

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made and entered into on the 28th day of August, 2020, by and between (among):

**"Claimant":** Michael and Fani Kirschner, on their own behalf and as Parents and Guardians of their minor sons, L.K. and N.K.

**"Insured":** Orange City School District Board of Education ("the Board")

**"Insurer":** The Ohio School Plan

All of whom shall collectively be referred to herein as the "Parties."

### **RECITALS**

A. In March, 2020, the Board became aware, for the first time, that certain properties located on North Pointe Dr, Pepper Pike, Ohio, were located in the territory of the Beachwood City School District Board of Education ("Beachwood") and not the Board's territory.

B. Upon investigation and consultation with the Cuyahoga County Auditor, Orange learned that the properties were incorrectly listed on the Cuyahoga County Auditor's Geographic Information System as assigned to the Board's territory and that this occurred when the County incorrectly adjusted the school district boundary following construction of Interstate 271.

C. Prior to the determination that the above-mentioned properties were not located within the Board's territory, Claimant's two minor children were enrolled in and attended the Board's schools.

D. Claimant had filed a lawsuit against the Insured styled *Michael and Fani Kirschner, et al. v. Orange City School District Board of Education, et al.* in the Cuyahoga County Common Pleas Court, Case No. CV 20 936487 (hereafter alternatively referred to as "Claim," "Lawsuit," or "Litigation") to permit the continued enrollment of his two minor children in the Board's schools for the 2020-2021 school year during the pendency of Claimant's territory transfer petition under Ohio Revised Code Section 3311.24.

E. The Claimant desires to completely dispose of all claims, actions and causes of action, whether legal or equitable, which he may have against the Releasees from the beginning of the world to the date of this Agreement related to the matters set forth in these Recitals and the Lawsuit.

F. The Parties desire to enter into this Settlement Agreement in order to provide for the valuable consideration set forth herein the sufficiency of which is hereby

acknowledged, in full settlement and discharge of all claims upon the terms and conditions set forth herein.

G. It is understood and agreed that this Settlement and the provisions hereof do not constitute, are not intended to be, and shall not be taken as, admissions of liability by the Insureds, either with respect to the claims and subject matter of the Litigation or otherwise, and that this Agreement is made simply as a compromise of disputed claims to avoid the expense, uncertainty, and inconvenience of protracted litigation of Claimant's allegations and claims.

H. The releases made and given herein have been made and given without reliance upon any statement or representation of the Parties hereto, except for the express representations and warranties contained herein.

## **AGREEMENT**

The parties hereto understand and agree as follows:

### **1. RELEASE AND DISCHARGE**

1.1 In consideration of the Board's permitting Claimant's two minor sons to attend school in the Orange City School District for the 2020-2021 school year only and other good and valuable consideration, the Claimant for themselves, on their own behalf and as Parents and Guardians of their minor sons, L.K. and N.K., do hereby irrevocably and unconditionally waive, release, acquit, and forever discharge the Orange City School District Board of Education (including past and present elected and appointed officials in their individual and official capacities) and, any and all past or present officials, agents, and employees agents, or officials including, but not limited to Lynn Campbell (in both his individual and official capacities), the Ohio School Plan, together with its' parents, subsidiaries, affiliates, administrators (including but not limited to HAS Claims Service, Inc.), employees, principals, agents, attorneys, officers, directors, predecessors, successors and assigns (collectively referred to herein as the "Releasees"), of and from any and all liability, claims, demands, charges, complaints, controversies, actions, causes of action, and suits at law or in equity, of any kind or nature whatsoever, known or unknown, asserted or unasserted, suspected or unsuspected, including without limitation any claim which was or could have been raised by Claimant in a court of law or any other forum, and any claim under any local, state or federal statute, and any claim under any other statutory, administrative, constitutional, contractual, tort, public policy, common law or other legal or equitable theory whatsoever, which Claimant at any time heretofore had or claimed to have had or which Claimant may have or claim to have regarding any matter as of the date of this Settlement Agreement related to the matters set forth in the Recitals above and the Lawsuit.

This Release by Claimant includes the complete and total satisfaction of any claims Claimant may have had against the Insured(s) including without limitation claims for personal injuries, mental anguish, emotional distress, wage loss, lost benefits, loss of income, loss of services, loss of consortium, pre-judgment and post-judgment interest,

post-settlement interest, general damages, liquidated damages, exemplary/punitive damages, compensatory damages, consequential damages, any and all claims based upon the Sunshine Law, R.C. § 121.22, public records laws, R.C. §§ 149.43 and 149.351, 20 U.S.C. §§ 1400 *et seq.* (the Individuals with Disabilities Education Improvement Act), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), the Americans with Disabilities Act (42 U.S.C. § 12101), Ohio Revised Code Chapter 3323, other civil rights laws, regulations that implement the above-referenced statutes, the U.S. Constitution and Ohio Constitution, 42 U.S.C. §§ 1983, 1985 and/or 1988, the First, Fifth, and Fourteenth Amendments to the U.S. Constitution, the rights to free speech, to petition the government for redress of grievances, to due process, to equal protection, to failure to properly investigate and/or train, ratification of or acquiescence in unconstitutional conduct, maintenance of an unconstitutional custom, policy or practice, discrimination, missed days of school, the residency issue, the Board's declination of the Superintendent's agreement, abuse of process, infliction of emotional distress, defamation, and expenses including but not limited to attorney fees and costs, together with any and all other loss, damage, and claim of every kind, nature, and description, resulting from or hereinafter resulting from the acts and omissions of the Releasees related to the matters set forth in the Recitals above and Lawsuit.

1.2 This Release, on the part of the Claimant shall be a fully binding and complete settlement between and among the Claimant, the Insured, and the Insurer, its assigns and successors.

1.3 Claimant further specifically covenants and agrees that neither they, nor anyone on their behalf, will sue the Insured or any of the aforementioned persons released herein with respect to any claim, matters, or issues covered by the foregoing Release, including without limitation any claim relating to or arising from the facts underlying the litigation.

1.4 The Claimant acknowledges and agrees that the release and discharge set forth above is a general release. Claimant expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Claimant does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Claimant's decisions to enter into this Settlement Agreement. The Claimant further agrees that Claimant has accepted the consideration specified herein as a complete compromise of matters involving disputed issues of law and fact. Claimant assumes the risk that the facts or law may be other than Claimant believes.

## **2. SETTLEMENT**

2.1 The Claimant will pursue and prosecute, to the fullest extent, the pending territory transfer with the Ohio State Board of Education. This includes, but is not limited to, compliance with all necessary deadlines and any other obligations set forth in Ohio Revised Code Section 3311.24, and related sections of the Ohio Administrative Code, regarding the transfer of school district territory. The Claimant will attend and participate in all scheduled hearings, meetings, or other occasions requiring such attendance and

participation, as necessary to prosecute the territory transfer. Claimant will further make timely submissions of all documents and other evidence as required by statute, regulation, rule, and/or order of the Ohio State Board of Education in relation to the territory transfer process.

2.2 The Claimant's two sons will be enrolled in Orange for the 2020-2021 school year to allow the pending territory transfer to be processed to its completion, as set forth in Section 2.1.

2.3 If the territory transfer process is not complete or is unsuccessful, the students will be unenrolled from Orange at the conclusion of the 2020-2021 school year, will not be enrolled in Orange for the 2021-2022 school year, and will not be permitted to enroll in Orange for the 2021-2022 school year, provided the family does not change their residence and move into the Orange City School District and provide all required evidence of such a move.

2.4 The students will only be permitted to enroll in Orange for the 2021-2022 school year if the territory transfer process is successful or the family changes its residence and moves into the Orange City School District.

2.5 The Board makes no representations regarding the eligibility of any of the students to participate in any interscholastic athletics or other interscholastic competition as a result of the proposed settlement.

2.6 Relative to the Board, its members, and Superintendent Campbell, Claimants represent that there are no pending claims with any court (except the Lawsuit referenced herein), or any governmental agency, including but not limited to Ohio Department of Education and/or the U.S. Department of Education Office for Civil Rights.

### **3. ATTORNEY'S FEES/DISMISSAL OF LITIGATION WITH PREJUDICE**

Other than expressly provided herein, each party hereto shall bear all attorney's fees, expenses and costs arising from the actions of its own counsel in connection with the Complaint, this Settlement Agreement and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters. The Claimant further agrees that their attorney, Jeremy Tor, is authorized to stipulate to the dismissal of Cuyahoga County Common Pleas Court, Case No. CV 20 936487, with prejudice.

### **4. NO ADMISSION**

Nothing contained herein shall constitute, be deemed to be, or construed as, an admission of liability by the Parties herein with respect to the claims and subject matter of the Litigation or otherwise. This Agreement shall not be used by the Parties in any administrative or judicial proceeding; provided, however, that nothing contained herein shall prejudice in any manner the right of the Parties to prove and enforce this Agreement.

## **5. REPRESENTATIONS OF COMPREHENSION OF DOCUMENT**

In entering into this Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Claimant by their attorneys and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by them.

## **6. WARRANTY OF CAPACITY TO EXECUTE SETTLEMENT AGREEMENT AND SUCCESSORS IN INTEREST**

The Claimant represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in the Settlement Agreement except as otherwise set forth herein and that the Claimant has the sole right and exclusive authority to execute this Settlement Agreement, and that the Claimant has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

## **7. ENTIRE AGREEMENT**

This Agreement: (1) constitutes the entire agreement between and among the Parties with respect to the subject matter hereof and supersedes any prior agreements, understandings, conditions, representations, or warranties, whether oral or written, with respect to the subject matter hereof; (2) may not be explained or supplemented by evidence of consistent additional terms or contradicted by evidence of any prior contemporaneous agreement. The Claimant further states that they have not relied on, nor have they been induced to execute this Agreement by any statements or representations, agreement or provisions, oral or written, made by anyone other than those expressly contained in the Agreement. Further, this Agreement may not be modified except by a writing signed by each of the Parties hereto.

## **8. SEVERABILITY/ GOVERNING LAW**

If any portion of this Settlement Agreement is held invalid by operation of law, the remaining terms of this Settlement Agreement shall not be affected. This Settlement Agreement shall be construed and interpreted in accordance with Ohio law.


## **9. ADDITIONAL DOCUMENTS**


This Settlement Agreement and any number of counterparts may be signed with the same effect as if the signatures to each counterpart were a part of the same instrument. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

**10. EFFECTIVENESS**

This Settlement Agreement shall become effective following the execution by the Claimant and Insured. We further state that we have carefully read the foregoing Settlement Agreement and Release and know the contents thereof and we sign the same as our own free act.

EXECUTED THIS 28<sup>th</sup> DAY OF AUGUST, 2020.

  
\_\_\_\_\_  
Michael Kirschner, Claimant

  
\_\_\_\_\_  
Fani Kirschner, Claimant

FOR THE BOARD:

\_\_\_\_\_  
Lynn Campbell, in his official capacity as  
Superintendent for the Board