

# Exhibit A

## **SETTLEMENT AGREEMENT**

AND NOW, this 15<sup>th</sup> day of April, 2014, 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 (“Agreement”) is made by and between: (1) the School District of Philadelphia (the “School District”) and the School Reform Commission (“SRC”)<sup>1</sup> (collectively “Defendants”) and (2) P.V., M.M., J.V., and R.S., by and through their parents (“Plaintiffs”) and the class certified by the Court in *P.V. v. The School District of Philadelphia*, 289 F.R.D. 227, 236 (E.D. Pa. 2013):

All children with autism in the School District of Philadelphia in grades kindergarten through eight (“K-8”) who have been transferred, are in the process of being transferred, or are at risk of being transferred, as a result of the School District’s upper-leveling process, the parents and guardians of those children, and future members of the class.

(the “Class” or “Plaintiff Class”).

**B. Terminology.** As used herein, the term “Upper-Leveling” or “Upper-Level Transfer” refers to when a student whose Individualized Education Program (“IEP”) requires use of an Autistic Support (“AS”) classroom completes the highest grade level for which an AS classroom is provided in his or her current school building and the School District transfers that student to a different school where those services can continue to be provided, despite that students completing the same grade level who do not require use of an AS classroom can continue to the next grade level in the same school building.

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<sup>1</sup> None of the individual defendants named in the complaint is currently employed by the School District.

**C. Resolution of Pending Litigation and Claims.** This Agreement concerns the resolution and dismissal of all Class claims seeking prospective injunctive relief challenging the School District's Upper-Leveling of class members which are or could have been asserted in *P.V. v. The School District of Philadelphia*, No. 2:11-cv-4027 (E.D. Pa.) (the "*P.V.* matter"), in exchange for the consideration specifically set forth herein.

## **II. SETTLEMENT TERMS**

**A. List of AS Classrooms.** By October 15 of each school year, the School District shall publish a list of all the schools within the School District that have AS classrooms for children in grades K-8. The list may be published with appropriate disclaimers regarding its accuracy and that school configurations are subject to change at any time throughout the school year. The list shall be published on the School District's website in a conspicuous and clear manner.

**B. Notice.** The School District shall provide parents of children with autism two notice letters, – one in January and one in June<sup>2</sup> – prior to any potential Upper-Leveling of any Class member. The notice letters and list of classrooms (see *supra* Part II(A)), together, shall constitute and satisfy the spirit of prior written notice. All letters shall be copied ("cc'd") to the child's entire IEP team. The draft letters speak for themselves and are attached hereto as Exhibit 1, but for further clarification:

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<sup>2</sup> As the effective date of the Settlement Agreement is April 2014, class members will only receive the June notice for the current (2013-2014) school year and that letter will not include the language from the sample at Exhibit C that prior notice was given. Furthermore, because June 1, 2014 is a Sunday, the notice letters will be sent by June 2, 2014.

(i) The first letter will be sent on or about January 17 and will notify parents of a potential Upper-Level Transfer and inform them that they can talk to a School District designee or their child's classroom teacher about Upper-Leveling or request an IEP meeting to discuss their child's needs.

(ii) The second letter will be sent on or about June 1 and include building assignment information, enclose the most current version of "Parents' Rights: Understanding the Procedural Safeguards Notice" booklet and inform parents that they can contact a School District designee, call the Office for Dispute Resolution or contact any other organization listed in the booklet for more information about mediation or filing a due process request.

**C. Maintenance of Individual Rights.** Individual Class members shall retain their statutory rights to challenge the circumstances of their own Upper-Level Transfer, including those contained within 20 U.S.C. § 1415 and 34 C.F.R. § 300, et seq.

**D. Enforcement of Settlement Agreement.**

(i) **Continuing Limited Jurisdiction.** The Parties agree that the Court shall retain jurisdiction through January 2, 2017, 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 January 3, 2017, except that with respect to any enforcement action commenced in accordance with the provisions of this section prior to January 3, 2017, but remaining open as of that date, such matter shall continue to final resolution; otherwise, after January 3, 2017, the

Court shall be fully and completely divested of jurisdiction with respect to the enforcement of this Agreement.

**(ii) Enforcement.** If at any time from the final Court approval of the Agreement through January 3, 2017, Class counsel have a reasonably justified and colorable grievance regarding compliance with this Agreement on a Class-wide, and not individualized, basis, Class counsel shall give written notice to the School District with a copy to counsel for the School District. The School District shall have 60 calendar days to resolve the alleged concern on the basis described in such grievance 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 Magistrate Judge Rice to enforce the Agreement. Judge Rice shall apply an appropriate remedy with respect to the specific matters addressed in the written complaint only and no others. The mechanism set forth in this Paragraph II(D)(ii) shall not be used to resolve grievances regarding specific Class members who may invoke appropriate administrative processes regarding their individual rights. For avoidance of doubt, this Agreement survives the divestment of the Court's jurisdiction, and may be enforced after January 3, 2017 via other legal process or action.

**E. Class Action Settlement Approval.** The Parties agree to cooperate and cause to be filed on or before April 15, 2014, a joint motion for preliminary approval of settlement agreement, and to otherwise facilitate approval of the Agreement including the submission of a form of notice to the Class under Fed. R. Civ. P. 23 as required by

rule and/or other Order of the Court. The Parties understand and agree that the burden of proof and persuasion concerning the fairness, reasonableness and adequacy of this Agreement shall rest with the Plaintiff Class regarding approval of this Agreement. Thus Plaintiffs will take the lead in drafting and Defendants shall have the opportunity to review the motion and Class notice form prior to submission to the Court. It is further understood and agreed by the Parties that the motion for settlement agreement approval and related papers filed with the Court shall note that the Defendants join the petition of the Plaintiffs.

### **III. RELEASE**

**A. Class Claims.** The Parties 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 fines, monies, fees, expenses and/or other amounts, arising out of or relating to the *P.V.* matter, except as specifically outlined herein in Paragraphs II(C) and III(B).

**B. No Individual Waiver.** Nothing in Paragraph III(A), or anywhere else in the Agreement, shall be construed or is intended to mean that any individual Class member is waiving any right or opportunity to file an individual due process complaint or to seek other recourse with respect to any issue arising in the course of the School District's provision of special education programs and services to him or her, including, e.g., to file a special education complaint with the Pennsylvania Department of

Education, or to take any action to enforce individual rights under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. and as amended (including 20 U.S.C. § 1415), Chapter 14 of the Pennsylvania Code of Education Regulations, 22 Pa. Code § 14 et seq., Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. and as amended, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, or other applicable rules or laws. Nothing in this Agreement shall constitute in any way a waiver of the provisions of the *LeGare Consent Decree* for those Class members in grade 8.

#### **IV. GOVERNING LAW**

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

#### **V. ATTORNEYS' FEES AND COSTS**

The Parties agree that the School District will pay the Public Interest Law Center of Philadelphia ("PILCOP"), as Class counsel, \$325,000 in attorneys' fees and costs in three installments. The School District's first payment of \$100,000 is due 60 calendar days after receiving final approval from the Court. The School District shall make its second payment of \$125,000 on or before October 15, 2014. The School District shall make its third and final payment of \$100,000 on or before July 15, 2015. Plaintiffs' counsel agree 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, including enforcement of the attorneys' fees and costs referenced herein. With the exception of the amounts set forth in this Paragraph V, the

Parties hereto are otherwise each responsible for the payment of their own respective attorneys' fees, expenses and costs incurred in connection with the *P.V.* matter.

## **VI. CLASS NOTICE**

The School District shall administer and bear the costs associated with disseminating notice to class members of the Agreement via first-class mail within ten business days of the Court's preliminary approval of the Agreement. Within five business days of mailing the notice, the School District shall certify in writing to Plaintiffs' counsel how many letters it has mailed. The School District also shall cause and bear the costs associated with the publication of the class notice, no less than ¼ of one page in size, in the Philadelphia Inquirer, Philadelphia Daily News, Philadelphia Tribune, and Philadelphia Notebook, to be run weekly for at least two full weeks within ten business days of the Court's preliminary approval of the Agreement. Within five business days of arranging for newspaper publication, the School District shall certify in writing to Plaintiffs' counsel the size, frequency, and run dates for the notice to be published. The School District also shall publish the class notice on its website, via a clear and conspicuous link that shall be active through final approval, within ten business days of the Court's preliminary approval of the Agreement. Within three business days of arranging for website publication, the School District shall certify in writing to Plaintiffs' counsel the link, manner, and format of the notice's publication on the School District's website.

## **VII. ENTIRE AGREEMENT**

This Agreement is the entire agreement of the Parties with respect to the subject matter hereof, 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 has been duly executed  
by counsel, authorized to do so as indicated herein:

PLAINTIFF CLASS

Dated: April 15, 2014

/s/ Sonja Kerr

Sonja Kerr, Esq.

DEFENDANTS

Dated: April 15, 2014

/s/ David Smith

David Smith, Esq.

# Exhibit 1

January 17, 20\_\_

**VIA REGULAR MAIL**

Parent(s) of Class Member  
1234 Broad Street  
Philadelphia, PA 191xx

Re: Notice of Change

Dear Parent:

Your child is currently in the **[insert current grade]** and assigned to a **[insert current classroom grade range]** Autistic Support (“AS”) classroom at **[insert name of current school]**. That school will not have an AS program available for students in grades **[insert next classroom grade range]** next year. If your child continues to need a supplemental level of autistic support for the next school year, your child will be assigned next year to a new school building that has a grade-appropriate AS classroom. The School District is currently in the process of determining a location. You will receive a letter in June notifying you of your child’s new school assignment. [Your child will be assigned to X building next year (*if known replace previous 2 sentences*)].

Please do not hesitate to contact me at **[insert designee’s telephone number]** regarding this transfer. You can also speak with your child’s classroom teacher regarding transition issues, or request an IEP meeting to discuss your child’s needs.

Sincerely,

**[School District designee]**

cc: IEP Team LEA, SEL, and Special Education Teacher

June 1, 20\_\_

**VIA REGULAR MAIL**

Parent(s) of Class Member  
1234 Broad Street  
Philadelphia, PA 191xx

Re: Notice of Change

Dear Parent:

We informed you previously that your child will be assigned to a new school building next year because your child's current school building will not have a grade-appropriate Autistic Support ("AS") classroom for your child. Your child will be assigned to **[next school building]** for the 20\_\_-\_\_ school year.

I am available to answer questions or to discuss any concerns you may have. My telephone number is **[insert designee's telephone number]**.

I have enclosed the "Parents' Rights: Understanding the Procedural Safeguards Notice" pamphlet published by the Pennsylvania Department of Education Bureau of Special Education which can provide you with more information. You can call the Office for Dispute Resolution ("ODR") at 1-800-222-3353 or any organization listed in the pamphlet for more information about mediation or to file a request for a due process hearing. If, after talking to the ODR or other organizations listed, you intend to mediate or to file for a due process hearing, please notify me at the above number as well.

Sincerely,

**[School District designee]**

cc: IEP Team LEA, SEL and Special Education Teacher