

RELEASE AND WAIVER AGREEMENT

The parties to this Release and Waiver Agreement are: _____ and _____ on behalf of themselves and their _____ (hereafter collectively the "Family") and the Brecksville-Broadview Heights City School District Board of Education, including all of its Board members, employees and agents in their individual and/or official capacities (collectively referred to as the "Board of Education", or the "District"),

WHEREAS, the _____ Family and the Board of Education have engaged in extensive discussions regarding _____ educational placement and programming beginning in the 2010-2011 school year and continuing through the present time;

WHEREAS, the _____ Family desires the opportunity to continue to work with private professionals to design and implement a program for _____ that includes vocational and community activities in addition to working on other skills;

WHEREAS, the Board of Education seeks to provide the _____ Family with the opportunity to design and implement a private program for _____ to meet his community, vocational and academic needs;

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

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. Development and Implementation of Educational Program.** The parties agree that the _____ Family shall be responsible for the development and implementation of _____ educational program for the 2014-15 school year through February 8, 2015 (including the Summer of 2014). This program shall be referred to herein as the Parentally Developed Program. In order to design and implement the Parentally Developed Program, the _____ Family shall be responsible for:
- A. Retaining consultants and service providers to design and implement the program;
 - B. Entering into any necessary contracts to retain consultants and service providers to design and implement the program;
 - C. Arranging for any required assessments;
 - D. Locating suitable programs or facilities;
 - E. Transporting _____ to/from the Parentally Developed Program;
 - F. Monitoring _____ progress and ensuring that the Parentally Developed Program is adequate to meet his needs; and
 - G. Providing quarterly progress updates to the Board.

The Family understands and agrees that the Board shall not be responsible for any aspect of educational program or the efficacy of the Parentally Developed Program except to make payments in accordance with this Agreement.

II. Role of the Board of Education. The Board of Education shall be responsible for providing funding for the Parentally Developed Program developed under Section I, in amounts not to exceed those set forth below and under the conditions set forth below. The Board of Education shall also be responsible for making referrals to any programs/placements that require a referral from the District. The referral process shall be limited to making contact with the program/placement and providing any documentation required by the program/placement. The Board shall not be responsible for attending meetings with providers, programs or placements selected by the Family or for coordinating services, programming or placement unless the provider communicates directly to the Board's Director of Pupil Services that the presence of the Board is required by a provider or program as a condition of acceptance or provision of services for . The parties understand and agree that, other than the role/duties expressly set forth herein, the Board shall have no other obligation for the development or implementation of educational program.

III. Financial Responsibility of the Board of Education. The Board of Education shall provide funding for the Parentally Developed Program as set forth below. The funding provided by the Agreement can be used by the Family, at their discretion, for any costs associated with the development or implementation of the Parentally Developed Program, including, but not limited to, assessments, vocational services, tuition, academic services, aide, vocational aide, transportation, other related services, community experiences, and the retention of consultants to assist with the development of the program. In order to access these funds, the Family shall follow the procedures set forth in Paragraph IV below.

A. 2014-15 School Year through February 8, 2015, and Summer of 2014

The Board shall provide funding for the Parentally Developed Program in an amount not to exceed \$79,502 for the 2014-2015 school year through February 8, 2015, and the Summer of 2014, from July 1, 2014 forward. These funds be made available as follows:

July 1, 2014 - \$32,897
October 1, 2014 - \$32,897
January 1, 2015 - \$13,707

Any amount of funding provided in a particular quarter that is not used can be carried over to the next quarter. Funds from a subsequent quarter cannot be used prior to the start of that quarter. The Family understands and agrees that provision of the payment of the aforementioned funding and the responsibilities set forth in Paragraph III above constitutes the Board of Education's only obligation to during the time period covered by this Agreement.

IV. Arrangements for Payment.

A. General The Family shall enter into any agreement required by providers of the Parentally Developed Program to facilitate placement/enrollment, except as expressly

stated in this Agreement. The _____ Family agrees they are responsible for any costs associated with _____ education that exceed the amount set forth in Paragraph III above. The _____ Family shall notify the Board of Education's Director of Pupil Services in writing of the identity of all service providers whose services may be paid for with funds provided under this Agreement before such services are provided. Upon receiving this information, and upon confirmation from the _____ family that any and all presented invoices are a true and accurate reflection of services provided and amounts owing, the Board shall take the required internal steps to arrange for payments to these service providers.

B. **Services other than Transportation.** For all services except transportation services, the _____ Family shall make arrangements for the providers they have selected to implement to be Parentally Developed Program to send invoices directly to the Board. Upon confirmation from the _____ family that any and all presented invoices are a true and accurate reflection of services provided and amounts owing, the Board shall pay these invoices to the extent that they do not exceed the amount set forth in Paragraph III above. Should the Board fail to pay a properly approved invoice in a timely manner and a late fee or penalty is incurred, the Board shall pay the late fee or penalty. In the event that the _____ Family pays for any program services directly, they shall present documentation of payments made by them to providers they have selected to design or implement the Parentally Developed Program and shall receive reimbursement from the Board.

C. **Transportation.** At the request of the _____ Family the Board shall enter into a contract with a transportation provider to facilitate _____ transportation to/from the Parentally Developed Program. In the alternative, the _____ family may be reimbursed at the IRS rate for their transportation of _____ to/from the Parentally Developed Program upon presentation of a statement of the date, location, and purpose of travel by the _____ family. Any funds used to pay for the transportation services and/or reimbursement to the _____ family at the IRS rate for their transportation of _____ to/from the Parentally Developed Program shall be deducted from the amount set forth in Paragraph III. The Board shall communicate the cost of transportation arrangements to the _____ Family so they are aware of this expense and can plan accordingly.

D. **Reports.** The Board shall provide a quarterly statement to the _____ Family showing payments made under this Agreement and the portion of the funds set forth in Paragraph III that remain.

E. **Nature of Payments.** All payments made by the Board in whatever form or to whatever payee for services, transportation, evaluations, or other obligations under this Agreement are made in accordance with this Agreement and in order for the Board to implement its obligations under the Individuals with Disabilities Education Act. The Board of Education shall not issue a 1099 Form unless required by Federal Law. If the Board of Education determines that Federal Law requires issuance of a 1099, prior to issuing the form, the Board of Education shall provide written notice to the _____ Family and give them an opportunity to demonstrate why the Board of Education is not required to issue a 1099 form.

V. **Multifactorred Evaluation.** The parties agree that the District will conduct the

triennial multifactored reevaluation in 2014. The _____ Family agrees to execute any documentation required by the Board in planning for and conducting the reevaluation. The _____ family waives their right to an independent educational evaluation in relation to the 2014 multifactored reevaluation.

- VI. **Responsibility for _____ Educational Program.** The parties agree that while _____ is educated via the Parentally Developed Program, the Board of Education shall not be responsible for the provision of a free appropriate public education ("FAPE") to _____ including, but not limited to, the development and implementation of an individualized educational program ("IEP") and the provision of any other programming and/or services. The Board's sole responsibility during the time that _____ is educated via the Parentally Developed Program under this Agreement is set forth in Paragraphs II and III of this Agreement.
- VII. **Development of IEP Document.** The parties understand and agree that, because the State of Ohio and some programs the _____ Family might wish to access require an IEP, an IEP shall be developed for _____ each year. The parties further understand and agree that the IEP shall not be implemented by the Board, that it may not encompass all aspects of _____ program, and that the IEP shall in no way limit or dictate the elements of the Parentally Developed Program. The IEP is being developed solely to comply with requirements from the State of Ohio and to provide to programs that require an IEP. The present _____ levels of performance and goals/objectives shall be provided to the Board's Director of Pupil Services no later than three weeks prior to the expiration of _____ then-current IEP each year. This will allow the Director of Pupil Services to transfer the information onto the State of Ohio required form. The _____ Family and the Director of Pupil Services shall then schedule a meeting, prior to the expiration of _____ then-current IEP to sign the new IEP. The _____ Family agrees to execute any documentation required by the Board waiving the presence of team members other than the Director of Pupil Services. The parties agree that the placement noted in this IEP document shall not be deemed stay-put nor shall these IEPs constitute admissible evidence in any future legal proceeding.
- VIII. **Additional Conditions.** The _____ Family understands and agrees that payment of tuition as described above shall be contingent on the following:
- A. That the _____ Family continues to reside within the boundaries of the Brecksville-Broadview Heights City School District during the term of this Agreement;
 - B. That the _____ Family continues _____ enrollment as a student in the Brecksville-Broadview Heights City School District during the term of this Agreement;
 - C. That the _____ Family continues to provide _____ educational services via the Parentally Developed Program during the term of this Agreement, and
 - D. That the _____ Family complies with all provisions of this Agreement.

Should any of the above-referenced conditions not be met, the Board shall have no obligation for any payments under this Agreement

- IX. **Term of Agreement, Renewal and Automatic Termination.** This Agreement Shall become effective upon execution by both parties and approval by the Board of Education. Should such execution and necessary Board meeting occur after July 1, 2014, the Board shall approve the Agreement as being retroactive to July 1, 2014. The Agreement shall continue through February 8, 2015, and terminate automatically thereafter. Any amendments to this Agreement must be in writing and signed by both parties.
- X. **Notice.** All notices required under this Agreement shall be provided in writing (which includes e-mail notification). Notice to the _____ Family shall be made to:

Notice to the Board of Education shall be mailed to:

Brecksville-Broadview Heights City School District
Director of Pupil Services
6638 Mill Road
Brecksville, OH 44141

- XI. **Removal From Parentally Developed Program Prior to Expiration of Agreement.** The parties agree that the _____ Family may choose for _____ to cease being educated via the Parentally Developed Program prior to February 8, 2015. Should the _____ Family elect to end _____ education via the Parentally Developed Program at any time prior to the expiration of this Agreement, they must notify the District at least 60 days prior to _____ last day in the Parentally Developed Program. This notification, which must be in writing, must be sent to the Board's Director of Pupil Services. Upon receiving such notification, the Director of Pupil Services shall take the necessary steps to convene _____ IEP team so that an IEP to be implemented by the Board of Education can be developed in conjunction with the _____ Family. Upon _____ removal from the Parentally Developed Program by the _____ Family, the Board of Education's obligations under this Agreement will cease and the Board's obligation to provide _____ with a free appropriate public education in accordance with the IDEA shall resume. The parties understand and agree, however, that due to the complex nature of _____ needs and programming, that it may not be possible for the Board of Education to finalize an IEP for _____ prior to the expiration of the 60 day notice period. The IEP shall be completed no later than 90 days from date of notice. The parties may extend this period by mutual agreement in writing.
- XII. **Stay Put.** The parties understand and agree that _____ placement at Parentally Developed Program for purposes of this Agreement is not deemed stay put.

- XIII. Release of Information and Participation by Board of Education.** The parties agree that the Board may remain involved in _____ educational program. By signing this Agreement the _____ Family consents to the release of educational records/information from the Parentally Developed Program to the Board and to periodic observations of _____ the Parentally Developed Program by educators from Brecksville-Broadview Heights. Should it be necessary, the Family shall provide a signed release of information to Parentally Developed Program providers allowing the Board of Education to receive educational records from the Parentally Developed Program providers and to observe _____ All observations shall occur with prior notice to the _____ Family and at mutually agreeable times/locations.
- XIV. Non-Admission of Liability and Effect of Agreement.** The _____ Family understands and agrees that payment of the aforesaid consideration does not constitute and may not be used as an admission by the Board of Education of any wrongdoing or failure or alleged inability of the Board of Education to provide _____ with a free appropriate public education in accordance with federal and state law.
- XV. Release of Claims.** The _____ Family does hereby forever release and discharge the Board of Education from any and all claims, demands, actions, causes of action or suits at law or inequity, of whatsoever kind or nature, which the _____ Family 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 February 8, 2017. This Agreement includes the release of, but is not limited to, all claims arising under the Individuals with Disabilities Education 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 of Education'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 the execution of this Agreement.
- XVI. Confidentiality.** The parties agree to keep the terms of this Agreement strictly confidential to the fullest extent permitted by law. The _____ family agrees not to disclose to any individual or entity (including but not limited to individuals providing the Parentally Developed Program, friends, colleagues, other parents), other than their legal counsel, members of their immediate family, financial advisors, accountants, or as required by law, the existence of or terms and conditions of this Agreement. The _____ Family may share information necessary to arrange for Parentally Developed Program providers to send invoices and educational records to the Board of Education. The _____ Family can disclose information necessary for contract and implementation of the Agreement. If asked, the _____

Family can respond that they have made an arrangement with the Board to develop a program and cannot discuss the details. The Family understands and agrees that if this confidentiality provision is breached by them or members of their immediate family who are privy to the existence and terms of this Agreement, the Agreement becomes null and void, and they must pay the Board the amount of \$20,000 in damage for the breach.

XVII. 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.

Date: 6-29-14

(On behalf of:

Date: 6-29-14

(On behalf of

Date: _____

Scot T. Prebles
Superintendent
(On behalf of the Brecksville-Broadview Heights City
School District Board of Education)

Date: _____

Richard Berdine
Treasurer
(On behalf of the Brecksville-Broadview Heights City
School District Board of Education)