

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is made by and between C.H., a minor, by and through his parent, Kimberly Williams, and J.F., a minor, by and through his parents, Natalie Wieters and Larry Freedman (“Plaintiffs”), and The School District of Philadelphia (“School District”) (all collectively, the “Parties”) in a case pending in the United States District Court for the Eastern District of Pennsylvania, No. 2:14-cv-06210.

WHEREAS, Plaintiffs filed a putative class action against the School District in the United States District Court for the Eastern District of Pennsylvania, Case No. 2:14-cv-06210;

WHEREAS former Plaintiff E.W., a minor, by and through his parent, Nina Williams, was dismissed from the case with prejudice by Orders dated January 11, 2017 and January 17, 2017 (Docket Nos. 64, 67),;

WHEREAS, Plaintiffs allege that the School District has a policy, custom or practice of not making individualized determinations regarding the type, amount and duration of Extended School Year (“ESY”) services that the School District provides to ESY-eligible students, and that this policy, custom or practice violates the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.*, and Chapter 14 of the Pennsylvania Code of Education Regulations, 22 Pa. Code § 14, *et seq.*;

WHEREAS, the School District denies that (a) it has a policy, custom or practice of not making individualized determinations for ESY-eligible students regarding the type, amount and duration of ESY services, (b) it has violated the IDEA or Pennsylvania law, and (c) Plaintiffs can meet the prerequisites to certify a class action or that Plaintiffs are entitled to the relief they seek;

WHEREAS, the Parties, without admitting or denying liability, seek to amicably resolve this dispute before the matter is extensively litigated and brought to trial;

NOW THEREFORE, for good and valuable consideration, it is hereby agreed as follows:

I. DEFINITIONS

A. “ESY” refers to Extended School Year services—“special education and related services” that are provided “beyond the normal school year,” “in accordance with the child’s IEP,” and “at no cost to the parents of the child.” 34 C.F.R. § 300.106(b).

B. “IEP” refers to a child’s Individualized Education Program. 20 U.S.C. § 1401(14).

C. “IEP Team” refers to the group of individuals as defined in 20 U.S.C. § 1414(d)(1)(B). *See also* 34 C.F.R. § 300.321.

D. “FAPE” refers to a free appropriate public education. 20 U.S.C. § 1401(9).

E. The “Effective Date” shall be November 15, 2016. The first school year in which the Settlement Agreement is in effect is the 2016-2017 school year.

F. The “Signatory Date” shall be the date the Settlement Agreement is signed by all Parties. The Signatory Date is later in time than the Effective Date.

II. NOTICE REGARDING ESY SERVICES

A. Notice to Special Education Teachers and SELs.

1. On or before October 31 and again on or before February 1 during the first three school years in which the Settlement Agreement is in effect, the School District will provide: (1) School District special education teachers; (2) Special Education Liaisons (“SELs”); and (3) building administrators or the administrator’s designee, with the materials written and approved by the Pennsylvania Department of

Education regarding ESY, specifically: (a) the Department of Education Teacher’s Desk Reference, attached hereto as Exhibit 1, and (b) the Bureau of Special Education Booklet titled “Extended School Year Services in Pennsylvania,” attached hereto as Exhibit 2.

2. The School District will also provide and/or otherwise make available to this same group of individuals, as well as other School District employees who are members of IEP Teams for students who have been determined to be eligible for ESY, including regular education teachers and individuals who provide specialized services to students with IEPs (e.g., occupational therapists), a so-called “ESY-At-A-Glance,” which will include the ESY goals section from the student’s IEP and prominently display the first three paragraphs of the ESY Services Notice to Parents/Guardians, described below and attached hereto as Exhibit 3. A template for the “ESY-At-A-Glance” will be provided to Plaintiffs within thirty (30) days of the Signatory Date.

B. Notice to Parents/Guardians.

1. ESY Services Notice. The School District will provide a notice (“ESY Services Notice”) containing agreed-upon language to all parents/guardians of students with disabilities advising them of the state law mandate to discuss ESY at every IEP Team meeting and the data used to determine both ESY eligibility and the type, amount, or duration of ESY services for each student on an individualized basis. The notice will advise parents/guardians that ESY must be determined on an individualized basis and that there is no fixed limit on the type, amount, or duration of services determined by the student’s IEP Team. The notice will also advise parents/guardians of their right to request an IEP Team meeting to discuss ESY. This notice will be provided to parents/guardians during the February report card conferences during the first three

school years in which the Settlement Agreement is in effect. The ESY Services Notice to Parents/Guardians to be provided to parents/guardians is attached as Exhibit 3.

2. Bus Transportation Form. The School District's ESY Bus Transportation Form ("Bus Form") will state that the form is used solely to determine whether parents/guardians intend to have their children participate in ESY services and which students need transportation to and from the services provided during the ESY summer schedule. The School District will continue to provide the Bus Form to parents/guardians in February during the report card conferences. The Bus Form to be provided to parents/guardians during the first three school years in which the Settlement Agreement is in effect is attached as Exhibit 4.

3. All notices under Paragraph II.B will be provided in the following languages: English, Albanian, Arabic, Chinese, French, Khmer, Russian, Spanish, and Vietnamese. If the parents'/guardians' native language is not one of these enumerated languages, the School District will provide these notices in the parents'/guardians' native language upon request.

C. **School District's Website**. The ESY Services Notice and the Bus Form will be available on the School District's website. The text on the "Extended School Year Information Page" on the School District's website will be substantially the same as the information in the ESY Services Notice, which is attached as Exhibit 3. In addition, it is the School District's understanding that the Pennsylvania Training and Technical Assistance Network ("PaTTAN") may prepare a webinar on ESY. To the extent such webinar is prepared, the School District will also make PaTTAN's webinar available to parents/guardians on the School District's website.

III. DETERMINATION OF ESY SERVICES

A. The School District shall make individualized determinations for ESY-eligible students of the type, amount, and duration of ESY services based on the student's individual needs. ESY services will not be predetermined or limited to those services that may be provided within the School District's planned ESY summer schedule for students who need additional or different services to receive FAPE.

B. During each IEP Team meeting, SELs (or another School District employee who is a member of the IEP Team) will discuss the individual student's ESY services, including an explanation that the type, amount, and duration of ESY services depend on the individual needs of the student, and are determined by the IEP Team based on the student's skills and behaviors. The SELs (or another School District employee) will document on the IEP that this explanation was provided.

C. At each IEP meeting, the IEP Team shall determine the need and extent of ESY services for students. If any IEP team member recommends that a student receive ESY services that do not fit within the District's typical schedule, an alternative IEP team meeting will be scheduled to determine whether the student requires the additional ESY services and, if so, what those services will be, and the logistics for providing those services.

D. IEPs will document the basis and/or data upon which the student's ESY services were determined.

IV. TRAINING

A. **Special Education Directors ("Sp. Ed. Director")**. Each Sp. Ed. Director will attend two trainings on the provision of ESY services during each school year; one in the Fall and one in the Winter. The School District will use its best efforts to

retain PaTTAN for the purpose of training Sp. Ed. Directors during the first three school years in which the Settlement Agreement is in effect. It is the School District's understanding that PaTTAN has agreed to provide the trainings for at least the first two years of the Settlement Agreement. To the extent PaTTAN is not available, the School District will consult with the Public Interest Law Center and the Parties will make an effort to agree upon an appropriate trainer. PaTTAN will use its ESY training materials, which are attached as Exhibit 5. In addition, during these same trainings, a School District employee will train the Sp. Ed. Directors using the two additional ESY-related PowerPoint slides that are attached hereto as Exhibit 6. The Parties acknowledge that PaTTAN controls its own content and that the Parties may not be able to prevent PaTTAN from revising that content independently. During the first three school years in which the Settlement Agreement is in effect, the Parties agree not to make material changes to Exhibits 5 or 6 or to request that PaTTAN make material changes to these Exhibits, except to revise the materials to be consistent with future changes in federal or state special education laws, regulations or guidance relating to ESY.

B. **Special Education Liaison (“SEL”)**. Each SEL will attend two trainings on the provision of ESY services during each school year; one in the Fall and one in the Winter. The trainings will be conducted by the School District's Sp. Ed. Directors, who will use PaTTAN's training materials and the additional slides which are specific to the School District's ESY services that are attached as Exhibits 5 and 6, respectively. The School District will review the training materials with attendees in a professional and timely manner, and the School District will not complete a training until it has fully explained the contents of the training materials and answered any questions. The Parties acknowledge that PaTTAN controls its own content and that the

Parties may not be able to prevent PaTTAN from revising that content independently. During the first three school years in which the Settlement Agreement is in effect, the Parties agree not to make material changes to Exhibits 5 or 6 or to request that PaTTAN make material changes to these Exhibits, except to revise the materials to be consistent with future changes in federal or state special education laws, regulations or guidance relating to ESY.

C. **School District Employees.** Special education teachers and building administrators will attend two trainings on the provision of ESY services during each school year; one in the Fall and one in the Winter. The trainings will be conducted by the School District's SELs, who will use PaTTAN's training materials and the additional slides which are specific to the School District's ESY services that are attached as Exhibits 5 and 6, respectively. The School District will review the training materials with attendees in a professional and timely manner, and the School District will not complete a training until it has fully explained the contents of the training materials and answered any questions. The Parties acknowledge that PaTTAN controls its own content and that the Parties may not be able to prevent PaTTAN from revising that content independently. During the first three school years in which the Settlement Agreement is in effect, the Parties agree not to make material changes to Exhibits 5 or 6 or to request that PaTTAN make material changes to these Exhibits, except to revise the materials to be consistent with future changes in federal or state special education laws, regulations or guidance relating to ESY.

D. **Parents/Guardians.** The School District will provide trainings twice per year to parents/guardians of students with disabilities about ESY during the first three school years in which the Settlement Agreement is in effect at different locations in the

School District; one in the Fall and one in the Winter. The School District will use its best efforts to retain PaTTAN for the purpose of providing these trainings to parents/guardians. The training for parents/guardians will include PaTTAN's training materials and the additional slides which are specific to the District's ESY services that are attached as Exhibit 5 and 6. To the extent PaTTAN is not available, the School District will consult with PaTTAN to identify an appropriate trainer. The Parties acknowledge that PaTTAN controls its own content and the Parties may not be able to prevent PaTTAN from revising that content independently. During the first three school years in which the Settlement Agreement is in effect, the Parties agree not to make material changes to Exhibits 5 or 6 or to request that PaTTAN make material changes to these Exhibits, except to revise the materials to be consistent with future changes in federal or state special education laws, regulations or guidance relating to ESY.

V. DATA TRACKING

A. The School District will provide to the Public Interest Law Center (the "Law Center") the following data/information in September of each year this Settlement Agreement is in effect, beginning in September 2017:

1. The number of students whose IEP Teams recommended ESY, and the number of students who received ESY services during the planned ESY summer schedule;
2. The number of students whose parents/guardians requested an IEP Team meeting to discuss the type, amount, or duration of ESY services; and the number of such IEP Team meetings;
3. The number of requests for ESY services different in type, amount, or duration than that which was offered through the School District's planned ESY summer schedule; and the number of students who received ESY services different in type, amount, or duration than that which was offered through the School District's planned ESY summer schedule;

4. A random sample of 10% or twenty, whichever is fewer, IEPs (redacted for anonymity) for students whose parents/guardians or another IEP Team member requested ESY services different in type, amount, or duration than that which was offered through the School District's planned ESY summer schedule, but for whom the request was denied;
5. A random sample of 10% or twenty, whichever is fewer, of IEPs (redacted for anonymity) for students who received ESY services different in type, amount, or duration than that which was offered through the School District's provisional ESY schedule;
6. Beginning in the first September following the Effective Date and ending at the End Date, a certification by a representative of the School District that the notices and training required in the Settlement Agreement were provided during the previous 12 months; and
7. The number of administrative complaints filed within the last fiscal year which included a challenge to the type, amount, or duration of ESY services.

B. The data/information will be provided to the Law Center on a confidential basis (not for publication) in connection with resolution of the ESY litigation.

C. Notwithstanding the foregoing, the data may be used in litigation arising out of or related to the enforcement of the Settlement Agreement.

VI. ENFORCEMENT OF SETTLEMENT AGREEMENT

A. **End Date and Court's Jurisdiction.** This Settlement Agreement will be effective until December 31, 2019 (referred to as the "End Date"). During this time period, the United States District Court for the Eastern District of Pennsylvania (the "Court") will maintain continuing jurisdiction for the sole and limited purpose of enforcing the terms of the Settlement Agreement. Such jurisdiction shall automatically terminate effective on the End Date, except that with respect to any enforcement action commenced in accordance with the provisions of Paragraphs VI.B.1 and VI.B.2 prior to the End Date, but remaining open as of that date, such matter shall continue to final

resolution; otherwise, after the End Date, the Court shall be fully and completely divested of jurisdiction with respect to the enforcement of this Settlement Agreement.

B. Alternative Dispute Resolution.

1. If at any time from the execution of this Settlement Agreement through the End Date, either Party has a reasonably justified and colorable grievance regarding compliance with this Settlement Agreement on a District-wide, and not an individualized, basis, that Party shall give written notice to the other Party with a copy to counsel for that Party. The receiving Party shall have sixty (60) days to resolve the alleged concern on the basis described in such grievance and developed through further communication between the Parties.

2. If, after the expiration of such resolution period, either Party is not reasonably satisfied with any proposed action or resolution, the Party may move to enforce the Settlement Agreement. The Court shall apply an appropriate remedy only with respect to the specific matters complained of and no others. The mechanism of enforcement set forth in this Paragraph shall not be used to resolve grievances regarding specific putative named or unnamed class members who may invoke appropriate administrative processes regarding their individual rights.

VII. RELEASE

A. 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, attorneys'

fees, other fees, expenses and/or other amounts, arising out of or relating to this matter, except as specifically outlined herein in Paragraphs VI.A-VI.B and VII.B.

B. Nothing in Paragraph VII.A, or anywhere else in the Settlement Agreement, shall be construed or is intended to mean that any Plaintiff is waiving any right or opportunity to file an individual due process complaint, to enforce the relief ordered by a hearing officer, 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 IDEA, 20 U.S.C. § 1400, *et seq.*, or Chapter 14 of the Pennsylvania Code of Education Regulations, 22 Pa. Code § 14 *et seq.*

VIII. DISMISSAL WITH PREJUDICE

Within three (3) days of the Signatory Date of this Settlement Agreement, Plaintiffs will file the Proposed Order attached hereto as Exhibit 7.

IX. GOVERNING LAW

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

X. ATTORNEYS' FEES AND COSTS

The School District will pay the Law Center, as Plaintiffs' counsel, \$93,000 within forty-five (45) days of the Signatory Date. Plaintiffs' counsel shall not be entitled to any additional fees or costs for monitoring or administering this Settlement Agreement except to the extent it may be a prevailing party in any proceeding to enforce this Settlement Agreement, as provided by federal or Pennsylvania law. With the exception of the amounts set forth in this Paragraph X, the Parties hereto are otherwise each

responsible for the payment of their own respective attorneys' fees, expenses and costs incurred in connection with this matter.

XI. PUBLICIZING THE SETTLEMENT AGREEMENT

Within five (5) business days of the Signatory Date, the Parties will issue the joint press release, attached hereto as Exhibit 8.

XII. ENTIRE AGREEMENT

This Settlement 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 Settlement Agreement.

XIII. AMENDMENT

This Settlement Agreement may not be modified, altered or changed except in writing and signed by all Parties wherein specific reference is made to this Settlement Agreement.

XIV. CONSULTATION WITH COUNSEL

Each Party has consulted with its or their respective counsel regarding the content, meaning and effect of this Settlement Agreement and is executing the Settlement Agreement freely, willingly and upon being fully informed of its or their legal rights, without duress, coercion or otherwise. The Parties hereto agree that this Settlement 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.

XV. SIGNATURES

This Settlement Agreement may be executed in counterparts, any such copy of which to be deemed an original, but all of which together shall constitute the same instrument. A faxed or e-mailed executed copy of the Settlement Agreement shall be deemed an original.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Settlement Agreement has been jointly executed by the Parties and their counsel as follows:

PLAINTIFFS

Dated: _____

Kimberly Williams, individually,
and on behalf of C.H., a minor

Dated: _____

Natalie Wieters, individually, and
on behalf of J.F., a minor

Dated: _____

Larry Freedman, individually, and
on behalf of J.F., a minor

**AS TO PARAGRAPHS VII AND X OF
THE SETTLEMENT AGREEMENT**

Dated: _____

Jeffrey Lerner
Covington & Burling LLP
One CityCenter, 850 Tenth St., NW
Washington, DC 20001-4956

Dated: _____

Jennifer R. Clarke
Executive Director
The Public Interest Law Center
1709 Benjamin Franklin Parkway
2nd Floor
Philadelphia, PA 19103

ON BEHALF OF DEFENDANT

Dated: _____

Natalie Hess
Deputy Chief, Office of Specialized
Services
The School District of Philadelphia

**APPROVED AS TO FORM ON BEHALF
OF DEFENDANT**

Dated: _____

Miles H. Shore
Interim General Counsel
The School District of Philadelphia