

LAW OFFICES
OXFELD COHEN, P.C.

A PROFESSIONAL CORPORATION

**60 PARK PLACE, SUITE 600
NEWARK, NEW JERSEY 07102**

**TEL (973) 642-0161
FAX (973) 802-1055
OXFELDCOHEN.COM**

**1881 BROADWAY, 4TH FLOOR
NEW YORK, NEW YORK 10023
(212) 452-1215
PLEASE REPLY TO NEWARK**

SANFORD R. OXFELD **
ARNOLD SHEP COHEN **
GAIL OXFELD KANEF **
RANDI DONER APRIL *
WILLIAM P. HANNAN **
BENJAMIN A. SPIVACK (1950-2012)

SAMUEL B. WENOCUR **
JOHN BRANIGAN, IV ***
BARRY FRANK **
OF COUNSEL

* MEMBER OF NJ BAR
** MEMBER OF NJ & NY BAR
*** MEMBER OF NJ & PA BAR

June 28, 2017

Joe Cortico, President
Elizabeth Education Association
Joe.cortico@eea-nj.org

RE: Elizabeth Education Association/Elizabeth Board of Education
“Excess Period Arbitration”

Dear Joe:

I have been asked my opinion concerning the terms of the proposed settlement of the above matter which is currently before arbitrator Barbara Zausner. I must qualify my response in two respects. First, while I have been the attorney of record representing the interests of the EEA in the negotiations for the new Collective Negotiations Agreement, I am not and have never been involved in representing the EEA in the Excess Period Arbitration. Tim Smith’s office has handled that matter since its inception and they have done a wonderful job. The second point I must note at the outset is that I have had a casual conversation with the arbitrator (with the express approval of both Mr. Smith and the Board attorney) so although nothing was official or set in stone I do have some idea of her thoughts on the matter.

I have also been present when both Mr. Smith’s accountant and then the Board’s accountant made presentations to all concerned about what they each viewed as the financial aspects of this matter.

I can say unequivocally that I support the settlement that was reached. I do this for four separate reasons:

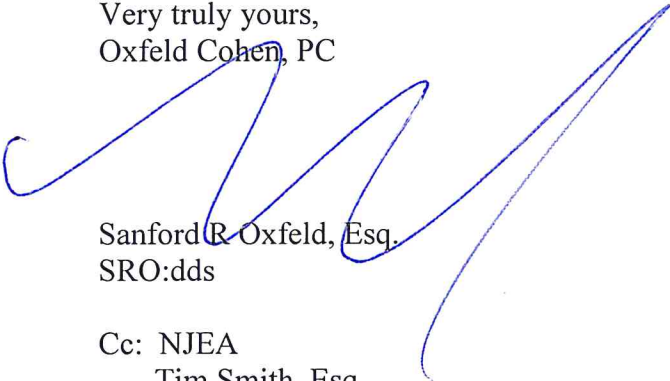
- Again, while I have no idea how the arbitrator would have ultimately ruled, I do believe that both the supporting data and the overall amounts are such that she would have found them acceptable. I have no doubt that she will endorse the terms of the settlement and find the terms reasonable under all of the attendant circumstances.

- In my experience, if the matter was not settled it would have been an additional two or three years, at the minimum, before any of our members received any compensation whatsoever; and that would have occurred only if we prevailed in the arbitration. I say this because an award of the magnitude of the settlement, being in millions of dollars, would have engendered an appeal by the Board in the trial court and if we prevailed there, undoubtedly the Board would have appealed at least to the Appellate Division of the Superior Court, if not ultimately to the New Jersey Supreme Court. As stated, that would have added years on to any payments.
- Our courts have held repeatedly the Board’s “ability to pay” is part of any contract and part of any arbitration, and that an arbitrator must consider that argument when presented by the Board. See South Plainfield Board of Education, 320 NJ Super 281 (App Div 1999). That means we could have won the arbitration in full and then have a court overturn the award if the court believed that the financial implications on the Board were serious enough.
- So, not only do we now have settlement which guarantees the affected members a considerable payout. And not only will that payout be in the immediate future as opposed to years from now. But of equal importance, by achieving the resolution through an agreed upon settlement as opposed to an arbitrator’s award, not only have we eliminated the risk of losing before the arbitrator, we have also eliminated the ability of the Board to challenge the matter in court.

For all of these reasons, but most importantly because it insures immediate payments to our members of a substantial amount of money, I fully endorse both the settlement and its terms.

Joe, feel free to call me if you have any additional questions.

Very truly yours,
Oxfeld Cohen, PC



Sanford R. Oxfeld, Esq.
SRO:dds

Cc: NJEA
Tim Smith, Esq.