

ATTACHMENT #5 - August 15, 2023

Specialized Education Of Pennsylvania, Inc.
INDIVIDUAL STUDENT TUITION AGREEMENT

2023-2024 RSY

With Warwick School District

This Individual Student Tuition Agreement (“Agreement”) is effective on August 22nd, 2023 (“Effective Date”), between Specialized Education Of Pennsylvania, Inc. (“SESI”) that owns and operates Capital Academy, an approved private special education school in Pennsylvania and Warwick School District, 301 W. Orange St., Lititz, Pennsylvania 17543 (referred to herein as “District,” even in instances where the counterparty refers to itself as “Board”).

WHEREAS, SESI owns and operates Capital Academy that serves students with a wide range of special education classifications, primarily students with emotional disabilities and especially students with multiple disabilities (the “School”); and

WHEREAS, the District desires to refer a student to the School; and

WHEREAS, the parties have agreed to memorialize the terms and conditions for such referral as set forth in this Agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the covenants contained herein, the parties agree as follows:

1. **Services.** The District agrees to enroll (hereinafter “Student”) in the School in accordance with the terms of the Student’s Individualized Educational Program (“IEP”) (collectively the “Services”) beginning on the Enrollment Date.
2. **Term and Termination.** The term of this Agreement is from August 22nd, 2023 to June 5th, 2024 unless otherwise extended in writing by the parties (“Term”). Either party, upon fifteen (15) days written notification to the other party, may terminate this Agreement at any time. For billing purposes, SESI will charge Tuition up to and including the date of Student withdrawal from the Program.
3. **Distance Learning.** When due to government or District mandated actions (directly or through its board of education) preventing SESI from conducting in-person classes, SESI may deliver, in consultation with the District, the Services, in whole or in part, via distance learning to the extent practicable, using programs, systems, teaching techniques, diagnostic tests, evaluation, academic courses and materials adapted for distance learning at the level of service reasonably practical under the same circumstances, at the fees, rates and payment schedules as set forth in this Agreement.
4. **Student Services.** The District or its designated representatives will have the right to general supervision of the Services, the right to approve such Services and the right to make changes to the Services in accordance with the terms of the Student’s IEP. SESI will maintain records of the Services provided to the Students, invoices issued to the District and payments made to SESI during the term of this Agreement. Such records

will be consistent with any guidance or standards developed by the Pennsylvania Department of Education. SESI employees have the requisite skill, expertise and knowledge necessary to perform the Services required under the terms of this Agreement. Provided however, during the national and state teacher shortages SESI may use substitute teachers to perform the Services until SESI fills such teacher vacancies. SESI will allow the District or the Pennsylvania Department of Education to conduct announced and unannounced site visits and to review all documents relating to the provision of special education services to the Students during hours that are least disruptive to the daily operation of the School.

5. Compliance with Laws. Compliance with Laws. SESI represents it complies with applicable laws and regulations governing the Services including student privacy laws including the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). The School is non-public and maintains licenses and certifications as required by Pennsylvania law.
6. Background Checks. SESI represents that it and its employees who are assigned to perform the Services set forth in this Agreement meet the hiring requirements for school-based employees as required by
7. Student Progress Reports. SESI will make available to the District or its representatives all progress and evaluative reports as required by the Student's IEP.
8. Fees. During the Term, the District agrees to pay SESI tuition and fees for related services for the Student-specific Services as set forth in the attached Schedule 1 (hereinafter collectively referred to as "Tuition") calculated based upon the requirements of the Student's IEP. If the referred Student's IEP requirements are changed during the Term, the Services, described herein will be revised to reflect such IEP changes and are incorporated herein by reference as of the date the School is notified by the District and a copy of the approved and revised IEP, by the District and Student parent/guardian, is provided to the School.
9. Invoicing and Payment. Tuition will be invoiced on a monthly basis by the fifteenth (15) day of the following month in which services were provided. All invoices are due and payable within thirty (30) days of receipt. The District agrees to pay SESI the Tuition during the Term regardless of the actual attendance of the Student.
10. Force Majeure. Neither party will be liable to the other party hereunder or in default under this Agreement for failures of performance resulting from acts or events beyond the reasonable control of such party, including, by way of example and not limitation, acts of God, disease outbreak or widespread illness, electronic computer virus, civil disturbances, war, and strike.
11. Indemnification and Limitation of Liability. To the extent permitted under law:
 - a. District agrees to indemnify SESI and its officers, directors and employees ("SESI Indemnitees") against and from Claims (defined below) asserted by third

parties for direct costs, expenses (including reasonable attorney's fees), damages, injury or loss ("SESI Losses") to which SESI may be subjected by reason of gross negligence or willful misconduct of District, its officers, directors or employees; provided however, SESI Indemnitees may not seek indemnification from District for any SESI Losses caused, in whole or in part, by the acts or omissions of SESI, its officers, directors and employees.

- b. SESI agrees to indemnify District and its officers, directors and employees ("District Indemnitees") against and from Claims (defined below) asserted by third parties for direct costs, expenses (including reasonable attorney's fees), damages, injury or loss ("District Losses") to which District may be subjected by reason of gross negligence or willful misconduct of SESI, its officers, directors or employees; provided however, District Indemnitees may not seek indemnification from SESI for any District Losses caused, in whole or in part, by the acts or omissions of the District, its officers, directors and employees.
 - c. **Claims.** If a claim for indemnification (a "Claim") is to be made by a party entitled to indemnification hereunder against the indemnifying party, the party claiming such indemnification will give written notice (a "Claim Notice") to the indemnifying party as soon as practicable after the party entitled to indemnification becomes aware of any fact, condition or event which may give rise to damages for which indemnification may be sought under this Section. Such Claim Notice will specify the nature and amount of the Claim asserted, if actually known to the party entitled to indemnification hereunder. If any lawsuit or enforcement action is filed against any party entitled to the benefit of indemnity hereunder, written notice thereof will be given to the indemnifying party as promptly as practicable and in any event within fifteen (15) days after the service of the citation or summons. Subject to the limitations of this Section, the failure of any indemnified party to give timely notice hereunder will not affect rights to indemnification hereunder, except to the extent that the indemnifying party demonstrates actual damage caused by such failure.
 - d. Notwithstanding any other provision, the total liability of SESI for all claims under this Agreement is limited to the total amount of fees paid to SESI under this Agreement. Neither SESI nor the District will in any event be liable for any indirect, consequential, or punitive damages, even if SESI or District have been advised of the possibility of such damages.
12. Disputes and Investigations. In the event that any action, suit, proceeding or investigation relating hereto or to the transactions contemplated by this Agreement is commenced, the parties hereto agree to immediately notify each other in writing of the pending action, suit, proceeding or investigation, and to cooperate to the extent possible to defend against and respond thereto and make available to each other such personnel, witnesses, books, records, documents or other information related to the Services and that are reasonably necessary or appropriate for such defense. In the event any dispute arises out of this Agreement, the parties will seek to resolve the dispute as expeditiously

as possible. Except as may be set forth herein, the interests of the referred Student shall be of the foremost concern in resolving such disputes.

13. Non-Assignment. No assignment of this Agreement or of any duty or obligation or performance or payment hereunder, will be made by either party, in whole or in part, without the prior written consent of the other party, which consent will not be unreasonably withheld, except that SESI may assign this Agreement or any duty or obligation or performance or payment hereunder to a subsidiary or affiliate of SESI or any entity acquiring all or substantially all of the stock, equity or assets of SESI.
14. Notice. Any notice required to be given under the provisions to this Agreement will be in writing and will be duly served when it is hand delivered to the addresses set out below, or is deposited, duly registered or certified, return receipt requested, in a United States Post Office, or via overnight delivery, to the party at the following addresses:

For the District	For SESI
Warwick School District 301 W. Orange St., Lititz, Pennsylvania 17543 Attention: Megan Demianovich	Specialized Education Of Pennsylvania, Inc. PO Box 444 Elmsford, NY 10523. Attention: Rondale King With a copy to SESI General Counsel at the address above.

Any party may designate a different address by giving the other party thirty (30) days prior written notice in the manner provided above.

15. Governing Law. This Agreement is intended to be construed, interpreted, and governed by the laws of Pennsylvania.
16. School Lunch. When the District has an enrolled student in an out-of-District placement, the District remains responsible for ensuring that lunches are available to the student even if the approved special education school does not participate in the National School Lunch Program. The same principle of access to meals applies if a student with disabilities would have been eligible to participate in a school breakfast program at the school the student would have attended if the student had not been placed out-of-District. Documentation related to free or reduced price meal benefits, including meal benefit applications, must be maintained by the District or approved private special education school claiming meal reimbursement. Approved private special education schools and collaboratives will review the free and reduced lunch student list with the District annually including the availability of meals to students who are publicly funded and placed at their facilities. If a school does not provide access to meals, approved special education school or collaborative leaders must contact the District to discuss arrangements that may be made to meet their mutual responsibility.
17. Independent Contractor. The relationship between the District and SESI will be that of principal to independent contractor, and the employees of one will not be deemed employees of the other for any purpose whatsoever. Each party will maintain during the

term of this Agreement such disability and worker's compensation insurance for its respective employees and staff as is required by law. Each party will indemnify and hold harmless the other against any claim or demand made by employees or staff of the indemnifying party against the other based on rights or privileges applicable to employees of the other. Each party will be solely responsible for the hiring, training, and termination of its own employees and contractors.

18. Entire Agreement. This Agreement includes all exhibits and Student Enrollment Form which may be referred to herein, all of which are attached hereto and hereby incorporated by reference. This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous oral and written agreements and statements, all of which have been fully integrated herein. This Agreement also supersedes any course of conduct, performance or dealing between the parties. No amendment or modification changing this Agreement's scope or terms will have any force or effect unless executed and delivered in writing and signed by all parties.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be duly executed as of the Effective Date above.

Warwick School District

Name:
Title:
Date:

Specialized Education Of Pennsylvania, Inc.

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Name:
Title:
Date:

Schedule 1
TUITION FOR INDIVIDUAL STUDENT AGREEMENT
EFFECTIVE: August 22nd, 2023

RSY for 2023-2024 School Year at Capital Academy

This Enrollment Form sets out the Fees, Services and frequency of Services for (the “Student”) referred by Warwick School District to be enrolled in Capital Academy (“School”) consistent with his or her Individualized Educational Program (“IEP”) and in accordance with the terms of the attached Agreement.

The District agrees to pay SESI Tuition, Transportation and Transportation 1:1 Fees, as applicable, during the Term regardless of the actual attendance of the Student.

Capital Academy – Alternative Education Enrollment

Tuition: \$173.00 per day enrolled

Enrollment Schedule

Enrollment in the School and Services to be provided to the Student are in accordance with their IEP and this Schedule shall be effective from August 22nd, 2023 through June 5th, 2024. If the Referred Student’s IEP changes during the School Year, the Services and frequency listed below will be revised and incorporated herein by reference on the date the School is notified by the District and provided the revised IEP as approved by the District and Student parent/guardian.

Enrollment Days RSY	Enrollment Days ESY (if any)

Service Name	RSY – Number of Sessions	ESY – Number of Sessions
Occupational Therapy Direct		
Occupational Therapy Consult		
Physical Therapy Direct		
Physical Therapy Consult		
Social Work Direct		
Social Work Consult		
Speech & Language Direct		
Speech & Language Consult		
1:1		
Other Service Provided		