

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement" or "Settlement") is entered into by and between Siskiyou Joint Community College District ("District"), and [REDACTED] ("Student"). The District and Student are hereafter referred to as the "Parties."

RECITALS

WHEREAS, Student filed a complaint against the District with the U.S. Department of Education, Office of Civil Rights, the California Community Colleges Chancellor's Office, and a claim for compensatory damages with the California Victims Compensation and Government Claims Board (the "Complaint");

WHEREAS, Student's Complaint alleged that the District violated the Americans with Disabilities Act (ADA), 42 U.S.C. § 12181, *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and related California statutes;

WHEREAS, after considering the expense and uncertainty associated with litigation or prolonged administrative investigations, the Parties desire to fully, fairly, and finally settle all claims Student has or may have against the District for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and that desire manifests itself by concluding all pending and/or threatened litigation between the Parties related to the Complaint; and

WHEREAS, the Parties now desire to resolve their differences and disputes between them related to the Complaint in consideration of the following terms set forth in this Agreement.

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning.

"Accessible" refers to digital content and Electronic Information Technology that meets the success criteria of the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA and complies with the accessibility requirements of the technical regulations, 36 C.F.R. pt. 1194, which implement Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d.

"Accessibility Auditor" refers to a person who or entity that is competent to determine if certain Electronic Information Technology, as that term is defined below, is Accessible who or that is mutually agreed upon by Student's Counsel, as that term is defined below, and the District's Counsel, as that term is defined below. Unless the Parties otherwise agree, Parties mutually agreed that District may choose from the following list to serve as the Accessibility Auditor:

SECRET

Interactive Accessibility
363 Willis Road, Suite 121
Sudbury, MA 01776
Phone: 603-580-9110
Contact: Kathy Wahlbin

Center for Accessible Technology
3075 Adeline, Suite 220
Berkeley, CA 94703
Phone: 510-841-3224
Contact: Dmitri Belser

"District" refers to the Siskiyou Joint Community College District, and its directors, and officers and employees.

"District's Counsel" refers to the law firm of Maire & Deedon, or another attorney or law firm as otherwise designated by the District.

"Effective Date" refers to the date by which this Agreement is fully executed by all Parties.

"Electronic Information Technology" or **"EIT"** refers to any software, websites, mobile apps, e-learning platforms, e-books, course management tools or other digital content, as it is distributed to students through a personal computer, mobile device or stand-alone hardware.

"Hawkes" refers to all websites, e-learning software, or digital content sold or distributed by Hawkes Learning Systems and any of its subsidiaries or partners.

"Instructional Materials" refers to any textbooks, worksheets, handouts, written documents or other information that students are assigned or recommended to review for any given course or program that s/he participates in through the District.

"Student's Counsel" refers to TRE Legal Practice and the Legal Aid Society-Employment Law Center.

2. Alterations to District Policies

2.1 Procurement Procedures for Electronic Information Technology.

A. The District shall modify all procurement policies as follows:

- (i) Require that all purchased Electronic Information Technology is Accessible.
- (ii) Include standard language in every contract that requires vendors to indemnify the District for any Electronic Information Technology that causes harm to students because the technology is not Accessible.

- (iii) Require all vendors to designate a contact person for expediting any complaints applicable to California Government Code § 11135.
- (iv) Verify through testing by an Accessibility Auditor that Electronic Information Technology is Accessible before executing procurement contracts, or by obtaining an express warranty, in conjunction with an indemnification agreement, from the EIT vendor that the EIT is Accessible.

B. The District shall amend its procurement procedures as described under section 2.1(a) above within 60 days of the Effective Date.

2.2 Faculty Discretion for Required Instructional Materials

- A. The District shall require course instructors to report to the District any Electronic Information Technology required for a course and prohibit those instructors from requiring students to use technology that has not yet been verified as Accessible by either the Accessibility Auditor or by express warranty in conjunction with an indemnification agreement from the EIT vendor.
- B. The District shall train all course instructors within two months of the Effective Date, and thereafter annually notify course instructors about the District's required reporting and verification policy in section 2.2A above as well as the process used to obtain verification that Electronic Information Technology is Accessible; all new course instructors shall be trained in accordance with this section, 2.2B, prior to commencing use of EIT as a required part of instruction.
- C. The District shall immediately prohibit all course instructors from using Hawkes until a future version has been verified to be Accessible by an Accessibility Auditor.
- D. The District shall institute a policy that suspends faculty use of Electronic Information Technology (across all campuses) if the District receives notice that such Electronic Information Technology is not Accessible and the District has not yet verified that the technology is Accessible by either an Accessibility Auditor or by express warranty in conjunction with an indemnification agreement from the EIT vendor. Such suspension will become effective immediately in all instructional courses in which a disabled student is affected, and shall become effective in all other instructional courses at the end of the semester. This suspension shall remain in force until such EIT is Accessible.
- E. Exceptions:
 - i. Notwithstanding the prohibitions in this section, 2.2, the District is not required to prohibit the use of any known EIT currently in use and approved

by the District, except that Hawkes is immediately prohibited pursuant to section 2.2C, until after completion of the accessibility audit and any applicable time for remediation as identified in section 2.3D.

ii. Notwithstanding the prohibitions in this section, 2.2, the District is not required to suspend use of EIT that meets either of the following criteria:

- the only reason the EIT is not fully Accessible is because of third party, user-generated EIT content that the District has no control over; or
- accessing the third party, user-generated EIT content is for non-Educational Purposes as defined in Section 2.3D. Nothing in this provision affects the District's legal obligation to provide equally effective alternate access to any third party, user-generated EIT content that might be necessary for Student's full and equal participation in the District's programs or activities.

iii. Notwithstanding the prohibitions in section 2.2D, if the District receives notification that certain EIT is not Accessible, and that such EIT is used for non-Educational Purposes, as defined in Section 2.3D, the District shall have the opportunity to remediate such EIT pursuant to Section 2.3D.

2.3 Accessibility audit and reporting

- A. Within six months from the Effective Date, the District shall complete an audit by the Accessibility Auditor to assess whether all of the District's Electronic Information Technology in use, or planned to be in use at the time of the audit, is Accessible.
- B. The District shall cause a copy of a completed written report of the audit to be sent to Student's Counsel within 30 days of the completed audit.
- C. If the audit reveals that EIT that is then in use, or planned to be in use, is not Accessible, the District shall suspend the use of such EIT immediately in all instructional courses in which a disabled student is affected, and shall suspend it in all other instructional courses at the end of the semester immediately following the audit, and such suspension shall remain in force until that EIT is Accessible, except as provided in 2.3D.
- D. Parties acknowledge that the District uses certain EIT for educational purposes within instructional courses ("Educational Purposes"), while other EIT is used for non-Educational Purposes, such as for administration. If the section 2.3A audit performed by the Accessibility Auditor reveals that EIT used for non-Educational Purposes is not Accessible, the District shall have six months to remediate such EIT, but Student and Student's Counsel shall not unreasonably refuse an extension to complete remediation if the circumstances so warrant.

3. Accessible Instructional Materials

3.1 The District shall send all Instructional Materials that need to be converted to Braille or an alternative format, such as the textbook, to the Alternate Text Production Center for California Community Colleges, except as provided in this section, so that those materials are provided to students before the materials are needed for courses. Parties recognize that the Alternative Text Production Center ("ATPC") will not always be able to produce all necessary course materials in a timely manner. To ensure that a student obtains timely course materials when the ATPC is unable to make a timely production, the District may produce the necessary course materials, such as handouts and assignments, through the High Tech Center at College of the Siskiyous with their PIAF machine for tactile images, so long as the Instructional Materials remain effective and appropriate to the academic task at issue.

3.2 The District shall require course instructors to provide a syllabus or list of required and recommended Instructional Materials to the District no later than 3 weeks prior to the first day of class. However, if a course instructor was not hired earlier than six weeks prior to the first day of class, said instructor will provide the District the stated syllabus or list at the earliest practicable time. This provision shall become effective starting with the spring semester of 2016.

3.3 The District shall notify course instructors at least once a year of their obligation to timely submit choices for Instructional Materials and of the desirability throughout the semester (whenever possible) of disseminating supplemental course materials as far in advance of the class reading due date as possible to ensure course materials are Accessible. A substantially similar notice shall be included in all contracts with temporary instructors. In its notice to instructors, the District will explain the critical importance of instructors making the course textbook and course readings available far enough in advance of the semester so that, assuming a print disabled student promptly requests an alternative format, the District has adequate time to convert the materials into an Accessible format before the start of classes. This notice will reference the District's applicable rules and guidelines.

4. Summer Semester 2015 Courses

4.1 The District shall allow Student to satisfy her grade of Incomplete in Psychology 1001 by meeting the course requirements through independent study that involves reading online posts without any interactive dialogue. If Student properly petitions District by sending a written request for an extension to the Registrar, Student shall be given an extension of at least 30 days beyond August 21, 2015 to meet the requirements of the course for a grade other than Incomplete.

4.2 The District shall provide Student with an on-campus qualified human reader for psychology. Student may access the human reader remotely through Skype or a similar video chat to the extent the human reader has access to that technology. A "qualified" reader means someone who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary. Said reader will be available to Student with 36-hours' notice on the following days and times in 2015:

August 3 between 2:00 PM and 7:00 PM;

August 6-7 between 8:00 AM and 7:00 PM;

August 10 between 8:00 AM and 7:00 PM;

August 11-13 between 8:00 AM and 5:00 PM;

Starting August 17 until the end of Student's extension pursuant to Section 4.1, Monday through Thursday between 8:00 AM and 5:00 PM, with the following exception during this time period: a human reader will not be available Monday and Wednesday between 10 AM and 1 PM.

5. Term of the Agreement

5.1 The term of this Agreement shall be three years from the Effective Date.

6. Enforcement of Agreement

6.1 The Parties understand that the Office of Civil Rights does not bear the responsibility of enforcing this Agreement, nor will the Office of Civil Rights enforce this Agreement.

6.2 All disputes concerning compliance with this Agreement shall be resolved through the following two-step process as follows:

- **Step One:** Student's Counsel and counsel for the District shall meet and confer in a good faith effort to resolve any dispute.
- **Step Two:** In the event that the parties are unable to resolve their dispute through such meet and confer negotiations within 21 days, the dispute shall be submitted to a court of competent jurisdiction in Sacramento for resolution. Reasonable fees and costs in connection with any proceeding may be claimed and recovered by either party in accordance with applicable law.

7. Payment to Student

7.1 Within 30 days after the Effective Date, the District shall make a payment of \$40,000 payable to [REDACTED] Special Needs Trust c/o TRE Legal Practice."

7.2 The District shall mail the payment to TRE Legal Practice, c/o [REDACTED] Special Needs Trust, 4226 Castanos Street, Fremont, CA 94536.

7.3 The District will issue a form 1099-MISC reflecting the payment to the [REDACTED] Special Needs Trust.

8. Attorneys' Fees and Costs

8.1 The Parties shall attempt to agree to an amount of attorneys' fees and costs. If the Parties cannot agree on an amount within twenty-one (21) days from the Effective Date, the Parties agree to submit the attorneys' fees and costs dispute to a mutually-agreeable third-party neutral for mediation. If the Parties cannot agree on a neutral mediator, then the parties shall request that JAMS provide a list of five randomly chosen neutrals in the Sacramento area with each party having the right to strike two names from the list to determine the neutral to mediate the matter.

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8.2 If the Parties are unable to resolve the dispute through the meet-and-confer process or mediation, the Parties shall submit the dispute to a mutually-agreeable third-party neutral from JAMS for arbitration within 45 days of the mediation. If the Parties cannot agree on a third-party neutral, then the Parties shall request that JAMS provide a list of five randomly chosen neutrals who are available to conduct an arbitration in the Sacramento area with each party having the right to strike two names from the list to determine the arbitrator to hear the matter and with JAMS making the final neutral selection based upon the Parties' respective strike lists. The decision of the arbitrator shall be binding on the Parties as to the fees and costs owed to Student's Counsel. If the arbitration requires a physical appearance it will be in the Sacramento area. The costs of the arbitration will be shared equally by the parties.

8.3 The Parties agree that the award by the JAMS arbitrator is final and binding and not subject to further review. In the briefing regarding attorneys' fees and costs and at any hearing regarding the same, the District shall not assert that Student's effort to resolve this matter privately and before the filing of the Complaint precludes Student from qualifying as the prevailing party or that such effort does not qualify as an action, proceeding, lawsuit, or claim. Upon agreement by the Parties, or pursuant to an arbitrator's decision, the District shall send the attorneys' fees and costs payment to the Legal Aid Society - Employment Law Center, 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

9. Release

9.1 Release of Claims in Full/Covenant Not to Sue. Effective on the Effective Date of this Agreement, Student and her executors, successors, heirs, assigns, administrators, agents, and representatives, in consideration of the relief set forth herein, fully and finally release the District and each of its respective present, former, or future officers, directors and employees (collectively, "**District's Released Parties**") from any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action, currently known or unknown, foreseeable or unforeseeable, alleged, or which could have been alleged, in the Complaint or any other court or administrative proceeding relating to the subject matter of the Complaint that arose on or before the Effective Date.

9.2 Civil Code Section 1542 Waiver. Student expressly waives the rights provided under California Civil Code Section 1542, relating to the subject matter of the Complaint as to the District and the District's Released Parties, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9.3 Full and Knowing Waiver. Student understands the significance and consequences of a California Civil Code Section 1542 waiver, and she expressly and knowingly assumes full responsibility for, and risk of, any damages or losses caused by this waiver. Student consulted with independent counsel, or had and declined the opportunity to do so, and executed this Agreement with a complete understanding of its legal effect. Student understands that by

executing this Agreement, she expressly waives all of the aforementioned rights, and binds herself to the terms of this Agreement.

10. Miscellaneous

10.1 Entire Agreement. This Agreement contains the entire agreement between the Parties. The terms of this Agreement supersede any prior discussions, understandings, or agreements between the Parties relating to this matter. No modifications or limits will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all of the Parties.

10.2 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

10.3 Interpretation. This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one party than another. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.

10.4 Choice of Law. This Agreement shall be governed, construed, and interpreted in accordance with the laws of California.

10.5 Severability. In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect. Nothing in this Agreement shall be construed to require the District to act contrary to state or federal laws, regulations, or guidelines.

10.6 Execution. The Parties, having carefully read this Agreement, and having consulted or having been given an opportunity to consult legal counsel, hereby acknowledge their agreement to all of the foregoing terms and conditions by executing this Agreement. Each signatory hereto represents and warrants that it is authorized to sign this Agreement on behalf of the respective party. This Agreement may be executed in any number of counterparts, and each such counterpart shall be an original and together they shall constitute one agreement. Facsimile and PDF signatures on this Agreement shall be treated as original signatures. A copy of this Agreement shall be treated as an original.

DATED: 8/12 2015


DATED: 9/1/15 2015

APPROVED AS TO FORM:

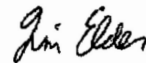
DATED: 8/17 2015

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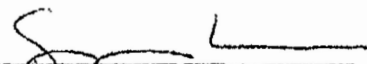
DATED: 9/2 2015


SISKIYOU JOINT COMMUNITY
COLLEGE DISTRICT


TRE LEGAL PRACTICE


TIMOTHY ELDER
Attorneys for Plaintiff

THE LEGAL AID SOCIETY -
EMPLOYMENT LAW CENTER


JINNY KIM
Attorneys for Plaintiff

MAIRE & DEEDON


WAYNE H. MAIRE Attorneys for
SISKIYOU JOINT COMMUNITY
COLLEGE DISTRICT

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