

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS

[REDACTED] & [REDACTED]
BSEA # [REDACTED]

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between [REDACTED] [REDACTED] (hereinafter "Parents"), individually and on behalf of their [REDACTED] (hereinafter [REDACTED]), and the [REDACTED] (hereinafter [REDACTED]). In consideration of the settlement of this matter in lieu of a hearing, and in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Term: This Settlement Agreement covers the 2015-16, 2016-17, 2017-18 and 2018-19 school years.

2. Payment of Tuition: For the period of this Agreement, the parties agree that [REDACTED] shall attend [REDACTED] School in [REDACTED] as a day student. For the 2015-16 school year, Parents shall pay the full amount of [REDACTED] tuition at [REDACTED] School. For the 2016-17, 2017-18 and 2018-19 school years, [REDACTED] shall pay 60 percent (60%) of [REDACTED] tuition at [REDACTED] School and Parents shall pay the balance of tuition. All funds paid by [REDACTED] toward [REDACTED] tuition shall be issued directly to [REDACTED] School upon receipt of invoices from [REDACTED] School.

3. Transportation and Other Costs. Parents agree to provide transportation for [REDACTED] to and from [REDACTED] School. Other than payment for the portion of tuition specified in paragraph 1 of this Agreement, [REDACTED] shall not be responsible for any other costs relating to [REDACTED] attendance at [REDACTED] School. [REDACTED] has no responsibility to provide or to fund any extended year services.

4. Except as specified in paragraphs 5, 6 and 7 of this Agreement, [REDACTED] shall have no obligation during the term of this Agreement to conduct evaluations, convene TEAM meetings,

develop IEPs, or afford [REDACTED] or his Parents with any additional procedural protections not otherwise specified in this Agreement. The terms contained herein fulfill [REDACTED] obligation to provide [REDACTED] with a free appropriate public education over the term of this Agreement.

5. The District shall arrange for and/or conduct [REDACTED] three-year evaluation before March 1, 2019 and the Parents' signatures to this Agreement constitute their consent to this evaluation. The Parents hereby consent and grant permission to [REDACTED] to observe the Student at reasonable times at [REDACTED] School and to receive from [REDACTED] School all copies of any school records, progress reports or testing results authored by educators or others associated with [REDACTED] School who will provide services to [REDACTED] during the course of his enrollment at [REDACTED] School.

6. Prior to April 1, 2019, [REDACTED] agrees to convene [REDACTED] TEAM to review his current educational needs and to develop an IEP and propose a placement for his for the 2019-20 school year. [REDACTED] shall provide a written placement proposal for the 2019-20 school year to the Parents on or before April 15, 2019. In the event of a dispute regarding [REDACTED] IEP or placement for the 2019-20 school year, the Parents waive any "stay put" rights to placement pending appeal at [REDACTED] School, and the parties agree that [REDACTED] IEP and placement shall be the IEP and placement proposed by [REDACTED] but only if [REDACTED] has delivered an IEP proposing a placement to the Parents by April 15, 2019. In the event that a dispute concerning placement is submitted to the BSEA for hearing, the parties agree to cooperate to proceed to hearing prior to the end of the 2018-19 school year.

7. In the unlikely event that [REDACTED] suffers an unanticipated and catastrophic illness or injury prior to the last day of school in June 2019 or is no longer able to attend the [REDACTED] School for any reason, [REDACTED] agrees to reconvene [REDACTED] TEAM to develop an appropriate IEP and to provide his with a free appropriate public education in accordance with his needs at that time. Under such circumstances, if there is any dispute regarding [REDACTED] services or placement, the parties agree that the "stay put" IEP shall be the IEP and placement proposed by [REDACTED]

8. The parties agree that this placement is made for settlement purposes only and that it is not based on a recommendation for a placement at [redacted] School or any other residential placement by [redacted] 8/2/16 [redacted] 3/2/16 [redacted] 3/2/16 [redacted] 3/2/16

9. The parties hereby agree that the financial terms of this Settlement Agreement shall remain confidential and shall not be disclosed to any third party, except as required by law or to enforce this Settlement Agreement. If asked about this matter, the parties shall indicate that the matter has been resolved to the satisfaction of both parties. Without breaching this Settlement Agreement, the parties may disclose this Settlement Agreement to their attorneys, educational consultants, advocates, and accountants for legal and financial assistance.

10. Except as otherwise provided in this Settlement Agreement, and except to enforce the terms of this Settlement Agreement, the parties agree to release and forever discharge each other from all debts, demands, actions, causes of action, suits, liabilities, claims of procedural violations, and any and all claims of any kind by any party for payment of attorneys' fees and other costs and/or damages, concerning the provision of special education services to [redacted] up to the date of this Settlement Agreement.

11. The parties to this Settlement Agreement are represented by legal counsel, and they understand and acknowledge that they are waiving specific rights which accrue to them pursuant to M.G.L. Ch. 30A and 71B, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973.

12. This Settlement Agreement is the entire agreement between the Parents and [redacted] and is intended to take effect as a sealed instrument upon execution by all parties.

Date 3/2/16

[redacted]
[redacted] Individually and on behalf of [redacted]
[redacted]

[REDACTED]

SETTLEMENT AGREEMENT

This Agreement is entered into by and between [REDACTED] (hereinafter, "Parents"), on behalf of their child, [REDACTED] (hereinafter, "Student"), and the [REDACTED] (hereinafter, "the District"), all of whom may be collectively referred to hereafter as "the Parties." In consideration of the settlement of this matter, and in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. This Agreement shall cover the 2016-2017 and 2017-2018 school years, ending in June 2018, only.

2. TUITION: For the life of this Agreement, the District will pay the tuition fee for Student to attend [REDACTED] ("Private Program") in the amount of forty-five thousand, eight hundred dollars (\$45,800.00) The District also agrees to only fund Student's textbooks, course materials, lab and art supplies at Private Program, up to One Thousand Dollars (\$1,000). This sum represents the District's total financial contribution to Student's annual tuition at Private Program. Payment shall be made directly to Private Program in monthly installments.

3. TRANSPORTATION THROUGH 11/23/16: From the date of execution of this Agreement (or September 26, 2016, whichever comes later) through November 23, 2016, the Parties shall split Student's transportation to and from school as follows: Parents shall transport Student one-way from the family home to Private Program each morning. The District shall provide reimbursement for this morning transport at the state-approved mileage reimbursement rate (.45 cents per mile) upon the Parents providing documentation of Student's attendance and a regular travel log to the District's special education department. The District shall transport the Student one-way from Private Program back to the family home each afternoon.

4. TRANSPORTATION AS OF 11/28/16: From November 28, 2016 through the life of this Agreement, the District shall provide Student with daily, roundtrip transportation between the family's home and Private Program [REDACTED] school hours are from 8:50-3:00. The Parents shall not be eligible for any reimbursement from the District for mileage accrued after November 23, 2016.

5. THERAPEUTIC SERVICES: The Parents agree to utilize their health insurance to provide Student with regular therapeutic services in consultation with [REDACTED]. The District agrees to reimburse the Parents in the amount of their co-pay for the Student to attend up to one (1) session per week of individual therapy; one (1) session per week of social skills/group therapy; and one (1) session per month with [REDACTED]. Reimbursement will be made upon proof of payment (receipt, cancelled check) and proof of Student's attendance at the session (as by a note from the treating therapist/psychiatrist) being provided to the District's special education department. No reimbursement will be made for any week in which the Student does not attend therapeutic services.

- a. Parents shall transport Student to and from therapeutic services, without reimbursement from the District.
- b. In the event that Parents lose health insurance coverage during the life of this Agreement, they will promptly provide written notice of that fact to the District. The District will then convene a meeting with Parents to discuss the provision of therapeutic services to Student. Such meeting may result in a written amendment to this Agreement. In the event that the Parties cannot agree to a written amendment, the District's obligation under this Paragraph shall terminate.

6. RELEASE TO CONSULT WITH [REDACTED]: The Parents hereby consent for the District's consultant, [REDACTED] to consult and share student record information about Student with staff at Private Program, Alternate Private Program (in accordance with Paragraph 8), and the Student's treating [REDACTED]. Further, upon request from Private Program, Alternate Private Program, or the Student's treating therapist/psychiatrist, the Parents agree to provide written consent for those professionals to speak with [REDACTED] about Student.

7. OTHER COSTS: All other costs associated with Student's attendance at Private Program during the life of this Agreement, including, but not limited to, additional transportation, field trips, or miscellaneous fees, shall be borne by the Parents without reimbursement from the District. All other costs associated with therapeutic services during the life of this Agreement shall be borne by the Parents without reimbursement from the District.

8. FAILURE TO ATTEND PRIVATE PROGRAM DUE TO STUDENT REFUSAL: The Parties hereby agree and acknowledge that Student will be deemed to have

ceased attending Private Program if Student's attendance in school or at therapeutic services falls below 80% due to school refusal or therapy refusal. In such a case, the Parties agree that the Student shall attend the therapeutic program at the [REDACTED] School in [REDACTED] ("Alternate Private Program"). The District shall pay the standard tuition rate for Student's attendance at Alternate Private Program, as approved by the Massachusetts Operational Services Division (OSD).

- a. In the event that Student begins attending Alternate Private Program, the District shall provide Student with daily, roundtrip transportation between the family home and Alternate Private Program for the remaining life of this Agreement.
- b. Within two (2) months of Student's first day attending Alternate Private Program, the District shall reconvene the Team to develop an IEP for Alternate Private Program. In the event of any dispute between the District and the Parents as to the IEP so developed, the Parties agree to proceed promptly to the Bureau of Special Education Appeals (BSEA) for resolution. The Student's stay-put program pending appeal shall be identified as the IEP for Alternate Private Program so developed by the Team.
- c. In the event that Student begins attending Alternate Private Program under this Paragraph, the Parents agree to support the District in seeking a pro-rata refund of any advance tuition paid to Private Program.

9. CEASING TO ATTEND PRIVATE PROGRAM FOR ANY OTHER REASON:

If the Student ceases to attend Private Program prior to the end of the 2017-2018 school year, for any reason other than the circumstances explained in Paragraph 8, the Parents shall immediately notify the District. The District will promptly reconvene the Team to develop an appropriate IEP program for Student. In the event of any dispute between the District and the Parents as to the IEP so developed, the Parties agree to proceed promptly to the Bureau of Special Education Appeals (BSEA) for resolution. The Student's stay-put program pending appeal shall be identified as the IEP so developed by the Team.

10. TEAM MEETING IN NOVEMBER 2016: The District shall reconvene Student's Team by or before November 18, 2016 to discuss Student's attendance and progress at Private Program. If Student has ceased attending Private Program before the Team is able to convene,

then the process described in Paragraph 8 or Paragraph 9 shall govern, depending on the nature of Student's departure from Private Program.

11. SPRING 2017 MCAS: In the event that Student is attending Private Program in Spring 2017, the Parties agree that the Student will return to [REDACTED] in Spring 2017 to participate in [REDACTED] grade MCAS assessments so that the Student may be eligible for a District diploma. MCAS testing will occur at an alternative testing environment and that location will be within the [REDACTED] District, which will include the standardized testing accommodations provided on Student's last-accepted IEP. An alternative testing environment will be decided by the Parent and the District. The District will provide the Parents will advance notification of the exact dates for testing. (MCAS testing is scheduled for ELA on March 21,22, 23;Math is scheduled for May 16, 17; Biology is scheduled for June 5, 6). The Student will require a quiet room and a teacher to read the directions and proctor. In the event that Student is attending Alternate Private Program, in accordance with Paragraph 8, Student will sit for the MCAS assessments at Alternate Private Program.

12. TEAM MEETING IN APRIL 2018: The District shall reconvene Student's Team by or before April 15, 2018 to discuss the Student's progress, discuss extended school year services, and develop an IEP for the 2018-2019 school year.

13. WAIVER OF STAY-PUT: The Parents agree to waive any right to stay-put at Private Program after the end of the 2017-2018 school year.

- a. If Student is attending Alternate Private Program, the Parties agree that the Student will have stay-put at that program, in accordance with Paragraph 8(b), after the end of the 2017-2018 school year.
- b. If Student is attending Private Program at the end of the 2017-2018 school year, the IEP developed by the Team in accordance with Paragraph 12 shall be identified as the Student's stay-put placement pending appeal. In the event of any dispute between the District and the Parents as to the IEP so developed, the Parties agree to proceed promptly to the Bureau of Special Education Appeals (BSEA) for resolution.

14. ACKNOWLEDGEMENT OF PRIVATE PROGRAM STATUS: The Parents understand and acknowledge that Private Program is not approved by the Commonwealth of Massachusetts' Department of Elementary and Secondary Education as a private special

education school which meets the requirements under Massachusetts law and regulations to provide special education and related services to a student with a disability(ies). The Parents understand and acknowledge that Private Program does not administer MCAS testing, and it is not required to teach to the Massachusetts Curriculum Frameworks/Common Core Curriculum. Further, because of Private Program's failure to teach to the Massachusetts Curriculum Frameworks/ Common Core Curriculum, Student may not have the requisite academic instruction to successfully participate in the MCAS elsewhere. Teaching staff at Private Program may not have either special education or appropriate regular education teaching certification from either the state of Massachusetts or from any other state. The Parents further understand and acknowledge that Private Program is not a therapeutic program, as Student's Team has previously recommended. Therefore, should Student have academic, social, emotional, or behavioral deficits as a result of attending Private Program, the Parents understand and agree that neither they nor Student has any claim against the District for compensatory education or special education services.

15. SETTLEMENT ONLY: This Agreement is for the purposes of settlement only. It does not constitute an admission by the District that Private Program or Alternate Private Program is the least restrictive environment in which Student can receive a free and appropriate education, nor does it reflect an understanding that the District is not capable of providing Student with a free and appropriate public education.

16. RESIDENCY CONTINGENCY: This Agreement is contingent upon the District remaining the school district programmatically and fiscally responsible for Student's education, subject to the provisions of M.G.L., c. 76, § 5; M.G.L., c. 71B inclusive; and 603 CMR 28.10.

17. GENERAL RELEASE: Except as otherwise provided in this Agreement, and except to enforce the terms of this Agreement, the Parties agree to release and forever discharge each other from all debts, demands, actions, causes of action, suits, liabilities, claims of procedural violations, and any and all claims of any kind by any party for payment of attorneys' fees and other costs and/or damages, concerning the provision of special education and regular education services to Student, up through the date of execution and the duration of this Agreement. Specifically, and without limiting the generality of the foregoing, the Parties understand and acknowledge that they are waiving specific rights which have or might accrue to

them pursuant to M.G.L., c. 30A, 71, 71B, 76; 20 U.S.C. §1400 et seq.; 42 U.S.C. §1983; the Americans with Disabilities Act; and Section 504 of the Rehabilitation Act of 1973.

18. OPPORTUNITY FOR REVIEW: The Parties to this Agreement have had the opportunity to fully consult with legal counsel of their choice. This Agreement sets forth the entire and complete understanding and agreement between the Parties. No Party is relying on any written or oral statement or representation not set forth herein.

19. CONFIDENTIALITY: Except as otherwise required by law, the Parties agree that this Agreement itself as well as all the terms of this Agreement shall remain confidential and shall not be disclosed by them or by their agents, employees, servants, or attorney(s) to any third party, except to counsel, financial advisors, and Private Program or Alternate Private Program, as necessary. Any unauthorized disclosure of the financial terms by the Parents without the express written consent of the District is strictly prohibited. Notwithstanding the foregoing, the Parties acknowledge and agree that the Parents, without breach of this Agreement, may indicate that Student is enrolled at Private Program or Alternate Private Program and shall, in response to any inquiry by a third party, state that the dispute has been amicably resolved to the mutual satisfaction of both Parties.

20. This Agreement shall be effective as a sealed instrument, and shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

September 27, 2016
Date

[Redacted Signature] own behalf and on behalf of
child, [Redacted]

9/27/16
Date

[Redacted Signature] own behalf and on behalf of
child, [Redacted]

9/27/16
Date

[Redacted Signature]

[Redacted]