

## **SETTLEMENT AGREEMENT RELEASE AND WAIVER**

The parties to this Settlement Agreement, Release and Waiver ("Agreement") are and \_\_\_\_\_, on their own behalf and on behalf of their minor daughter, (referred to collectively hereafter as \_\_\_\_\_), and the Brecksville-Broadview Heights City School District Board of Education, including all of its current and former members, officers, employees and agents, in both their individual and official capacities (hereinafter collectively referred to as "the Board").

WHEREAS, the \_\_\_\_\_ and the Board of Education disagree regarding the provision of a free appropriate public education ("FAPE") to \_\_\_\_\_ for the 2018-19 school year under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400, *et seq*; and

WHEREAS, the parties to this Agreement desire to settle all matters in controversy between them as of the date of this Agreement;

NOW THEREFORE, in consideration of the mutual promises as set forth below, the parties to this Agreement agree for themselves and on behalf of their heirs, successors, assigns, agents and employees as follows:

- I. **Placement at CCCA.** The parties agree that \_\_\_\_\_ will attend the Cleveland Clinic Center for Autism/Lerner School ("CCCA") for the 2018-19 school year (including the summer of 2019) under the following arrangement:
- A. The Board shall be responsible for paying \_\_\_\_\_ tuition to CCCA in an amount not to exceed \$79,254. Any costs in fee \_\_\_\_\_ program at CCCA in excess of this amount shall be the financial responsibility of the \_\_\_\_\_. Parents agree to provide all necessary invoices and authorizations to allow the District to pay CCCA directly. The District intends to make three (3) payments in the amount of \$26,418 to CCCA. These payments will be made on or about September 1, 2018 January 1, 2019, and May 1, 2019.
  - B. The parties agree that the Board shall not be responsible for transporting to and from CCCA for the duration of this Agreement and that transportation is the sole responsibility of the \_\_\_\_\_.
  - C. The \_\_\_\_\_ understand and agree that payment of a portion \_\_\_\_\_'s tuition at CCCA for the time period set forth above shall be contingent on the following:
    - (1) that the \_\_\_\_\_ continue to reside within the boundaries of the Brecksville-Broadview Heights City School District;
    - (2) that the \_\_\_\_\_ continue \_\_\_\_\_; enrollment as a student in the Brecksville-Broadview Heights City School District;
    - (3) that the \_\_\_\_\_ continue \_\_\_\_\_ enrollment at CCCA;

- (4) that the \_\_\_\_\_ refrain from applying for the Autism Scholarship Program or the Jon Peterson Scholarship Program; and
- (5) that the \_\_\_\_\_ comply with all provisions of this Agreement.

Should any of the above-referenced conditions not be met, the Board shall have no obligation for any further tuition payments under this Agreement. Specifically, if any condition above is not satisfied, the District's liability to make the payments specified in Paragraph I.A. will be prorated in accordance with those periods of time the \_\_\_\_\_ at these requirements.

**II. 2018-19 IEP and Responsibility for \_\_\_\_\_ Educational Program.** Parents affirm they selected CCCA, and it was not determined by the District to be \_\_\_\_\_ least restrictive environment. The parties agree that while \_\_\_\_\_ attends school at CCCA under the auspices of this Agreement, the Board shall not be responsible for the development and implementation of her IEP or any aspect of her educational program. The Board shall not be responsible for the efficacy of the program \_\_\_\_\_ will be attending at CCCA, and parents agree 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 CCCA.

**III. Release of Information and Participation by Board of Education.** The parties agree that the Board may remain involved in \_\_\_\_\_ educational program, and to facilitate this, the \_\_\_\_\_ agree as follows:

- A. By signing this Agreement, the \_\_\_\_\_ consent to the release of educational records/information from CCCA to the Board and to regular observations of \_\_\_\_\_ at CCCA by educators from Brecksville-Broadview Heights to enable \_\_\_\_\_ Brecksville-Broadview Heights IEP team to determine progress and evaluate her specific levels of performance to facilitate the development of \_\_\_\_\_ IEP for the 2018-19 school year. Should it be necessary, the \_\_\_\_\_ will provide a signed release of information to CCCA allowing the Board of Education to receive educational records from CCCA (including, but not limited to, all programming data, assessments, consultant's reports, and evaluations) and to observe \_\_\_\_\_ at CCCA. The parties understand and agree that it may be necessary for Brecksville- Broadview Heights to receive approval from CCCA to observe \_\_\_\_\_ CCCA. The \_\_\_\_\_ agrees to take any actions necessary to assist Brecksville-Broadview Heights in obtaining approval from CCCA for these observations.
- B. The \_\_\_\_\_ agree to provide, on a quarterly basis, a copy of \_\_\_\_\_ progress reports and grade reports to Brecksville-Broadview Heights's Director of Pupil Services. The \_\_\_\_\_ will ensure that all educationally relevant information provided to them by CCCA will be disclosed to the Board of Education through Brecksville-Broadview Heights's Director of Pupil Services, and will work with Brecksville-Broadview Heights's Director of Pupil Services in obtaining such information from CCCA.

C. The parties agree that the Board of Education shall be given the opportunity to participate in all IEP meetings and progress review meetings held by CCCA with the . The shall be responsible for providing notice of these meetings to Brecksville-Broadview Heights's Director of Pupil Services within three (3) days of the ' receipt of notice for each meeting. At the option, this notification may be sent directly to Brecksville-Broadview Heights's Director of Pupil Services by CCCA. This requirement will be waived only in the event of an emergency that necessitates an immediate meeting. In such an instance, th agree to notify Brecksville-Broadview Heights's Director of Pupil Services about the meeting as soon as possible.

D. Parties shall meet by May 22, 2019, to develop a 2018-19 IEP fo . The Parties agree to work cooperatively and in good faith to develop the 2018-19 IEP. During the IEP team meeting, in addition to developing goals and objectives, and identifying appropriate special education and related services, the Team will consider placement options for

IV. **Stay Put.** The derstand and agree tha' placement at CCCA for purposes of this Agreement is not deemed "stay put"; rather, it is a compromise placement for purposes of EMIS reporting. tay-put placement shall be the placement recommended by the members of her IEP team from the Brecksville Broadview Heights City School District upon her return to the District. This means that if the subsequently challenge educational placement or eligibility via a due process proceeding, her stay put placement shall be the placement recommended by the members of the team from the District and there shall be no entitlement to continue placement at CCCA or any other program during the pendency of any dispute, unless reimbursement is ordered as an appropriate remedy by a State Level Review Officer. Th. retain all due process rights with the placement decision regarding the 2018-19 school year.

V. **Non-Admission of Liability.** The understand and agree that payment of the aforesaid consideration does not constitute and may not be used as an admission by the Board of any wrongdoing or failure or alleged inability to provide with a free appropriate public education in accordance with federal and state law. Rather, th and the Board are entering into this Agreement solely for the purpose of avoiding protracted, vexatious, and expensive litigation.

VI. The payments identified in Paragraph I.A shall be made within twenty (20) business days of the District's Director of Pupil Services receiving the relevant documentation. The 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 Britton 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 Parent may or may not otherwise be entitled in accordance with *Hartmann v. Duffey*, 95 Ohio St.3d 456 (2002).

- VII. Release of Claims.** The \_\_\_\_\_ do hereby forever release and discharge the Board from any and all claims, demands, actions, causes of action or suits at law or in equity, of whatsoever kind or nature, which the \_\_\_\_\_ may have had, now have, or may now or hereafter assert against the Board, growing out of or resulting from the Board's provision to \_\_\_\_\_ of a free appropriate public education for the entire period prior to the execution of this Agreement and through the 2018-19 school year (including the summer of 2019). This Agreement includes the release of, but is not limited to, all claims arising under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983; Ohio Revised Code Chapter 3323; related federal and state regulations and any other applicable federal, state or local laws or regulations relating to the Board's provision of and \_\_\_\_\_ receipt of a free appropriate public education and claims for attorney fees, costs or expenses, including without limitation any out-of-pocket or other costs related to \_\_\_\_\_ educational services and evaluations prior to and through the end of the 2018-19 school year (including the summer of 2019).
- VIII. Effect of Agreement.** In the event the \_\_\_\_\_ do not agree to \_\_\_\_\_ entering the program to be offered by the Board of Education following the 2018-19 school year, or in the event of a dispute regarding \_\_\_\_\_, program in any subsequent school year, this Agreement may be introduced only by way of background and shall not be considered in any way relevant to the issues of the Board's ability to provide a free appropriate public education for \_\_\_\_\_
- IX. Confidentiality.** The parties agree to keep the terms of this Agreement strictly confidential to the fullest extent permitted by law. The \_\_\_\_\_ agree not to disclose to any individual or entity (including but not limited to individuals at CCCA, friends, colleagues, other parents), other than their legal counsel, members of their immediate family or as required by law, the existence of or terms and conditions of this Agreement. The \_\_\_\_\_ may disclose limited information about this Agreement to CCCA solely for the purpose of arranging for invoices to be sent to the Board. The \_\_\_\_\_ understand and agree that if this confidentiality provision has been breached by them or members of their immediate family who are privy to the existence and terms of this Agreement, no further tuition payments will be made to CCCA under the terms of the Agreement as of the date of the breach.
- X.** The Parties agree that the provisions of this Agreement can only be modified in writing.
- XI. Acknowledgement.** The parties acknowledge they have read this Agreement and fully understand its provisions. They further acknowledge they have had the opportunity to consult with legal counsel of their choosing and declare and acknowledge that no promises or agreements not hereby expressed or contained herein have been made to them, and that this Agreement contains the entire agreement between the parties hereto. The Parties affirm they are signing this Agreement of their own free and voluntary will.
- XII.** This Agreement is comprehensive with respect to the sums to be paid to the benefit of Parents, and Parents and their attorney(s) 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'

disagreement concerning Student's education and/or placement during the 2018-19 school year. Except as provided in this Agreement, the Parties shall bear their own costs in connection with this matter.

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On her own behalf and on behalf  
Of her daughter

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Date

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On his own behalf and on behalf  
Of his daughter

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Date

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Joelle Magyar  
Superintendent  
On behalf of the Board of Education  
Of the Brecksville-Broadview Heights City School District

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Date

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Jeffrey Hall  
Treasurer  
On behalf of the Board of Education  
Of the Brecksville-Broadview Heights City School District

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Date

