

EXHIBIT A

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SETTLEMENT AGREEMENT AND RELEASE

BY THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as the "Agreement"), made between E [REDACTED] K [REDACTED] (hereinafter referred to as the "Student"), a minor by and through her parents and legal guardians, A [REDACTED] F [REDACTED] who resides at [REDACTED] 10/17/07 TK
 [REDACTED] and T [REDACTED] K [REDACTED] who resides at [REDACTED] [REDACTED] (hereinafter referred to collectively as the "Parents" and hereinafter referred to collectively with the Student as the "Plaintiffs"), and the Parents, individually and on their own behalf, and the Easton Area School District (hereinafter referred to as the "District" and hereinafter referred to collectively with the Defendants as the "Parties"), located at 1801 Bushkill Drive, Easton, Pennsylvania 18040-8186, the Parties, intending to be legally bound, hereby declare that, in settlement of any and all outstanding claims of any kind, whether or not known, including but not limited to attorneys' fees and costs, any and all expert witness fees and costs, evaluations, and any other costs, expenses, charges, obligations or liabilities, including liability for damages of any kind whatsoever, including but not limited to compensatory education and compensatory damages, from the beginning of time through and including August 26, 2007, and in order to avoid continued disputes and litigation which have arisen between the Parties, the Parties make the following agreements:

DISMISSAL OF LAWSUITS

1. The Plaintiffs agree to dismiss with prejudice all legal proceedings, whether judicial or administrative, which they and/or anyone on behalf of the Student have instituted or caused to be instituted against the District, John Merlo, individually

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and in his official capacity, and/or any of the District's officers, directors, employees, agents, attorneys, and insurers, specifically including the lawsuits captioned *E. [REDACTED] K., et al. v. Easton Area School District, et al.*, which was originally filed in the United States District Court for the Eastern District of Pennsylvania as Civil Action Number 2:06-cv-03592 (hereinafter referred to as the "Plaintiffs' Lawsuit") and *Easton Area School District v. E. [REDACTED] K., et al.*, which was originally filed in the United States District Court for the Eastern District of Pennsylvania as Civil Action Number 2:06-cv-03644 (hereinafter referred to as the "District's Lawsuit"), which were subsequently consolidated together under Civil Action Number 2:06-cv-03592, and all of the specific claims, allegations and assertions asserted in the Plaintiffs' Lawsuit and the District's Lawsuit.

2. The District agrees to dismiss with prejudice all of the specific claims, allegations and assertions asserted against the Plaintiffs in the Plaintiffs' Lawsuit and the District's Lawsuit.

WAIVERS AND RELEASES

3. The Plaintiffs hereby acknowledge and affirm that by consenting to this Agreement and accepting from the District the consideration defined in Paragraph Ten (10) of this Agreement, as well as the other obligations of this Agreement, the Plaintiffs hereby waive all rights and claims for the Student, her heirs, estate, executors, administrators and representatives, successors and assigns, attorneys

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and any other persons or entities who may claim through her, as well all rights and claims for the Parents individually and on their own behalf, against the District, John Merlo and/or the District's officers, directors, employees, agents, attorneys, and insurers that Plaintiffs might otherwise have, whether or not known, pursuant to the Individuals with Disabilities Education Act (hereinafter referred to as the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and its implementing regulations, 34 C.F.R. Part 300, Section 504 of the Rehabilitation Act of 1973 (hereinafter referred to as "Section 504"), 29 U.S.C. § 794, and its implementing regulations, 34 C.F.R. Part 104, the Americans with Disabilities Act of 1990 (hereinafter referred to as the "ADA"), 42 U.S.C. §§ 12101-12213, Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983, and any other state or federal law, including the right to attorneys' fees and costs, any and all expert witness fees and costs, evaluations, tuition reimbursement, and any other costs, expenses, charges, obligations or liabilities, including liability for damages of any kind whatsoever, including but not limited to compensatory education and compensatory damages, or any other form of equitable or monetary relief, from the beginning of time through and including August 26, 2007; provided, however, that nothing in this Agreement shall preclude claims or demands directly related to the implementation of this Agreement. Likewise, the Defendants hereby acknowledge and affirm that by consenting to this agreement, they are hereby waiving all rights and claims against Plaintiffs whether known or unknown from the beginning of time through the date of execution of this Agreement by the

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parties; provided, however, that nothing in this Agreement shall preclude claims or demands directly related to the implementation of this Agreement.

4. The Parties and Lisa Spitale, Esquire, acknowledge, as evidenced by their signatures on Page 13 of this Agreement, that the waivers and releases provided by Plaintiffs in this Agreement also include a full waiver and release of any claims that could have been asserted by Lisa Spitale, Esquire, on behalf of the Student during her appointment as guardian *ad litem* for the Student pursuant to the Order of the Court of Common Pleas of Northampton County, dated March 16, 2007.
5. This Agreement settles all disputed issues of fact and law between the Parties and Lisa Spitale, Esquire, from the beginning of time through and including August 26, 2007.
6. In no way should entering into this Agreement be considered or deemed to constitute an admission of fault, liability or wrongdoing by the District, John Merlo and/or the District's officers, directors, employees, agents, attorneys, and insurers for any alleged actions and/or allegations asserted by the Plaintiffs, including any of the facts alleged and/or allegations asserted in the Plaintiffs' Lawsuit and/or the District's Lawsuit. The District is not admitting liability and/or admitting to any of the facts and/or allegations contained in the Plaintiffs' Lawsuit and/or the District's Lawsuit. Moreover, nothing in this Agreement shall be deemed to establish a policy, practice, or custom of the District concerning the provision of special education and related services.

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GUARDIAN AD LITEM

7. The Parties hereby acknowledge the federal court appointment of Marcie Romberger, Esquire, as the Student's guardian *ad litem* for any and all decisions pertaining to the Student's education for the duration of the Student's enrollment in the District and for the duration of the Third Party Education Trust referred to in Paragraph Ten (10) of this Agreement. The federal court appointment of Marcie Romberger, Esquire, as the Student's guardian *ad litem* is evidenced by and further explained in the attached Order issued by the Honorable Timothy R. Rice, attached hereto as Exhibit A.
8. The Parties acknowledge that the Order issued by the Honorable Timothy R. Rice, attached hereto as Exhibit A, shall specifically conclude the duration of the state court appointment of Lisa Spitale, Esquire, as the Student's guardian *ad litem*.
9. The Parties acknowledge that Lisa Spitale, Esquire, and Marcie Romberger, Esquire, shall be paid for their services as the Student's guardian *ad litem* at a rate of One Hundred Dollars (\$100.00) per hour from the funds in the Third Party Education Trust referred to in Paragraph Ten (10) of this Agreement upon their submission of a substantiating invoice to the Trustee as described in Paragraph Eleven (11) of this Agreement.

PAYMENTS

10. In full and complete settlement of all claims, disputes, or demands that have or could have arisen between the Plaintiffs and the District, John Merlo and/or the

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District's officers, directors, employees, agents, attorneys, and insurers, including claims for compensatory education, tuition reimbursement, evaluations, monetary damages, attorneys' fees and costs, and any other such claims, from the beginning of time through and including August 26, 2007, the District agrees:

- a. to pay the law office of Murphy & Murphy, P.C., an additional Twelve Thousand Dollars (\$12,000.00) within thirty (30) days of court approval of this Agreement as complete reimbursement for [REDACTED] attorneys' fees incurred by Angela Uliana-Murphy, Esquire, in this matter, which is intended to be in addition to the Twelve Thousand Dollars (\$12,000.00) the District previously disbursed to Ms. Murphy pursuant to the Parties' February 7, 2006 Joint Settlement Stipulation;
- b. to pay the law office of Gross, McGinley, LaBarre & Easton, LLP, Six Thousand Dollars (\$6,000.00) within thirty (30) days of court approval of this Agreement as complete reimbursement for [REDACTED] attorneys' fees incurred by Raymond DeRaymond, Esquire, in this matter;
- c. to pay Elizabeth Kapo, Esquire, an additional Seventy Five Thousand Dollars (\$75,000.00) within thirty (30) days of court approval of this Agreement as complete reimbursement for [REDACTED] attorneys' fees incurred in this matter, which is intended to be in addition to the Twenty Five Thousand Dollars (\$25,000.00) the District previously disbursed to Ms. Kapo pursuant to the Parties' February 7, 2006 Joint Settlement Stipulation;

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- d. as the Grantor, to establish a Third Party Education Trust (hereinafter "Trust"), attached hereto as Exhibit B, for the sole benefit of the Student to ARC Community Trust of Pennsylvania (hereinafter "Trustee"), who shall serve as the Trustee, within thirty (30) days of court approval of this Agreement;
- e. to deposit an initial check for One Hundred Twenty Seven Thousand Five Hundred Dollars (\$127,500.00) into the Trust within thirty (30) days of court approval of this Agreement;
- f. to deposit a second and final check for One Hundred Twenty Seven Thousand Five Hundred Dollars (\$127,500.00) into the Trust no later than October 20, 2008;
- g. the total amount deposited by the District into the Trust shall not exceed the sum of Two Hundred Fifty Five Thousand Dollars (\$255,000.00);
- h. any and all monies deposited by the District into the Trust shall be managed, administered and disbursed by the Trustee;
- i. any and all monies disbursed by the Trustee from the Trust must be for direct payment or reimbursement of documented "legitimate educational expenses," as defined within Paragraph Eleven (11) of this Agreement and within Article III, Section 3.02 of the Trust, that are for the sole benefit of the Student and are specifically sought by Marcie Romberger, Esquire, as the court appointed guardian *ad litem* of the Student, as described in the Order attached hereto as Exhibit A;

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- j. the total payments and reimbursements for "legitimate educational expenses" disbursed by the Trustee for the benefit of the Student shall not exceed the balance available in the Trust at any given time;
 - k. the terms of the Trust shall fully comport with the terms of this Agreement and the Order attached hereto as Exhibit A. In the event that any term contained in this Agreement is found to be inconsistent with any term contained in the Trust document, the terms of this Agreement shall be controlling; and
 - l. the Trust shall expire and be terminated by the Trustee in the event that the Student should become deceased before the entire principal of the Trust has been funded by the District, disbursed by the Trustee or expended by the Student, and, upon the termination of the Trust, any remaining principal of the Trust shall revert to the District as the sole contingent beneficiary of the Trust.
11. "Legitimate education expenses," as defined in Article III of the Trust, are defined as actual financial expenses directly incurred by the Student's guardian *ad litem* on or after the date of the Parties' full execution of this Agreement, intended to address the Student's educational needs, meaning those requisite items, products or services that can be provided to the Student to support the development of her full educational potential, including special education instruction, transition services, and/or remedial tutoring provided by certified teachers or instructors or in licensed facilities or programs, planned educational courses of instruction,

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including post-secondary education, offered through accredited or licensed facilities, institutions or programs, educational software/hardware, books, texts, materials, computer equipment and other assistive technology; related services as defined in the regulations implementing the IDEA, educational evaluations and consultative services provided by licensed facilities, programs or related service providers, behavioral therapy/services offered by appropriately certified or licensed providers or in licensed facilities or programs; the costs and fees for Lisa Spitale, Esquire, in her capacity as the Student's guardian *ad litem* pursuant to the March 16, 2007 Order of the Court of Common Pleas of Northampton County, the costs and fees for Marcie Romberger, Esquire, in her capacity as the Student's current and future educational guardian *ad litem* pursuant to the Order attached hereto as Exhibit A, and any necessary costs of transportation in relation to securing such legitimate educational services for the Student. "Legitimate educational expenses" shall not include any payment to the Plaintiffs, or any other relative by blood or marriage, payments for the support and maintenance of the Student, including payments for services, programs and/or equipment required solely for medical or rehabilitative needs, activities intended for personal enrichment not directly related to a specific educational need, vehicles of any sort; leisure travel, living expenses, food and clothing; costs incurred which are primarily for purposes of entertainment, including recreational activities such as but not limited to attendance at amusement parks, movies, vacations, and recreational equipment primarily for the use or participation in recreational

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activities, and/or any sort of legal fees and costs. The obligation of the Trustee to make direct payments to service providers and/or vendors and/or reimbursements in accordance with this Agreement shall be contingent upon the Student's educational guardian *ad litem* providing substantiating documentation from the service provider and/or vendor of a "legitimate education expense" to the Trustee, consisting of a billing statement on professional or business letterhead that includes the name, address, phone number and hourly rate and/or cost of the service provider and/or detailed invoice of costs from the vendor and the type and amount of services and/or material/equipment provided to the Student for which payment is sought, and, in the case of requests for reimbursement to the Student's educational guardian *ad litem*, the educational guardian *ad litem* must additionally provide a substantiating bank or credit card statement, copy of a processed check or similar evidence of payment by the educational guardian *ad litem*.

12. Nothing in this Agreement shall constitute acknowledgement by the District that any of the programs, services, materials, or equipment for which payment or reimbursement is made under Paragraphs Ten (10) and/or Eleven (11) of this Agreement constitutes part of a free and appropriate public education for the Student, nor establishes an interest in the continued provision of such programs, services, materials, or equipment beyond the point at which the provider thereof is unwilling or unable to continue or the funds available under the terms of this Agreement are exhausted, whichever is sooner.

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ACKNOWLEDGEMENTS

13. The Parties, by signing this Agreement, acknowledge and agree that:
- a. this Agreement constitutes the entire agreement and understanding between the Parties, and this Agreement replaces and rescinds any and all previous or contemporaneous administrative awards or rulings and agreements or understandings between the Parties whether written or oral, specifically including the Parties' February 7, 2006 Joint Settlement Stipulation;
 - b. this Agreement may only be modified by mutual agreement of the Parties in writing;
 - c. no party to this Agreement, or anyone of their behalf, including but not limited to the Student's guardian *ad litem*, shall have any power or authority to amend, modify, alter, revoke or terminate the Trust for any reason, other than the specific termination event(s) agreed to herein this Agreement, without first obtaining written mutual consent from both the District and the Student's guardian *ad litem*;
 - d. this Agreement is to be interpreted in the broadest terms in favor of a mutual release so as to avoid future litigation between the Parties, including, but not limited to, any claim for wrongful use of civil proceedings, or any other similar statute, rule or common law tort, arising out of this litigation;

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- e. the Parties understand the terms of this Agreement, including the waivers and releases that forever discharge the District and its officers, directors, employees, agents, attorneys, and insurers from any claim by the Plaintiffs and/or Lisa Spitale, Esquire, from the beginning of time through and including August 26, 2007;
- f. the Parties have had an opportunity to and did review this Agreement, including the waivers and releases, with their respective attorneys, received an adequate explanation from their respective attorneys of the terms and obligations described by this Agreement, understand the meaning and effect of all of the terms of this Agreement and are satisfied with the representation and advice they have received from their attorneys;
- g. the Parties have had sufficient time to consider the terms and obligations described by this Agreement, and the entry into and execution of this Agreement is voluntary and of the Parties' own free will, without compulsion of any kind and no promise or inducement not expressed herein has been made to the Parties; and

GOVERNING LAW

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

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ENFORCEMENT

- 15. The Parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the Parties allege a breach of this Agreement.
- 16. The United States District Court for the Eastern District of Pennsylvania will retain jurisdiction to enforce the terms of this Agreement.

CAUTION: READ THIS ENTIRE AGREEMENT, WHICH CONSISTS OF SIXTEEN (16) PARAGRAPHS, BEFORE SIGNING YOUR NAME(S) BELOW.

PLAINTIFFS:

[Redacted Signature]
 [Redacted], a minor by and through
 her parent A [Redacted] and A [Redacted]
 individually and on her own behalf

Date: 10/22/2007

[Redacted Signature]
 [Redacted], a minor by and through
 her parent T [Redacted] and T [Redacted]
 K [Redacted] individually and on his own behalf

Date: 10/17/07

[Redacted Signature]
 [Redacted] by and through her
 guardian *ad litem* Lisa Spitale, Esquire

Date: 10/22/07

DEFENDANTS:

[Handwritten Signature]
 Authorized Representative of
 Easton Area School District

Date: 11-15-07

[Handwritten Signature]
 John Merlo

Date: 11-12-07