

**SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE**

AND NOW, this 27<sup>th</sup> day of July, 2012, the undersigned parties, as further described herein, in consideration of the mutual promises and covenants further contained herein, and intending to be legally bound, hereby agree as follows:

**I. BACKGROUND.**

**A. Parties.** This Settlement Agreement and Mutual General Release (“Agreement”) is made by and between: (1) the Chester Upland School District, the Board of Directors of the Chester Upland School District (together with the Chester Upland School District, “CUSD” or the “District”), Wanda Mann, and Delores Sharp (collectively, “the District Plaintiffs”); (2) T.F., the PA-NAACP, and the class of all parents of students attending the CUSD who are obtaining or may be eligible to obtain services under the IDEA and/or are protected by the Rehabilitation Act as certified by the Court in *Chester Upland School District, et al. v. Commonwealth of Pennsylvania, et al.*, 2:12-cv-00132 (E.D.Pa., Baylson, J.) (the “Federal Action”), by its Order dated May 8, 2012 (“the Class,” and, collectively, “the Intervenor-Plaintiffs”); and (3) the Commonwealth of Pennsylvania, the Pennsylvania Department of Education, and Secretary Ronald Tomalis (collectively, “the Commonwealth Defendants”).

**B. Resolution of All Pending Litigation and Claims.** This Agreement concerns the resolution and dismissal, with prejudice, of all Litigations, as defined in Paragraph III.A below, and the dismissal of all claims which are or could have been asserted in the Litigations, in exchange for the consideration specifically set forth herein.

**C. No Admission.** No party to this Agreement is admitting any liability for any claim asserted in the Litigations. This Agreement is the compromise of a disputed matter, and

neither the execution hereof nor the performance of any act contemplated hereby is an admission by a party of any liability, other than that created by this Agreement, to perform such act.

**D. Class Action Claims.** The Federal Action includes claims by the District Plaintiffs against the Commonwealth Defendants, by the Intervenor-Plaintiffs against CUSD and the Commonwealth Defendants, and by the Class against the Commonwealth Defendants and CUSD. This Agreement is specifically intended to settle and compromise the Class claims, as well as all other claims in the Litigations, and will be submitted to the Court in the Federal Action, for approval of the Class portions thereof pursuant to Fed. R. Civ. P. 23.

**E. Intent.** The Parties hereto desire to settle and dismiss with prejudice the Litigations enumerated in Paragraph III.A and to provide each other with a general mutual release of all claims stated therein, or which could have been stated therein, pursuant to the terms and conditions set forth in this Agreement.

**F. Related Documents.** In connection with this Agreement, the Commonwealth Defendants and the Chester Community Charter School (“CCCS”) are executing a Settlement Agreement and Mutual General Release (the “Related Agreement”), the terms of which are intended to and do inure to the benefit of both the District Plaintiffs and the Intervenor Plaintiffs, and which further form a material inducement to the District Plaintiffs and the Intervenor Plaintiffs to enter into this Agreement. The Related Agreement is incorporated here and made a part hereof as if set forth in full and constitutes a material term of this Agreement. This Agreement is specifically contingent upon the full and complete execution and performance of the terms and conditions of the Related Agreement as is further set forth therein and summarized in Paragraph II.A below.

II. **SETTLEMENT TERMS.**

A. **CCCS Settlement.** The amounts paid to CCCS on the District's behalf and from the District's funds pursuant to the Related Agreement and as summarized in this Paragraph II are in full and complete settlement of all amounts due and owing from the District to CCCS for the education of the District's resident students through June 30, 2012.

B. **Fiscal Year 2011-12 Distribution.** On or about June 30, 2012, the Commonwealth Defendants transferred to CCCS, on behalf of the District, remaining District state subsidies totaling \$5,522,161 (the "Remaining Subsidy"). All Parties hereto acknowledge that although transferred prior to the execution of this Agreement, the transfer was made in contemplation of, and as a material inducement to the execution of, this Agreement by each of them.

C. **Additional Distributions.** The Commonwealth Defendants shall make disbursements, in addition to that set forth in Paragraph II.B, on behalf of the District in an amount totaling \$20.5 million. These amounts will be distributed by the Commonwealth on behalf of the District for the payment of the District's outstanding accounts payable to Vendors and Other Payees as of June 30, 2012, at such time and in such manner and amount as is determined in the sole discretion of the Commonwealth Defendants. The Commonwealth Defendants will make direct payment of these funds to Vendors on the District's vendor list (as agreed between the Commonwealth and the District) as of June 30, 2012, in the amounts designated therein, without undue delay upon execution of this Agreement. The Commonwealth Defendants will further make direct payment of these funds to Other Payees, including by way of example, but without creating any implied duty or obligation, payments made to satisfy other outstanding District bills, such as those claimed to be due through June 30, 2012, to: (1) the

Delaware County Intermediate Unit; (2) employees of the District for summer payroll; (3) charter schools for their education of the District's resident students through June 30, 2012; and (4) the Pennsylvania Unemployment Compensation Fund, among others. With respect to disbursements made under this Paragraph II.C, the following shall apply:

1. **Unpaid Wages and Benefits.** Those amounts required to pay employees of the District for unpaid wages and benefits will be transferred to the District for payment of those items so that appropriate deductions and withholdings can be made from such payments.

2. **No Base Increase.** The amounts set forth in this Paragraph II.C will not be added to the District's base for purposes of 2012-2013 or future PDE-363 forms for calculation of charter school payments by the District.

3. **Fund Control.** It is understood that the Commonwealth Defendants will control, exclusively and without interference by the District, the timing and manner of all payments anticipated under this Paragraph II.C. Within a reasonable time after the completion of such payments, the Commonwealth Defendants will provide the District with a record of all payments made under this Paragraph II.C.

4. **Source of Funds.** The amounts set forth in this Paragraph II.C shall be comprised of remaining 2011-12 subsidies, funds appropriated for the District in accordance with Act 9A of 2012 and Act 87 of 2012, and funds allocated for the District in addition to the funds appropriated under those Acts.

D. **CUSD Special Education Programs and Services.** CUSD represents, warrants and promises that it shall substantially implement the 2012-13 Special Education Enhancement Schedule attached hereto as Exhibit A, which Exhibit A is made a part hereof, in accordance

with the timeframe set forth therein to the extent it is reasonably possible. The Parties recognize that the dates set forth in Exhibit A are guideposts for achieving the goals stated therein, and not specific deadlines subject to enforcement as such.

Approximately \$9.7 million, which was not included in the District's proposed 2012-13 budget, has now been appropriated for the District by reason of Act 82 of 2012, subject to the requirements of the Act, and may be used, in part, for purposes of enhancing the special education programs and services in the District, including as set forth herein.

**E. Agreement of Non-Interference.** The Commonwealth Defendants, and the District, agree that they will not approve or agree to any action proposed by a Chief Recovery Officer or Receiver, whichever is appointed under Act 141 of 2012, which would substantially interfere with or violate the spirit and intent of any provisions of this Agreement, including Paragraph II.D.

**F. Department's Special Education Officer.** The Parties agree that Commonwealth Defendants will place an individual with significant experience in special education and Section 504 to serve in the District as the Department of Education's Special Education Officer ("Department's SEO"), commencing on September 10, 2012, and remaining in the District through the remainder of the 2012-2013 school year. The Parties agree that the Department's SEO shall have express authority to ensure that students with disabilities in the CUSD receive a free appropriate public education as that term is defined under the IDEA – including as set forth in 20 U.S.C.A. § 1413 – and 22 Pa. Code Chapter 14, and to further ensure the District's compliance with Section 504. The Department's SEO shall serve at the pleasure of the Department. The Parties agree that Department's SEO shall have the authority to direct such action within the District as is necessary to ensure a free appropriate public education for the

District's students with disabilities, including, but not limited to, as appropriate and necessary, with regard to the following priority areas:

1. Staffing to ensure the provision of FAPE to students with disabilities in the CUSD.
2. Revision of and compliance with a revised district special education plan, including program profile. The plan shall include/complete revision of a procedures-policies manual and continue/complete the development of the special education database system (IEP Writer). The plan and the policies and procedures manual shall be posted on the CUSD's website, with all staff notified of its availability.
3. Timeliness of initial evaluations and re-evaluations, and authorization of Independent Educational Evaluations, and the provision of functional behavioral assessments and behavior intervention plans.
4. Timely and appropriate development of IEPs, with appropriate progress reporting.
5. The provision of education in the Least Restrictive Environment.
6. The provision of extended school year programming, as appropriate.

The Department's SEO shall serve as a resource to and respond without undue delay to Class parents and Class counsel with reasonable objections and concerns regarding the provision of FAPE. The Department's SEO shall also provide monthly written reports to the Department, the District, and Class counsel relating to the provision of FAPE in the District.

**G. Access to the Department's SEO.** The Parties agree that Class Counsel may communicate directly with the Department's SEO, to the extent reasonable and appropriate for purposes of monitoring this Agreement. Class Counsel shall provide undersigned counsel for the

Commonwealth Defendants with copies of any and all correspondence to the Department's SEO contemporaneously with and in the same form as the provision of such correspondence to the Department's SEO.

**H. Enforcement of Settlement Agreement.** The Parties agree that the Court shall retain jurisdiction of the Federal Action through June 30, 2013, for the sole and limited purpose of enforcing compliance with this Agreement in accordance with the terms of this paragraph. Such jurisdiction shall automatically terminate effective June 30, 2013, except that with respect to any enforcement action commenced in accordance with the provisions of this section II.H prior to June 30, 2013, but remaining open as of that date, such matter shall continue to final resolution; otherwise, after June 30, 2013, the Court shall be fully and completely divested of jurisdiction with respect to the enforcement of this Agreement. If, at any time from the final court approval of the settlement effected by this Agreement through the completion of the 2012-2013 school year (including ESY), Class Counsel have a reasonably justified and colorable complaint about the provision of FAPE or compliance with this Agreement on a Class-wide, and not individualized, basis, Class Counsel shall give written notice to the Commonwealth Defendants through the Department's SEO, with a copy to counsel for the Commonwealth Defendants, and to the District. The District and Commonwealth Defendants shall have 30 calendar days to resolve the alleged concern on the basis described in such complaint and developed through further communication between the Parties. If, after the expiration of such resolution period, Class Counsel is not reasonably satisfied with any proposed action or resolution, they may make a filing with the Court to enforce this Agreement with respect to the specific matters addressed in the written complaint only and no others. The mechanism set forth

in this Paragraph 2.H. shall not be used to resolve complaints regarding specific Class members, who may invoke appropriate administrative processes.

**I. Dismissal with Prejudice.** Subject to Paragraph II.H, in consideration of the funding and other considerations provided by the Commonwealth Defendants by virtue of the terms of this Agreement and the Related Agreement, the District Plaintiffs and PA-NAACP will cooperate in the execution and filing of all papers necessary to effect the dismissal, with prejudice, of the Litigations, and will further advocate for the final approval of the Class Settlement in the Federal Action, as set forth herein.

**J. Class Action Settlement Approval.** The provisions of Paragraph II.H notwithstanding, in consideration of the terms of this Agreement and the Related Agreement, CUSD and the Class, including T.F., agree to cooperate and cause to be filed a Petition for Approval of Class Action Settlement, to effectuate the dismissal, with prejudice, of the Federal Action, and to otherwise prosecute the approval process for such settlements, to include the submission of a form of notice to the Class under Fed. R. Civ. Proc. 23 as required by rule and/or other Order of the Court in the Federal Action. The Commonwealth Defendants shall have the opportunity to review the petition and form of notice prior to their being submitted to the Court in the Federal Action. The Parties hereto understand and agree that the burden of proof and persuasion concerning the fairness, reasonableness and adequacy of this Agreement shall rest with the CUSD and the Class Representatives concerning approval of this Agreement and the corresponding settlement of the Class claims. It is further understood and agreed by the Parties that the petition for class settlement approval and related papers filed with the Court in the Federal Action to effect same shall note that CUSD and the Class Representatives specifically



concur in and consent to the dismissal with prejudice of the Class claims against the Commonwealth Defendants and all aspects of the Release set forth in Paragraph IV.

**III. LITIGATIONS TO BE DISMISSED OR DISCONTINUED.**

**A. Enumerated Cases.** The following litigations and adversarial matters, including all appeals therefrom (the “Litigations”), shall be dismissed or discontinued with prejudice, and shall be further subject to the mutual general release set forth in Paragraph IV hereof:

1. *CCCS v. Commonwealth*, et al., No. 16 MAP 2012 (Pa. Supreme Court);
2. *CCCS. v. Commonwealth*, et al., No. 54 MAP 2012 (Pa. Supreme Court);
3. *CCCS v. Commonwealth*, et al., No. 135 MD 2009 (Pa. Commonwealth Court);
4. *CCCS v. Commonwealth*, et al., No. 493 MD 2009 (Pa. Commonwealth Court);
5. *CCCS v. Commonwealth*, et al., No. 632 MD 2011 (Pa. Commonwealth Court), and the related appeal of the denial of summary relief, filed to the Pennsylvania Supreme Court on July 23, 2012;
6. *Chester Upland School District, et al. v. Commonwealth*, et al., No. 213 MD 2012 (Pa. Commonwealth Court);
7. *Chester Upland School District, et al. v. Commonwealth*, et al., 2:12-cv-00132 MMB (E.D.Pa., Baylson, J.) (the “Federal Action” herein);
8. *CCCS v. Chester Upland School District*, MMS #EDU-2008-SLAP-0134799 (Hearing Officer Jackie Lutz); and
9. *Chester Upland School District v. CCCS*, MMS #EDU-2010-SLAP-177341 (Hearing Officer Sandra Stoner).

**B. Cooperation.** The Parties shall cooperate with each other with respect to the preparation and filing of all motions, applications, petitions, praecipes, notices or other papers as may be required by applicable rules of practice and procedure to effect the dismissals or discontinuances with prejudice required by Paragraph III.A.

**IV. RELEASE.**

**A. Education Programs, Services and Funding.** The Commonwealth Defendants, the District Plaintiffs, and the Intervenor-Plaintiffs, including the Class, hereby remise, release, quitclaim and forever discharge each other and their respective successors, assigns, affiliates, employees, agents, directors, officers, boards, divisions, bureaus, sections and all other related entities, whether or not officially constituted, of and from all and any manner of actions, causes of actions, judgments, suits, debts, accounts, and claims for services or funds, monies, fees, expenses and/or other amounts, that were or could have been asserted in the Litigations, including the Federal Action, except as specifically excepted herein in Paragraphs IV.B and IV.C.

**B. No Individual Waiver.** Nothing in Paragraph IV.A, or anywhere else in the Agreement, shall be construed or is intended to mean that any individual student in the District who is or may be eligible for special education services is waiving any right or opportunity to file an individual due process complaint with respect to any issue arising in the course of the District's provision of special education programs and services to him or her, or to file a special education complaint with the Pennsylvania Department of Education, or to take any action to enforce individual rights under Section 504 and 22 Pa. Code Chapter 15.

C. **No Investigative Waiver.** Nothing in Paragraph IV.A shall be construed or is intended to mean that the Commonwealth Defendants may not conduct monitoring or investigation of the provision of special education programs and services in the District. The Commonwealth shall provide copies of investigation reports prepared up to and including June 30, 2013, to Class Counsel.

V. **GOVERNING LAW.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

VI. **ATTORNEYS' FEES AND COSTS.** The Parties agree that the Commonwealth Respondents will pay the Public Interest Law Center of Philadelphia (PILCOP), as Class Counsel, \$260,000.00 in attorneys' fees and costs. PILCOP agrees to waive and shall not be entitled to any additional fee for monitoring or administering this Agreement except to the extent it may be a prevailing party in any proceeding to enforce it. With the exception of the amounts set forth in this Paragraph VI, the Parties hereto are otherwise each responsible for the payment of their own respective attorneys' fees, expenses and costs incurred in connection with the Litigations.

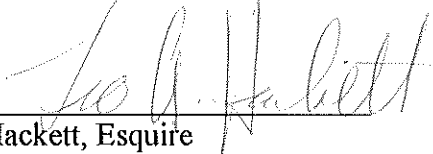
VII. **ENTIRE AGREEMENT.** This Agreement is the entire agreement of the Parties with respect to the subject matter hereof, and except with regard to the Related Agreement, there are no other agreements, express or implied, choate or inchoate, relating to the subject matter hereof, and, if there is, and it is not set forth and referenced specifically herein, it is hereby declared null, void and of no further force, influence, consequence or effect. No promise or inducement not herein expressed has been made to any of the Parties, by any of the Parties, and no party hereto

relies on any statement or representation made by any person, whether or not a party hereto, which is not specifically set forth in this Agreement.

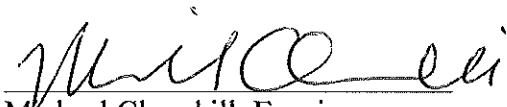
**VIII. COUNSEL.** Counsel are executing this Agreement on behalf of the Parties hereto, and Counsel hereby represent and warrant that their respective clients have consulted with them or other counsel of their choice regarding the content, meaning and effect of this Agreement, and that their mutual execution on behalf of their clients indicates that they are authorized to act on their client's behalf, and that such client acted freely, willingly and upon being fully informed of its or their legal rights, without duress, coercion or otherwise. The Parties hereto agree that this Agreement was jointly drafted and that it shall not, in the event of any dispute, be construed or construable against any of them on the basis of the source of draftsmanship.

IN WITNESS WHEREOF, this Settlement Agreement and Mutual General Release has been duly executed by counsel, authorized to do so as indicated herein:

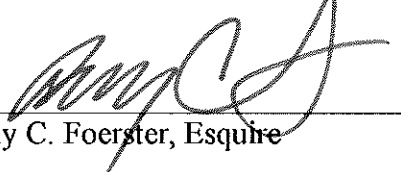
**THE DISTRICT PLAINTIFFS**

By:  Date: 7/27/12  
Leo Hackett, Esquire

**THE INTERVENOR-PLAINTIFFS, INCLUDING ALL CLASS MEMBERS**

By:  Date: 7-27-12  
Michael Churchill, Esquire

**THE COMMONWEALTH DEFENDANTS**

By:  Date: 7-27-12  
Amy C. Foerster, Esquire

# Exhibit “A”

## 2012-13 CUSD Special Education Enhancement Schedule

- 7/27 Post/Advertise Director of Special Education, Supervisor of Special Education, School Psychologist, Special Education assistant for Access, Guidance Counselor
- 8/1 Interim Director of Special Education Appointed
- 8/6 Work on Special Education Policy & Procedure Manual revision
- 8/23 Hire Supervisor of Special Education, School Psychologists, Special Education Assistant for ACCESS, Guidance Counselors
- 9/4 Start date: Supervisor of Special Education, School Psychologists, Special Education Assistant for ACCESS, Guidance Counselor
- 9/10 Work Special Education Plan Revision
- 10/1 SEO / Interim Special Education Director Recommendation on additional staffing
- 10/1 Implement revised Special Education Policy Manual and Procedures
- 10/8 Post / Advertise additional Special Education Staffing
- 10/29 Schedule Staff Training on Special Education Policy & Procedure
- 11/1 Draft Revised Special Education Plan to Superintendent & Board
- 11/15 Board adopt revised Special Education Plan
- 11/15 Hire Director of Special Education
- 11/15 Hire additional Special Education Staff