

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "AGREEMENT") is effective as of the 22nd day of November, 2016, by and between the STATE OF NEW YORK (hereinafter the "STATE") by the Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU"), and Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services, and its present board of education, officers, administrators, employees or agents (hereinafter "BOCES") (the STATE and BOCES are collectively referred to as the "PARTIES").

WHEREAS, BOCES contracts with school districts in Albany, Schoharie, Schenectady, and Saratoga counties to provide individual students with school based therapy services as required by a student's Individual Education Plan; and

WHEREAS, BOCES provides said school districts with documentation that school based therapy services have been provided to individual students and said documentation is used by school districts as a basis to submit claims to the Medical Assistance Program (Title XIX, hereinafter Medicaid) for reimbursement for the cost of school based therapy services; and

WHEREAS, between September 1, 2010 and August 31, 2013, school districts submitted Medicaid claims to the fiscal agent for the New York State Department of Health ("DOH") and received Medicaid reimbursement during the same time period (the "AUDIT PERIOD"); and

WHEREAS, MFCU conducted an audit-investigation of school districts' Medicaid claims for reimbursement for school based therapy services provided by BOCES during the AUDIT PERIOD and concluded that a percentage of claims were

invalid due to the failure of BOCES to properly document that the services were actually rendered to individual students (the "AUDIT INVESTIGATION"); and

WHEREAS, the term "COVERED CONDUCT" shall mean, during the AUDIT PERIOD: 1) BOCES' employees submitting documentation to school districts in Albany, Schoharie, Schenectady, and Saratoga counties showing that school based therapy services were provided to individual students where said documentation served as the basis for claims for reimbursement made by school districts to Medicaid for school based therapy services consisting of Physical Therapy (individual and group), Speech Therapy (individual and group), Occupational Therapy (individual and group) and Psychological Counseling (individual and group); and 2) the submission of claims for reimbursement by said school districts to the extent they relied upon the documentation supplied by BOCES and the receipt of payments thereon by said school districts from Medicaid as reimbursement for the cost of said school based therapy services;

WHEREAS, the STATE and BOCES have agreed to resolve the issues raised by the AUDIT INVESTIGATION;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the STATE and BOCES agree as follows:

1. BOCES agrees to pay to the STATE the Sum of Two Million dollars (\$2,000,000.00) (the "TOTAL PAYMENT") as repayment for the COVERED CONDUCT. The TOTAL PAYMENT shall be paid by certified or cashier's check tendered at the time of the execution of the instant settlement agreement by the PARTIES.

2. The making of this AGREEMENT is not intended, and shall not be construed as an admission that BOCES knowingly or intentionally: (a) submitted false documentation indicating that school based therapy services were provided, (b) engaged in any unacceptable practices within the meaning of 18 N.Y.C.R.R. § 515.2.

Releases

3. In consideration of the STATE'S entering into this AGREEMENT, BOCES releases and forever discharges the STATE and any employee, past or present, other than employees of organizations established under or regulated by the Education Law, from any and all claims, debts, sums of money, contracts, agreements, damages, and liability of any kind or nature whatsoever, in law or in equity, which BOCES had or may have had arising out of COVERED CONDUCT during the AUDIT PERIOD from the earliest date of the AUDIT PERIOD to the date of this Agreement.

No Further Repayments

4. In consideration of the payment by BOCES of the TOTAL PAYMENT, the Attorney General shall not seek to impose on BOCES or the school districts any other financial obligation due to the COVERED CONDUCT. Additionally, the STATE shall not conduct a further audit of BOCES for the COVERED CONDUCT.

5. BOCES will not submit additional or adjusted claims for the COVERED CONDUCT to school districts.

6. Notwithstanding any terms of paragraphs 4 and 5, the relief provided for herein relates solely to Medicaid reimbursements to school districts for the costs of school based therapy services pursuant to any statutes, regulations and official directives

governing Medicaid payments with respect to COVERED CONDUCT and not to any other relationship between BOCES and the STATE.

7. Nothing in this AGREEMENT shall be deemed to be a waiver of any provision of healthcare law, rules and regulations.

Other Provisions

8. This AGREEMENT is binding upon all PARTIES and upon the assigns, transferees, purchasers and any successors-in-interest of BOCES.

9. This AGREEMENT constitutes the complete and full agreement reached by the STATE and BOCES and may not be changed in any respect, except by a writing duly executed by the PARTIES or their authorized representatives. Unless new information, beyond what was disclosed by the AUDIT INVESTIGATION comes to the attention of the Attorney General, the Attorney General will not prosecute BOCES or school districts in Albany, Schoharie, Schenectady, and Saratoga counties for violations of law arising from the COVERED CONDUCT.

10. BOCES agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this AGREEMENT or creating the impression that this AGREEMENT is without factual basis. Nothing in this paragraph affects BOCES's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the STATE is not a party.

11. The AGREEMENT shall be deemed to have been mutually prepared by the PARTIES hereto and shall not be construed against any of them solely by reason of authorship.

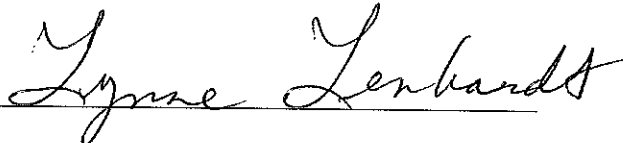
12. BOCES acknowledges that it has entered into this AGREEMENT freely and voluntarily and upon due deliberation, and without coercion or duress.

13. This AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The PARTIES consent to the jurisdiction of the Supreme Court of the State of New York, Albany County, in any action to enforce or interpret this AGREEMENT.

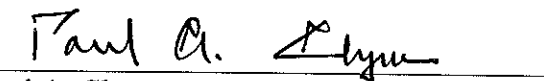
WHEREFORE, the PARTIES have read the foregoing AGREEMENT and accept and agree to the provisions contained therein and hereby have caused this AGREEMENT to be signed effective as of the date set forth above.

AGREED TO:

ALBANY-SCHOHARIE-SCHENECTADY-SARATOGA
BOARD OF COOPERATIVE EDUCATION SERVICES (BOCES)

By: 

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

By: 
Paul A. Clyne
Special Assistant Attorney General

Dated: Albany, New York
November 22, 2016