imposed obligations also involve unequal bargaining power. This is particularly the case for parents who are financially unable to support their children's needs privately, as the educational placement, program and services for such children depend on support of the school district. A financially-constrained parent is at the mercy of her school district to support her disabled child's educational needs. *See M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 123 (3d Cir. 2014) ("Without interim financial support, a parent's 'choice' to have his child remain in what the state has determined to be an

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[27] *the future* following its date of execution (Ja626, ¶ 6). It further purportedly placed a cap on *all* the District's financial support for N.W.'s education into the future, even under changed circumstances, predetermined at a time when she was just fourteen years old (Ja626, ¶ 4). Prevailing law and public policy bars a New Jersey school district from blanketly divesting itself of future obligations for a disabled minor's education in this manner.[13]

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[13] In comparison, prospective waivers of rights under Title VII and the ADA have long been held illegal. *EEOC v. Allstate Ins. Co.*, 778 F.3d 444, 450, 453 n. 5 (3d Cir. 2015) ("[r]eleases . . .

The type of broad exculpatory waivers of prospective obligations under the IDEA contained in the March 2 Instrument are unconscionable and the practice of seeking them ***must stop***: in this case and all cases in New Jersey. School boards should not be permitted to coerce parents into choosing between maintaining their child's future educational rights under the IDEA and securing an appropriate placement for their child. *Compare Rena C. v. Colonial School District*, 890 F.3d 404, 418 (3d Cir. 2018) ("[t]en-day offer letters should not permit school boards to force parents to choose between securing an appropriate placement for their child and obtaining the attorney's fees to which they would otherwise be entitled"). [28] Accordingly, the N.J. OAL's decisions of May 17, 2018 and June 20, 2018 must be vacated as the March 2 Instrument violates public policy and is void.

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must be knowingly and voluntarily signed and cannot waive future claims") (quoting *Alexander v. Gardner–Denver*, 415 U.S. 36, 51-52 (1974) ('[A]n employee's rights under Title VII are not susceptible of prospective waiver")); *Adams v. Philip Morris, Inc.*, 67 F.3d 580, 585 (6th Cir.1995) ("An employer cannot purchase a license to discriminate"). By the same token, school districts should not be permitted to purchase a license to disavow the rights of disabled children.

<u>POINT III</u>: EVEN IF THE MARCH 2 INSTRUMENT DID NOT VIOLATE PUBLIC POLICY, IT IS UNENFORCEABLE AS A MATTER OF LAW AS IT DOES NOT MEET THE IDEA'S KNOWING AND VOLUNTARY TEST OR SUPPORT A MEETING OF THE MINDS

"[A] settlement is a contract," *Varano v. All State Ins. Co.*, 366 N.J. Super. 1 (App. Div. 2003), and to be enforceable, must meet basic contractual requirements. *Blunt v. Lower Merion School Dist.*, 767 F.3d 247, 335 n. 50 (3d Cir. 2014) ("[s]ettlement agreements are regarded as contracts and must be considered pursuant to general rules of contract interpretation"). Construction of a contract is a legal question exclusively for the court to decide. *Newark Publishers Ass'n v. Newark Typographical Union*, 22 N.J. 419, 427 (1956); *Dome Petroleum Ltd. v. Employers Mut. Liab. Ins. Co.*, 767 F. 2d 43, 47 (3d Cir. 1985).

To be enforceable, a contract requires mutual assent or "a meeting of the minds." *Morton v. 4 Orchard Land Trust*, 180 N.J. 118, 120 (2004). "If parties to an agreement do not agree on one or more essential terms of the purported agreement courts generally hold it to be unenforceable." *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435 (1992) (citing *Heim v. Shore*, 56 N.J. Super. 62 (App. Div. 1959)). Additionally, for mutual assent to exist, the parties must "have an understanding of the terms to which they have agreed." *Atalese v. U.S. Legal Servs. Grp., L.P.*, 219 N.J. 430, 442 (2014). Thus, an enforceable contract requires

* * *

[33] settle, while they had no intent of abiding, in good faith, with IEP requirements consistent with the commands of the IDEA.

Beyond the ambiguities in the March 2 Instrument, the remaining *Matula* factors (67 F.3d at 497), compel the conclusion that the waivers are unenforceable. Specifically, the consideration provided to plaintiffs in exchange for the waivers consisted solely of out-of-pocket tuition reimbursement for a special-education placement and thus, did not exceed, but instead, was less than the relief to which plaintiffs were entitled by law (*Rena C.*, 890 F.3d at 418); the parent was not represented by counsel at the time of the settlement (Ja606); the parent did not receive an adequate explanation of the document (Ja616), and she had little, if any, time to reflect upon it before signing before the N.J. OAL. The fast pace of the proceedings was confirmed by the ALJ's comments that morning: "But we have to talk briefly and quickly because we're either going forward or not" (Ja607); and "[b]ecause this is an older case. It's got to get done" (Ja607). The parent's understanding she would have three days to thoroughly review the agreement was confirmed in court, but then later renounced by defendants (Ja640-Ja642).

* * *