

SETTLEMENT AGREEMENT, RELEASE AND WAIVER

This Settlement Agreement, Release and Waiver (hereinafter "Agreement") is entered into by and between _____ individually and on behalf of their son, _____ ("Student"), and the Brecksville-Broadview Heights School District Board of Education ("District" or "Board") (collectively, "Parties"). In consideration for the mutual promises and covenants contained herein, the Parties agree as follows:

1. _____ qualifies for special education and related services as a child with a disability pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA") under the category of Other Health Impaired – Minor ("OHI – Minor"). A dispute has arisen between the Parties regarding the provision of a free appropriate education ("FAPE") to _____ for the remainder of the 2016-2017 school year (i.e., from April 24 – May 31, 2017) and the 2017-2018 school year. Specifically, the District proposed a change of placement to an alternative educational placement, and Parents disagreed with the type and choice of alternative school placement proposed by the District. The District asserts the educational placement specified in _____ individualized education program ("IEP") dated April 26, 2017, is reasonably calculated to enable _____ to make progress appropriate to his circumstances.
2. The Parties reach this compromise agreement to avoid the expense, inconvenience, and acrimony of a due process hearing under applicable laws (including the IDEA and Section 504 of the Rehabilitation Act of 1973 ("Section 504")). The District is not admitting that any IEPs or placements that it offered were/are inappropriate. Parents are not admitting that the same were/are appropriate.
3. In consideration of and for the promises and mutual covenants set forth herein, the Parties agree as follows:
 - a. The District will pay to and/or on behalf of Parents an amount not to exceed twenty one thousand three hundred seventy eight dollars and 50 cents (\$21,378.50) (i.e., \$3,726 for the remainder of the 2016-2017 school year; and \$17,652.50 for the 2017-2018 school year) for costs associated with _____ tuition and educational expenses at Julie Billiart School ("Julie Billiart") from April 24, 2016, through May 31, 2018, in full satisfaction of its obligation to provide a FAPE to _____. The District's reimbursement payment for the "remainder of the 2016-2017 school year" will be made to Parents within twenty-one (21) days of Parents' submission to the District of proof of payment. The District's payment(s) for the 2017-2018 school year will be made directly to Julie Billiart based upon receipt of monthly or

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quarterly invoice(s) from Julie Billiart, whichever is Julie Billiart's standard practice, that are submitted to the District's Director of Pupil Services. The District will issue payment within thirty (30) days of receipt of proper invoices / documentation. The Parties agree to work cooperatively to facilitate payment arrangements.

Parents agree that _____ will remain enrolled in the District during the pendency of this Agreement. Parents further agree that for any school year in which they and/or Student accept the payments set forth above, Parents and/or Student waive their right to apply for the Jon Peterson Special Needs Scholarship. Parents also agree that for any period covered by this Agreement in which they seek contributions from the District above and/or beyond that which is expressly set forth above, the District's payment obligations under this Agreement shall immediately terminate.

Parents shall bear full responsibility for all other costs associated with Student's education from April 24, 2017, through May 31, 2018, including, but not limited to, additional tuition and/or fees charged by Julie Billiart, private therapies, and/or home-based services.

- b. Parents assume responsibility for transporting _____ to and from Julie Billiart for the period April 24, 2017, through May 31, 2018. The District will reimburse Parents, as set forth below, for their expenses associated with transporting _____ to and from Julie Billiart on school days during the period of April 24, 2017, through May 31, 2018. The reimbursement for the remainder of the 2016-2017 school year shall be made in a lump sum payment, within twenty-one (21) days of Parents' submission of appropriate documentation. The reimbursement for the 2017-2018 school year shall be made in monthly payments. Parents are responsible for submitting appropriate documentation (e.g., certification of the number of days _____ attended Julie Billiart during the specified month) by the tenth (10th) of the following month. The monthly transportation payment will occur within twenty (21) calendar days of the District's receipt of the above referenced documentation. The Parties agree that for each day of Student's attendance at Julie Billiart, Parents are entitled to reimbursement based on the following calculation: 45 miles (i.e., one round-trip to/from Julie Billiart) x IRS-approved mileage rate x number of days of certified attendance during the preceding month. Parents may use official Julie Billiart attendance sheets to establish the number of days _____ attended during the preceding month for purposes of determining the amount of payment to which they are entitled.

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- c. Parents affirm that they selected Julie Billiard, and Julie Billiard was not determined by the District to be Student's least restrictive environment ("LRE"). As such, Parents agree that the District shall not be responsible for the efficacy of the educational program provided to _____ by or at Julie Billiard, and that they shall have no right to seek compensatory education or other relief from the District as a result of any real or perceived failures by Julie Billiard. See Paragraphs 4 and 11, below _____ may return to school in the District anytime and forego payment of any remaining funds otherwise authorized by this Agreement).
- d. The District's obligation to provide payments pursuant to Paragraphs 3.a. and 3.b. shall automatically terminate if Student stops attending Julie Billiard (i.e., Student withdraws from, is removed from, or otherwise ceases to be enrolled in Julie Billiard), or if Parents or Student no longer reside in the District. In such case, the obligation to provide payments shall terminate on the date Student is no longer attending Julie Billiard, or on the date Parents or Student no longer reside in the School District. Such termination shall have no effect upon the District's obligation to pay its share of Student's tuition at Julie Billiard that is incurred prior to the date Student is no longer attending Julie Billiard, or Parents or Student no longer reside in the School District. If Student stops attending Julie Billiard for any reason during the 2017-2018 school year, Parents must notify the District within five (5) school days, and the District will proceed to implement the IEP dated April 26, 2017, until such time as a new IEP can be developed, which will occur within ten (10) school days of _____ returning to school in the District. See Paragraph 11.
- e. Parents agree to provide releases allowing the District to receive all education records (including, but not limited to, all progress reports, report cards, programming data, assessments, consultant's reports, and/or evaluations) prepared by Julie Billiard from April 24, 2017, through May 31, 2018. Parents also consent to up to two (2) observations of Student at Julie Billiard by District employees or representatives. Parents shall receive at least seventy-two (72) hours advanced notice of the observations. If the District requires assistance from Parents to obtain educational information about Student from Julie Billiard, the District will advise Parents of the need and provide Parents with specific guidance as to the nature of the assistance needed, and Parents will act in good faith to provide such assistance.
- f. Parents understand and agree that Student's placement at Julie Billiard is unilateral on their part and is not deemed "initial stay-put," "stay put" or Student's "initial/pendency placement" should Parents disagree with the IEP dated April 26, 2017, or the IEP developed by the District pursuant to Paragraph 11 or 12, and challenge any of the specified IEPs or file any administrative or judicial proceeding

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regarding such IEPs. Under such circumstances, Student's "stay put" or "pendency placement" shall be the placement identified in the IEP dated April 26, 2017. The "stay put" or "pendency placement" during any subsequent dispute may be changed as authorized by the IDEA and its implementing regulations (i.e., through a decision of the State Level Review Officer or through a mutual agreement between the District and Parents). The Parties expressly agree that the placement identified in the IEP dated April 26, 2017, shall be Student's "initial stay-put," "stay put" or "initial/pendency placement" regardless of whether Parents agree with the IEP and/or consent to its implementation.

- g. Parents agree to assume full responsibility for federal, state and local taxes and other payments, if any, owed on the amounts paid by the District to Parents or on behalf of Parents to Julie Billiard pursuant to this Agreement. The District will neither report to the Internal Revenue Service ("IRS") the amounts paid to Parents or Julie Billiard pursuant to this Agreement nor issue to Parents a Form 1099-MISC, and no withholdings will be made from the amounts paid by the District to Parents or Julie Billiard pursuant to this Agreement. If it is later determined by the IRS or another governmental authority that the District should have withheld taxes from the amounts paid by it to Parents or Julie Billiard pursuant to this Agreement, Parents agree to indemnify and hold the District harmless for the amount of such taxes, and to reimburse the District for any penalties and/or interest assessed against the District as a result of its failing to withhold the taxes on said payments.
 - h. The payment for educational services in Paragraph 3.a. shall not be construed as an admission by the District that such services are necessary or appropriate for the provision of a FAPE to Student and shall not be construed as a private placement by the District.
4. The Parties agree that for any school year or time period referenced in this Agreement, Parents and/or Student have the right to decline the settlement amounts specified in Paragraph 3.a. and 3.b., and to seek to have Student educated by the District and to be served under the IDEA. If Parents and/or Student accept the payments referenced in Paragraphs 3.a. and 3.b., any claims they may have otherwise had against the District for the 2016-2017 and 2017-2018 school years, including any right to access a FAPE from the District, are waived for the period covered by the payments in accordance with the terms of the Agreement.
5. This Agreement is not precedent setting. The Parties expressly agree that this Agreement shall have no bearing on current and future educational programming and educational placement, except as expressly stated herein. As such, Parents agree that they

are prohibited from introducing this Agreement, or the payments made by the District in accordance with this Agreement, in any future due process proceeding for the purpose of establishing _____ need for placement outside of the District.

6. This Agreement and all payment obligations existing hereunder are contingent upon Parents and Student residing in the District, and upon the District being provided records and access to Student in accordance with Paragraph 3.e., above. If Parents and/or Student no longer reside in the District, or if releases for education records and/or access to Student are not provided by Parents, the District's payment obligations shall terminate after a fourteen (14) calendar day period in which Parents can cure said failure(s). Nothing contained in this Agreement shall be construed to preclude Student and/or Parents from forfeiting payment(s) provided hereunder and returning to the District for an education.
7. If _____ and/or his legal guardian or representative(s), as designated by a Court or Parents, ever initiate any legal proceedings seeking to invalidate or set aside all or any portion(s) of this Agreement, other than an action for breach of this Agreement, Parents shall hold the District harmless and indemnify the District for any liability, judgment, legal fees, or other costs and expenses arising from such legal proceedings. To the extent permitted by law, any challenge to this Agreement must be brought in Federal District Court.
8. Parents expressly acknowledge that this Agreement is effective through the end of the 2017-2018 school year, and that circumstances may change. Parents further acknowledge and agree that they assume the risk of any and all changes in circumstance and that this Agreement shall not be invalidated by any such change(s).
9. Parents specifically waive any right to interest or late fees on the amount of settlement for any delay in payment from the date of settlement until the date payment is due in accordance with the terms of this Agreement, and specifically release and discharge the District and Smith Peters Kalail Co., L.P.A., including all of their predecessors, successors, assigns, officers, employees and agents, and each of them, in both their individual and official capacities, from any claim or demand for interest on the settlement amount to which the Parents may or may not otherwise be entitled in accordance with *Hartmann v. Duffey*, 95 Ohio St.3d 456 (2002).
10. In consideration of the promises and commitments of the Board, as set forth in this Agreement, Parents, on their own behalf and on behalf of _____ agree that all of the issues that could have been raised in a request for an impartial due process hearing and/or an administrative or judicial proceeding are resolved by this Agreement. Additionally, Parents, individually and on behalf of _____ forever release and discharge the Board, including the individual Board members, employees, and agents in their official

capacities, (collectively referred to as "The Board and its Agents"), from any and all claims, demands, actions, causes of actions or suits at law or in equity of whatsoever kind and nature (including administrative complaints with the Ohio Department of Education and the United States Department of Education Office for Civil Rights, including claims of discrimination under Section 504), which Parents and/or Student may have had, now have, or may now or hereafter assert against the Board and its Agents for the entire period prior to and up to the date of the signing of this Agreement, and through May 31, 2018, with respect to _____ and his education in or through the District (i.e., the District's provision of a free appropriate public education to _____), and Parents' participation in _____ educational programming. This comprehensive waiver of claims includes, but is not limited to, claims relating to education, special education, related services, transportation, tuition, room and board, reimbursement, compensatory education, damages (including related to claims of discrimination), therapy, independent evaluations, and attorneys' fees. If _____ returns to the District prior to May 31, 2018, this section of the Agreement will apply through the date _____ returns to school in the District. This discharge of any liability includes, but is not limited to, a release of all claims arising under Section 1983 of the Civil Rights Act (42 U.S.C. § 1983), 20 U.S.C. §§ 1400 *et seq.* (i.e., the Individuals with Disabilities Education Improvement Act), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), the Americans with Disabilities Act (42 U.S.C. § 12101), Ohio Revised Code Chapter 3323, other civil rights laws, regulations that implement the above-referenced statutes, and the U.S. Constitution and Ohio Constitution. Notwithstanding the preceding, Parents retain all their rights under applicable laws and regulations to enforce this Agreement.

11. Nothing herein shall prevent _____ from returning to and attending the District's schools for implementation of a new IEP, which will be developed within ten (10) school days of _____ returning to school in the District. In the interim, while the new IEP is being developed, the District will implement the IEP dated April 26, 2017. Parents waive their right to challenge the appropriateness of the IEP dated April 26, 2017, during the ten (10) school days while a new IEP is being developed. Parents retain their right to challenge the appropriateness of the new IEP, after it is developed and offered by the District.
12. By April 25, 2018, the District will convene an IEP team meeting to develop and offer an IEP for _____ for the 2018-2019 school year. If Parents disagree with the IEP and/or educational placement proposed by the District for the 2018-2019 school year, and file a due process complaint regarding such IEP or educational placement, the Parties agree (as stated in Paragraph 3.f., above) that Julie Billiard shall not be Student's "then-current educational placement (i.e., initial "stay put" or "pendency placement.")). Under such circumstances, _____ /"stay put" or "pendency placement" shall be the placement identified in the IEP dated April 26, 2017.

13. Parents expressly waive their right to initiate a complaint with the Ohio Department of Education (“ODE”) relating to any aspect of _____ education arising on or before the date of execution of this Agreement. Parents further agree that ODE does not have jurisdiction to investigate or rule upon any complaints brought by Parents relating to any aspects of Student’s education arising on or before the date of execution of this Agreement. Additionally, Parents waive their right to file a complaint with the U.S. Department of Education’s Office for Civil Rights (“OCR”) concerning any aspect of Student’s education arising on or before the date of execution of this Agreement. Parents confirm that any issue/claim that could have been brought before ODE or OCR has been resolved.
14. Parents (individually and on behalf of _____) agree to keep the existence of this Agreement and the terms and content of this Agreement confidential, and will not release it or discuss it, in writing or orally, with third parties. Specifically, Parents agree not to share this Agreement or the terms of this Agreement with anyone other than the following: (a) Julie Billiart personnel necessary to facilitate implementation of this Agreement; (b) Parents’ attorneys, accountants, financial advisors, and tax advisors; and (c) courts and mediators as necessary. Parents shall direct the individuals and organizations referenced in (a) and (b) to keep this document and its terms confidential, and that this document constitutes a student education record that is protected under state and federal laws. The Parties agree that the terms of Paragraph 3.a. (for the limited and express purpose of securing invoices/billing records from Julie Billiart concerning _____ educational programming/services), Paragraph 3.b. (for purpose of obtaining attendance records from Julie Billiart), and Paragraph 3.e. (for the purpose of securing cooperation and collaboration from Julie Billiart in providing education records and observations) may be shared with Julie Billiart. If asked about their dispute with the Brecksville-Broadview Heights City School District, Parents shall respond only that it has been satisfactorily resolved. If Parents violate this Paragraph, a court of competent jurisdiction shall have authority to award appropriate relief, including that Parents shall refund all monies paid pursuant to this Agreement. The District acknowledges its responsibility to keep this Agreement confidential pursuant to federal and state law as an educational record.
15. The provisions of this Agreement can only be modified through mutual agreement as evidenced by a document signed by both parties that serves as a supplement to this Agreement.
16. The Parties acknowledge that they have read this Settlement Agreement, Release and Waiver, and fully understand its provisions. The Parties further acknowledge that they have had an opportunity to consult with an attorney representing them to consider its terms before signing this Agreement. The Parties further declare and acknowledge that no

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promises or agreements not expressly included in this Agreement have been made and that this Settlement Agreement, Release and Waiver contains the entire agreement between the Parties. The Parties affirm they are signing this Agreement of their own free and voluntary will.

17. This Agreement does not constitute nor shall it be construed as an admission of liability or wrong doing by the Board, its agents, employees or successors, with respect to any claims Parents could have potentially raised with respect to [REDACTED] entitlement to a FAPE. The Board expressly denies that it has done anything wrong or unlawful.
18. This Agreement is comprehensive with respect to the sums to be paid to and/or on behalf of Parents, and Parents and their attorney agree that they shall make no application to a court for, or in any other manner seek, fees and/or costs in connection with the Parties' dispute concerning Evan's proposed alternative educational placement. The Parties shall bear their own costs in connection with this matter.

Date: 6/20/2017

Signature: _____

Date: 6/20/2017

Signature: _____

Date: _____

Signature: _____

Gina Symsek, Director of Pupil Services
Brecksville-Broadview Heights City
School District