

SETTLEMENT AGREEMENT, RELEASE AND WAIVER

This Settlement Agreement, Release and Waiver (hereinafter "Agreement") is entered into between _____ and _____ ("Parents"), 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 of and 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 Autism. A dispute has developed between the Parties regarding the provision of a free appropriate education ("FAPE") to _____ for the 2017-2018 school year. Specifically, Parents believe that the District cannot provide _____ a FAPE. The District asserts that it can offer _____ an IEP that is reasonably calculated to enable him to make progress appropriate in light of his circumstances.
2. The Parties reach this compromise agreement to avoid the expense, inconvenience, and acrimony of a due process hearing under applicable laws. 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. a. The District agrees to pay for the costs (i.e., tuition and related educational expenses) associated with _____ attending the Monarch Center for Autism ("Monarch") during the 2017-2018 school year, inclusive of the summer of 2018, and the 2018-2019 school year, inclusive of the summer of 2019. The District's payments pursuant to this Paragraph shall constitute full satisfaction of its obligation to provide a FAPE to _____. The District agrees to pay _____ tuition directly to Monarch in an amount equal to the tuition normally charged by Monarch for children placed by their school district in Monarch for the regular school year, and the normal cost of the summer program that _____ participated in during the summer of 2017. The District's payments to Monarch shall be made in accordance with the payment schedule utilized by Monarch with other public schools that have their students attending Monarch. Parents shall request that Monarch direct bill the District. The Monarch invoices should be 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 shall enter into a contract with Monarch (or its parent organization, Bellefaire JCB), if necessary, to provide for attendance at Monarch for the periods specified in this Agreement. Parents agree that Student will remain enrolled in the District during the pendency of this Agreement. Parents further agree that for any school year in which Parents and/or Student accept the District making the payments set forth above, Parents and/or Student waive their right to apply for the Autism Scholarship Program ("ASP"). Parents further agree that for any period covered by this Agreement in which they seek contributions above and/or beyond that which is expressly set forth above, the District's payment obligations under this Agreement shall immediately terminate. Parents bear full responsibility for all other costs associated with Student's education from September 1, 2017, through August 31, 2019, including but not limited to therapies and/or home-based services.

- b. The District agrees to transport -- to and from Monarch and his mother's home from September 1, 2017, through August 31, 2019. Parents agree that they may not direct or control the District's choice of transportation provider as long as the District ensures that proper background checks as required by law are completed by said provider. The Parties expressly agree that if the District is closed due to inclement weather, and/or the transportation provider determines the roads to be unsafe for travel due to inclement weather, they will not be obligated to transport Student to or from Monarch. In the event Parents choose to transport Student on any day that the District is closed or the provider is unable to provide transportation due to inclement weather, the transporting Parent shall be reimbursed at the IRS-approved mileage rate for transportation of Student to and from Monarch and mother's home.
- c. Parents affirm that they selected Monarch and all other non-District providers, and they were not determined by the District to be Student's least restrictive environment. As such, Parents agree that the District shall not be responsible for the efficacy of the educational program provided to Student by Monarch and all other non-District providers, 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 Monarch and all other non-District providers. See Paragraphs 4 & 13 (Student 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 payment pursuant to this Agreement shall terminate on the date _____ is no longer enrolled in Monarch, or on the date he and/or his mother no longer reside in the District. If _____ stops attending Monarch for any reason during the 2017-2018 school year, inclusive of the summer of 2018, or the 2018-2019 school year, inclusive of the summer of 2019, Parents must notify the District immediately, and the District will offer to implement the IEP dated August ____, 2017, until such time as a new IEP can be developed. See Paragraph 13.
- e. Because Parents have unilaterally placed _____ at Monarch for the 2017-2018 and 2018-2019 school years, Parents expressly waive the right to convene an annual IEP team meeting prior to development of the 2019-2020 IEP (unless _____ returns to school in the District earlier pursuant to Paragraph 13). Parents affirm their intent to work cooperatively and in good faith with the District to develop Student's IEP for the 2019-2020 school year. Specifically, Parents agree to make Student available for all educational assessments and observations necessary for the District to develop an IEP for Student for the 2019-2020 school year. The Parties agree that a meeting to develop Student's 2019-2020 IEP will be held on or before May 1, 2019, but acknowledge that additional meetings beyond this date may be necessary. Parents are responsible for inviting Monarch personnel to the IEP team meeting(s) which will be convened at a mutually agreeable time for the District and Parents. The District agrees to allow an individual of Parent's choosing to observe any placement proposed by the IEP team designed to be in effect during the 2019-2020 school year, so long as said individual affirms his/her intent not to obtain, secure, retain, or re-disclose information relating to other students.
- f. Parents agree to provide releases, allowing the District to receive all education records (including, but not limited to, all programming data, assessments, consultant's reports, and/or evaluations) from Monarch and any other service provider(s) who have worked with and/or provided educational services to _____ from September 1, 2017, through August 31, 2019, and/or to provide such records directly if requested to do so by the District. Parents also consent to periodic observations of Student at Monarch by District employees or representatives. Such observations will not occur more frequently than quarterly. Parents shall receive seventy-two (72) hours advanced notice of these observations, which will occur in accordance with Monarch's rules, regulations and guidelines. The District agrees to limit the

number of District employees or representatives who attend an observation to no more than three (3) persons per observation. Parents also consent to District employees or representatives attending all official meetings held at Monarch regarding Student (e.g., meetings when staff discuss with Parents Daniel's progress and/or educational programming). Parents will provide the District's Director of Pupil Service with notice as soon as possible of all upcoming meetings and conferences regarding Student, and notify the Director of Pupil Services in a timely manner of any changes to the meeting schedule. If the District requires assistance from Parents to obtain needed educational information and/or observations about or of Student, the District will advise Parents of this 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.

- g. Parents understand and agree that _____ placement at Monarch is unilateral on their part and is not _____ "initial stay-put," "stay put" or "initial/pendency placement" should Parents disagree with the IEP or educational program developed and proposed by the District pursuant to Paragraph 3.e. or Paragraph 13. The Parties agree that Monarch 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 August ____, 2017, regardless of whether Parent agrees with the IEP and/or consents to its implementation. 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).
- h. 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 on behalf of Parents to Monarch pursuant to this Agreement. Except as stated below, the District will neither report to the Internal Revenue Service ("IRS") the amounts it paid on behalf of Parents to Monarch pursuant to this Agreement, nor issue to Parents a Form 1099-MISC, and no withholdings will be made from the amounts paid to Monarch pursuant to this Agreement. Parents further acknowledge that the District will issue a Form 1099-MISC to Monarch for the amounts paid to it 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 Monarch

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 it failing to withhold the taxes on said payments.

- i. 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 period referenced in this Agreement, Parent and/or Student have the right to decline the settlement terms and amounts specified in the subsections of Paragraph 3, and to seek to have Student educated in the District and to be served under the IDEA. If Parents and/or Student accept payment for any year or period referenced in the subsections of Paragraph 3, claims for that specific year and/or period, including any right to access a FAPE from the District, are waived for the period of the year covered by the payment 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 or administrative proceeding for the purpose of establishing need for services and/or placement outside of the District.
6. This Agreement and all payment obligations existing hereunder are contingent upon Student's mother and Student residing in the District, and upon the District being provided records and access to Student in accordance with Paragraph 3.f., above. If Student's mother 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) 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. Any challenge to this Agreement must be brought in Federal District Court.

8. Parents expressly acknowledge that this Agreement is effective through the 2018-2019 school year, inclusive of the summer of 2019, 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.
9. The payments identified in Paragraph 3.a., shall be made within thirty (30) business days of the District's Director of Pupil Services receiving the documentation set forth in the subsections to Paragraph 3. 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. Parents (individually and on behalf of) waive any other claims that have accrued or may accrue through August 31, 2019, against the Board and all agents, officers, and employees of the Board, including claims relating to education, special education, related services, tuition, room and board, reimbursement, compensatory education, therapy, and independent evaluations. Notwithstanding the preceding, in the event of a breach of this Agreement, Parents retains all their rights under applicable laws and regulations to enforce this Agreement.
11. 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 Student, agree that all of the issues that were raised or could have been raised in a request for Due Process and/or an administrative or judicial proceeding are resolved by this Agreement. Parents, individually and on behalf of Student, forever release and discharge the Board, including 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 and/or retaliation), 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 this Agreement, and through August 31, 2019, with respect to Student and his education in or through the District (i.e., the District's provision of a free appropriate public education to Student through the end of the 2018-2019 school year, inclusive of the summer of 2019). If Student returns to the District prior to August 31, 2019, this section of the Agreement will apply through the date Student 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 retains all their rights under applicable laws and regulations to enforce this Agreement.

12. The Parties agree to keep this Agreement and the terms of this Agreement confidential. Parents further agree not to share this Agreement or the terms of this Agreement with anyone other than the following: (a) Monarch personnel necessary to facilitate implementation of this Agreement; (b) Parents' attorneys, accountants, financial advisors, and tax advisors; and (c) courts and mediators as necessary. 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.
13. 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 August ____, 2017. Parents waive their right to challenge the appropriateness of the IEP dated August ____, 2017, during the ten (10) school days while a new IEP is developed. Parents retain the right to challenge the appropriateness of the new IEP, after it is developed and offered by the District.

14. Student's triennial multifactored evaluation/evaluation team report ("ETR") is due by February 18, 2019. The Parties agree to meet by December 21, 2018, to plan a new 2019 ETR. The 2019 ETR will be completed in a timely manner, and the evaluation team will meet by February 18, 2019, to review the 2019 ETR. The Parties agree to postpone the related IEP team meeting to consider the implications of the 2019 ETR until the team meets in April, 2019, to develop the 2019-2020 IEP. Any observations associated with completion of the 2019 ETR will be separate and apart from the observations identified in Paragraph 3.f. The Parties agree to work in a cooperative and collaborative manner to complete the 2019 ETR.
15. Parents expressly waive their right to initiate a complaint with the Ohio Department of Education relating to any aspect of Student's education arising on or before the date of execution of this Agreement. Parents further agree that the Ohio Department of Education does not have jurisdiction to investigate or rule upon any complaints brought by Parents relating to any aspect 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 (including claims of discrimination and/or retaliation). Parents confirm that any issue/claim that could have been brought before ODE or OCR has been resolved.
16. District and Parents agree that the provisions of this Agreement can only be modified in writing.
17. 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 declare and acknowledge that no 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.
18. 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 that may have been asserted against the Board, and the Board expressly denies that it has done anything wrong or unlawful.

19. This Agreement is comprehensive with respect to the sums to be paid to or on behalf of Parents, and Parents agree that they shall make no application to the Court for, or in any other manner seek, fees and/or costs in connection with the above-styled matter. The Parties shall bear their own costs in connection with this matter.
20. This Agreement is subject to approval by the Board, which shall meet to consider the Agreement by Monday, August 28, 2017. The Superintendent agrees to recommend to the Board that it approve this Agreement.

Date: _____

Signature: _____

For herself and on behalf of

Date: _____

Signature: _____

For himself and on behalf of

Date: _____

Signature: _____

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

Date: _____

Signature: _____

Joelle Magyar, Superintendent
Brecksville-Broadview Heights City
School District