



Enclosure No. 6

Lorelei Case
Assistant Superintendent for Business
9 Thompson Street
Port Jervis, New York 12771

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To: Ruth Zuclich
Board of Education

From: Lorelei Case *LC*

Date: November 28, 2017

Subject: Orange County Department of Social Services (OCDSS) Transportation Agreement

Under ESSA, students in foster care may attend the “school of origin”. The “school of origin” is expected to transport the student.

The Port Jervis City School District has three students who meet the ESSA criteria. These students will be transported from the foster care location to the district by the district.

The OCDSS will cover two-thirds of the cost.

The attached agreement has been reviewed and agreed to by the county and the district’s legal counsel. The agreement is on the December 12th agenda for approval.

LC:mo

Transportation Agreement for Students in Foster Care

This **Transportation Agreement for Students in Foster Care** ("Agreement") is entered into by and between the Port Jervis City School District, a municipal corporation having its principal office at 9 Thompson Street, Port Jervis, County of Orange, State of New York 12771, acting by and through its Board of Education (hereinafter referred to as "District" or "Board"), and the County of Orange, a municipal corporation and one of the counties of the State of New York, with principal offices at 255-275 Main Street, Goshen, New York 10924, acting on behalf of its Department of Social Services (hereinafter referred to as "County" or "OCDSS"). District/Board and County/OCDSS may also be referred to hereinafter individually as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, in December 2015, the United States Congress passed the Every Student Succeeds Act ("ESSA") (Pub L 114-95, 129 US Stat 1802), which reauthorized and amended the federal Elementary and Secondary Student Act of 1965 ("ESEA") (20 U.S.C. 6301 et seq.);

WHEREAS, the ESSA, *inter alia*, instituted new protections for children in foster care, requiring local education agencies (referred to collectively, "LEAs," or individually, a "LEA") and local child welfare agencies to work together to ensure the educational stability of such children;

WHEREAS, the ESSA emphasizes the importance of limiting educational disruption of a child who is in the foster care system by keeping the child in his/her school of origin unless a determination is made that a change in schools is in the child's best interests;

WHEREAS, it is understood that "School of Origin" is the school in which a child is enrolled at the time he/she is placed in foster care, or at the time the child's foster care placement changes;

WHEREAS, the ESSA requires LEAs to ensure that a child in foster care requiring transportation to his/her School of Origin promptly receives such transportation in a cost-effective manner;

WHEREAS, when, after exploring all available options, transportation cannot be provided at no additional cost, the ESSA requires LEAs to provide transportation when the local child welfare agency agrees to share the actual, additional cost incurred by the LEA to transport the child from the foster care placement to the School of Origin; and

WHEREAS, the District, an LEA, and OCDSS, a local child welfare agency, are desirous of entering into an agreement pertaining to the sharing of additional costs incurred in the provision of prompt and cost-effective transportation for any child who is in foster care and under the custody of OCDSS, whose respective School of Origin is located within the District's boundaries, and whose respective foster care placement is located outside the boundaries of his/her School of Origin

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated into this Agreement as if set forth at length herein.
2. Unless earlier terminated as provided in Section 14 hereof, the term of this Agreement

("Term") shall be conterminous with the District's 2017-2018 school year, commencing on the first day, and terminating on the last day thereof, in accordance with the District's calendar, a copy of which is annexed hereto as "Appendix B" and incorporated herein. The Term may be extended for additional one (1)-year periods, subject to the written approval of the Parties.

3. The terms and conditions of this Agreement apply to any child who meets the following criteria:

(a) the child's School of Origin is located within the District;

(b) the child's initial and/or subsequent foster care placement is located outside the boundaries of his/her School of Origin; and/or ;

(c) OCDSS has determined it to be in the child's best interest to remain enrolled in his/her School of Origin despite his/her foster care placement outside the boundaries of such School of Origin and/or the District as a whole; and

(d) it has been determined that transportation of the child cannot be provided at no additional cost to the Parties, and that District-provided transportation is the only sustainable option available.

Any such child shall be referred to herein as "Student" and be specifically identified on the annexed and incorporated "Appendix A," which may be amended from time to time during the Term by mutual written agreement of the Parties.

4. During the Term the District, in coordination with OCDSS, shall arrange and provide for the transportation of Student between his/her foster care placement and his/her School of Origin for as long as Student is enrolled in the School of Origin, or until Student is no longer in foster care within the custody of OCDSS, whichever first occurs. If Student's School of Origin is an elementary or middle school at the time of Student's initial placement in foster care, or at the time of a subsequent change in foster care placement, it shall remain the District's obligation to arrange and provide for transportation of Student between the foster care placement and the District's middle or high school following Student's matriculation from the School of Origin, while Student attends such middle or high school (which will then become the School of Origin) or until Student is no longer in foster care within the custody of OCDSS, whichever first occurs. The Parties acknowledge and understand that this provision is intended to enable Student, if he/she remains in foster care within the custody of OCDSS and it is within his/her best interest, to graduate from the District without disruption.

5. The District shall ensure that the transportation arranged and provided pursuant to this Agreement is the most cost-effective mode of transportation available to transport Student.

6. The County shall reimburse the District in an amount equal to two-thirds (2/3) of the unfunded additional cost incurred by the District to transport Student back and forth from his/her foster care placement to his/her School of Origin. The "unfunded additional cost," as used in this Agreement, shall mean the difference between the amount the District would ordinarily spend to transport Student back and forth to his/her School of Origin prior to his/her foster care placement, and the cost to transport Student back and forth from his/her foster care placement to his/her School of Origin that is not otherwise reimbursed to the District by the State of New York ("State") according to the District's State education funding rate of reimbursement. By way of example, if the additional transportation cost was \$200.00, and the District's State education funding reimbursement rate was seventy (70%) percent, the unfunded additional cost would be \$60.00, two-thirds (2/3) of which (or

\$40.00) would be reimbursed by the County in accordance with Section 9 below. The unfunded additional cost incurred by the District for Student must be fully substantiated by the District in accordance with Section 9 hereof.

7. Notwithstanding anything contained in Section 3 hereof to the contrary, for any Student who exits foster care during the pendency of a given school year, the District shall continue to arrange and provide transportation for such Student between Student's residence and his/her School of Origin until the end of that particular school year to ensure educational stability. The County will continue to reimburse the District for the unfunded additional cost associated with such transportation in accordance with the terms and conditions of this Agreement.

8. Pursuant to County Law §362, the County shall have no liability under this Agreement to the District or anyone else beyond the funds appropriated for this Agreement. The County hereby expressly represents to the District that sufficient funds have been appropriated by the County to meet its obligations under this Agreement through December 31, 2017. The County will recommend to the appropriate authorities budget allocations sufficient to cover the County's share of transportation costs under this Agreement for the remainder of the 2017-18 school year. The County acknowledges that, in the event sufficient budget allocations are not approved and the County is unable to pay its full share of costs in accordance with this Agreement, the District may terminate this Agreement in accordance with Section 14 hereof.

9. The District shall prepare and submit to OCDSS a separate, detailed monthly invoice for each Student covered under this Agreement. To be entitled for reimbursement by the County, each invoice must adequately identify the Student to whom it relates, indicate the mode of transportation used for such Student, specify the number of days such Student was transported back and forth from his/her foster care placement to his/her School of Origin during the month to which the invoice refers, the District's State education funding rate of reimbursement, and the exact amount of reimbursement received by the District from the State for the transportation of such Student. The District must deliver all invoices to OCDSS, at BOX Z, 11 Quarry Road, Goshen, New York 10924, Attention: Senior Clerk for Services, in Accounting Unit by no later than the tenth (10th) day of each month. OCDSS shall remit payment to the District, at the address provided in the opening paragraph of this Agreement (or at such other address designated by the District in a notice delivered to OCDSS in accordance with Section 12 hereof), within sixty (60) days of OCDSS' receipt of an invoice that satisfies the requirements of this Section 9.

10. The Parties acknowledge and agree that the obligation of the County under this Agreement is strictly of a financial nature. The County assumes no responsibility for, and no liability associated with the provision of transportation for any Student under this Agreement. To the extent permitted by law, the District shall defend, indemnify, and hold harmless the County, including its officials, employees and agents, from and against any and all losses, damages, claims, actions, lawsuits, demands, proceedings, liabilities, judgments, costs, and/or expenses, including without limitation, reasonable attorneys' fees and expenses (collectively, "Claims") which may arise by reason of any act or omission of the District, its officials, agents, employees, contractors, representatives, or any person (including independent contractors) directly or indirectly employed by the District, in connection with the performance of this Agreement, which the County, or its officials, employees or agents, may suffer by reason of any actions or omissions of the District, its officials, employees, representatives, contractors, and/or agents. The County shall promptly cause notice of Claims to be delivered to the District in accordance with Section 12 hereof, provided that the failure to give such notice shall not affect the County's right to indemnification hereunder. The District shall defend such Claims at its sole cost and expense. The County and the County Attorney shall have the right to participate in the defense of any such Claims at its sole cost and expense. If notice is given and the District fails to promptly assume or assert the

defense of the Claims in good faith, the Claims may be defended, comprised or settled by the County without the consent of the District, and the District shall remain liable under this Section 10. Notwithstanding any provision of this Section 10 to the contrary, the County may retain control over the defense (at the cost of the District) if, in the reasonable opinion of the County, there may be a conflict between the positions of the County and the District in conducting the defense of the Claims or that there may be legal defenses available to the County different from or in addition to those which counsel for the District is asserting or may assert. The District cannot settle a matter other than for monetary damages without the consent of the County, which such consent shall not be unreasonably withheld or delayed. The terms and conditions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. The District shall maintain or cause maintained, in full force and effect, during the Term, at its sole expense, statutory worker's compensation insurance, statutory disability insurance, automobile and comprehensive general liability insurance to protect the District and the County from claims for personal injury (including death) and property damage, which may arise by reason of any act or omission of the District, its officials, agents, employees or any person (including independent contractors) directly or indirectly employed by the District, or by any of them, in connection with the performance of this Agreement. The comprehensive general liability insurance shall include broad form contractual liability, bodily injury, and property damage. The limits for the comprehensive general liability insurance shall be \$1,000,000.00 each occurrence and \$5,000,000.00 aggregate. This requirement may be met by providing evidence of \$1,000,000 in primary automobile and \$1,000,000 in comprehensive general liability insurance and an umbrella or excess liability limit of \$4,000,000 or more. The automobile liability insurance shall include coverage for bodily injury and property damage. Limits shall be \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate. These policies must be so written as to insure against any contingent liability, shall be carried with an insurer authorized to do business in the State by the State Insurance Department, and shall name the County as an additional named insured thereon. Neither the comprehensive general liability insurance policy nor the automobile liability insurance policy shall have exclusion for sexual molestation. The District shall furnish the County with a certificate of insurance of said policies at, or prior to, execution of this Agreement. If the District is self-insured, it shall furnish the County with a statement from its chief executive officer or legal counsel stating that the District will provide the required insurance coverage and will name the County as an additional insured. All liability insurance shall cover and be applicable to all owned, non-owned, hired, or temporarily used vehicles by the District. Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the County with respect to its interests, (ii) it shall have a requirement that it shall not be cancelled, nor coverage thereunder reduced without at least thirty (30) calendar days' notice to the County, directed to the County's Risk Management Division and OCDSS, and that similar notice will be given prior to the expiration of the policy, if the policy is not to be renewed or if coverage is to be reduced upon renewal. The District acknowledges that its failure to obtain or keep current the insurance coverage required by this Agreement shall constitute a breach of the Agreement. The terms and conditions of this Section 11 shall survive the expiration or earlier termination of this Agreement.

12. Except as otherwise provided herein, any notice, demand (other than the monthly invoices submitted in accordance with Section 9 hereof), or communication required or permitted to be given by one Party to the other shall be in writing and addressed to the Parties at the addresses set forth below (or at such other address as either Party may designate in writing to the other Party delivered in accordance with the provisions of this Section 12) and/or to such other parties as one Party may from time-to-time reasonably designate in writing to the other Party (delivered in accordance with the provisions of this Section 12), and shall be (a) personally served, (b) deposited in the United States mail, duly registered or certified with postage fully prepaid thereon, or (c) delivered by an overnight courier service that confirms delivery. Notice shall be effective and deemed delivered and received upon

receipt or refusal to receive, in the event of personal service; or on the fifth (5th) day following the date of depositing the notice in the United States mails; or on the day following presentment of the notice to an overnight courier service for delivery. The terms and conditions of this Section 12 shall survive the expiration or earlier termination of this Agreement.

To the County:

Name: Darcie M. Miller, LCSW-R
Title: Commissioner, Orange County Department of Social Services
Address: Box Z, Quarry Road, Goshen, New York 10924

With Copy to:

Name: Langdon C. Chapman
Title: Orange County Attorney
Address: 15 Matthews Street, Suite 305, Goshen, New York 10924

To the District:

Name: Lorelei Case
Title: Assistant Superintendent for Business
Address: 9 Thompson Street, Port Jervis, County of Orange, State of New York 12771

With Copy to:

Name: Thomas Scapoli, Ingerman Smith, LLP
Title: School District Attorneys
Address: 550 Mamaroneck Avenue, Suite 209, Harrison, New York 10528

13. The Parties shall comply and be responsible for compliance with all federal, state, and local statutes and rules applicable to their respective obligations under this Agreement, including but not limited to, the New York State Education Law, the New York State Vehicle and Traffic Law, New York State Department of Transportation, and the Commissioner's rules and regulations, as may be amended from time to time during the Term.

14. This Agreement may be terminated prior to the expiration of the Term by the mutual agreement of the Parties memorialized in a duly executed written document. This Agreement will automatically terminate upon the date of full execution of a universal agreement by and among OCDSS and the LEAs in Orange County, including the District, pertaining to transportation of students in foster care. This Agreement may be terminated by either Party in the event of a material breach by the other Party upon thirty (30) days' written notice to the breaching Party delivered in accordance with Section 12 hereof, provided that the breaching Party has failed to cure such breach within that thirty (30)-day timeframe.

15. This Agreement shall be governed by the laws of the State of New York. Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed to in writing by the County Executive of the County, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County, or, if appropriate, in the federal District Court with venue in the Southern District of New York, White Plains division. The terms and conditions of this Section 15 shall survive the expiration or earlier termination of this Agreement.

16. If any term, provision, covenant or condition of this Agreement, or the application thereof, to any person, place or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition

as applied to other persons, places and circumstances shall remain in full force and effect. The terms and conditions of this Section 16 shall survive the expiration or earlier termination of this Agreement.

17. This Agreement constitutes the full and complete agreement of the Parties, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto.

18. This Agreement and any rights hereunder may only be amended by mutual consent of the Parties, in a subsequent writing duly executed by the Parties. Any such amendment agreement shall be attached to and become part of this Agreement.

19. This Agreement may not be assigned by either Party without the prior written authorization of the non-assigning Party.

20. Nothing contained in this Agreement shall be construed to create an employment or principal-agent relationship or partnership or joint venture, between the Parties or any officer, employee, servant, agent or independent contractor of either Party.

21. The failure of either Party to enforce, at any time, any provision of this Agreement does not constitute a waiver of such provision or waive the right of either Party at any time to avail itself of such remedies as it may have for breach or breaches of such provision. None of the terms and/or conditions of this Agreement shall be considered waived by either Party unless such waiver is explicitly given in writing, duly executed by the Party that is waiving such terms and/or conditions. No such waiver shall constitute a waiver of any past or future default or breach, or a modification of any of the terms and/or conditions of this Agreement. The terms and conditions of this Section 21 shall survive the expiration or earlier termination of this Agreement.

22. The undersigned representatives hereby represent and warrant that they are officers, directors, or agents of their respective Parties with full legal rights, power and authority to enter into this Agreement on behalf of and bind their respective Parties with respect to the obligations enforceable against the Parties in accordance with the terms of this Agreement.

IN WITNESS THEREOF, the Parties have executed this Agreement on the date last written below.

PORT JERVIS CITY SCHOOL DISTRICT

COUNTY OF ORANGE

Name:
Title:

Name: Stefan ("Steven") M. Neuhaus
Title: County Executive

Dated:_____

Dated:_____

APPENDIX A
CONTAINS CONFIDENTIAL INFORMATION
NOT SUBJECT TO DISSEMINATION OR DISCLOSURE IN DISCOVERY OR PURSUANT TO FOIL

	<u>Student Name</u>	<u>School of Origin</u>
1.	Haley Thorburn	Port Jervis High School
2.	Antonio Amezquita	Port Jervis Middle School
3.	Ethan Small	Hamilton Bicentennial Elementary School

APPENDIX B

A copy of the Port Jervis City School District 2017-2018 school year calendar is annexed hereto immediately following this cover page, and incorporated herein and made part hereof.

Port Jervis City School District 2017-2018 Student Calendar

Adopted by the Board of Education on April 20, 2017

<p>1 Sup't Conf. Day 4 Labor Day 5 First Day of School 20 Early Dismissal Drill</p> <p style="text-align: right;">19</p>	September 2017	February 2018	<p>16-19 Presidents' Weekend</p>																																																																																											
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178 School Days
4 Conference Days
6 Emergency Days
188 Total

*Make up days if necessary, will begin with
May 25, April 2, and then March 26*

- Conference Day
- No School for Students
- School Holiday
- Regents Exam
- Early Dismissal