

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND
UNIVERSITY OF TENNESSEE HEALTH SCIENCES CENTER UNDER THE
AMERICANS WITH DISABILITIES ACT**

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and The University of Tennessee, through its Health Sciences Center (“UTHSC”).
2. This matter is based upon a complaint filed with the Educational Opportunities Section of the Civil Rights Division of the Department of Justice that alleged that UTHSC discriminated against an individual with a disability (the “Complainant”) in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131, *et seq.* Specifically, the Complainant alleged that UTHSC failed to make necessary reasonable modifications to its policies, practices, and procedures when it suddenly placed her on a mandatory medical leave of absence from UTHSC because of her mental health condition without first considering options for her continued enrollment. The Complainant further alleged that certain faculty members and administrators retaliated against her for complaining about being discriminated against on the basis of disability.
3. The Complainant alleges the following:
 - In the middle of the second semester of her one-year masters program, she suffered a mental health crisis due to a pre-existing mental health disability, which was aggravated by stress from her academic schedule. She had not previously disclosed her disability to UTHSC, but, immediately following the onset of the crisis, she informed UTHSC’s Student Academic Support Services (SASS) of her disability. SASS and the Behavioral Intervention Team consulted with the Complainant’s doctor and agreed with the Complainant that she would take a short temporary leave of absence. SASS also agreed with the Complainant on a number of other accommodations including extensions for the assignments that she missed due to the temporary leave of absence.
 - When the Complainant returned from the two week temporary leave of absence, she attempted to complete her course work and was behind in her clinical training. About two weeks later, the Dean of the College summoned Complainant to a meeting. Complainant was placed on a mandatory medical leave of absence; prohibited from submitting work she had already completed; instructed not to contact her teachers or fellow students; and directed to stay off campus unless readmitted. Her UTHSC email account was also suspended.
 - After readmission the following semester, Complainant attempted to complete the required coursework for a class. She alleges that she was not then granted another extension and the late submission led to a failing grade in that course.

- After the Complainant was told she was being placed on a mandatory leave of absence, the Complainant filed a formal discrimination complaint with UTHSC's Office of Equity and Diversity ("OED"). The Complainant alleges that after filing the complaint, she was treated in a hostile and intimidating manner and instructed not to contact the OED investigator, and that OED failed to undertake an adequate, impartial and timely investigation of her complaint. Finally, the Complainant alleges that, when she continued to send emails to faculty members and administrators complaining about the alleged discriminatory treatment, she was brought before UTHSC's Progression Committee on charges of unprofessional conduct.

4. The Department of Justice is responsible for administering and enforcing Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the regulation implementing Title II, 28 C.F.R. Part 35. The Department of Justice has the discretion to retain the complaint for investigation under 28 C.F.R. § 35.190(e).

5. The Complainant has been diagnosed with Post Traumatic Stress Disorder ("PTSD") and Attention Deficit Hyperactivity Disorder ("ADHD"). These mental impairments substantially limit the Complainant's major life activities of learning, concentrating, and thinking. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102(1)(A) and 28 C.F.R. § 35.104.

6. UTHSC is a public institution of higher education located at 920 Court Avenue, Memphis, TN 38163, and is a public entity within the meaning of 42 U.S.C. § 12131(1).

GENERAL TITLE II OBLIGATIONS AND RESPONSIBILITIES

7. Under Title II of the ADA, a public entity may not exclude a qualified individual with a disability from participation in, or deny such an individual the benefits of, the services, programs, or activities of such entity, or subject such individual to discrimination, by reason of such disability. 42 U.S.C. §12132. A public entity must make reasonable modifications to its policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless such entity can demonstrate that making the modifications would fundamentally alter the nature of its service, program or activity. 28 C.F.R. § 35.130(b)(7). In addition, no person may discriminate against any individual because such individual has opposed any act or practice made unlawful by the ADA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the ADA. 42 U.S.C. § 12203(a). It is also unlawful under the ADA to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, any right granted or protected by the ADA. 42 U.S.C. § 12203(b).

8. Title II of the ADA allows a public entity to impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities. 28 C.F.R. § 35.130(h).

ACTIONS TO BE TAKEN BY UTHSC AND THE UNITED STATES

9. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this matter to avoid litigation. Thus, the parties hereby agree to enter into informal voluntary resolution of this matter in accordance with 28 C.F.R. § 35.173(b). UTHSC denies the allegations set forth in paragraph 3, above, and this Agreement does not constitute a finding or admission that UTHSC violated Title II of the ADA, its implementing regulations, or any other laws or regulations.

10. UTHSC shall not exclude persons with disabilities, including persons with mental health disabilities, from participation in, or deny such persons the benefit of, its services, programs, or activities, or subject such persons to discrimination, on the basis of disability, in violation of 42 U.S.C. §12132, and the relevant implementing regulation, 28 C.F.R. Part 35.

11. Title II does not require UTHSC to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. 28 C.F.R. § 35.139(a). However, in determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 28 C.F.R. § 35.139(b).

12. Within 30 calendar days of the effective date of this Agreement, UTHSC shall draft an amendment to the leave of absence/withdrawal provisions of its current Academic Affairs, Academic and Student Affairs Policies (the "Policy") as specified in paragraph 13 below. Once drafted, UTHSC shall provide a copy of the Policy to counsel for the United States for review and approval. If the United States chooses to provide comments on UTHSC's proposed Policy, UTHSC will incorporate the United States' comments unless there is disagreement, in which case UTHSC and the United States will work together in good faith to resolve the disagreement. If the parties are unable to agree on the Policy within 30 days of the United States providing notice of any concerns, the United States may pursue relief under the enforcement provisions of paragraph 23 below. Within 30 calendar days of the United States' approval, UTHSC shall implement the amended Policy and post the amended Policy on UTHSC's official website (where it will remain for the term of this Agreement).

13. The Policy amendment shall state that prior to placing a student with a mental health disability on a mandatory medical leave of absence for reasons relating to that disability:

- a. Except in emergency circumstances, UTHSC will conduct an individualized assessment of each student and will give careful consideration to the opinions and recommendations of the student's treating physician or mental health professional, if available, along with the opinions and recommendations of the healthcare professionals consulted by UTHSC. UTHSC will encourage the student to provide any other additional information that the student believes is relevant to the determination. UTHSC will respect the student's confidentiality, and only require the student to provide a medical release for access to the student's

medical and mental health records as reasonably necessary to complete its individualized assessment.

- b. Based on that individualized assessment, UTHSC will determine whether, and what, reasonable modifications can be made that would be effective to allow such student to continue to attend classes and otherwise participate in its educational programs while seeking treatment for, or recovering from, any related medical or mental health conditions. However, in the event that UTHSC also considers whether the student poses a direct threat to the health or safety of others, UTHSC's individualized assessment must be based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.
- c. UTHSC will require a student to take a medical leave of absence only if: (A) after the individualized assessment, and careful review and consideration documented by UTHSC, UTHSC concludes that the student's continued participation in its educational programs would require modifications that would be unreasonable or would fundamentally alter the nature of those programs; (B) the student rejects all reasonable modifications offered by UTHSC and the student cannot meet UTHSC's essential eligibility requirements to continue to participate in its educational programs; or (C) even with the provision of all of the reasonable modifications offered by UTHSC, the student cannot meet UTHSC's essential eligibility requirements, which must satisfy the requirements of 28 C.F.R. § 35.130(b)(8). If UTHSC decides to impose a mandatory leave of absence, UTHSC will advise the student of available grievance procedures should the student wish to challenge the decision.

14. a. Nothing in this Agreement shall be construed to prevent UTHSC from requiring students to at all times meet the essential eligibility requirements and technical standards. Absent exigent circumstances concerning a potential safety threat, UTHSC shall ensure that any process used by SASS to evaluate a student's request for accommodation or reasonable modification of UTHSC policies, is conducted independently from other campus processes. Further, that information provided to the SASS is used solely to evaluate the student's request for accommodation or reasonable modification. UTHSC also shall, to the extent practicable, complete the process for evaluating any pending request for accommodation or reasonable modification and notify the student of the result of that process and appeal rights, prior to imposing a leave of absence or dismissal of the student. UTHSC must reasonably modify policies, practices, and procedures where necessary to avoid discrimination against students with disabilities.

b. Nothing in this Agreement shall be construed to prevent UTHSC from engaging in a process to identify and assess whether a student poses a threat to the health or safety of themselves or others, although UTHSC must reasonably modify policies, practices, and procedures where necessary to avoid discrimination against students with disabilities. Absent exigent circumstances, UTHSC shall explain its threat assessment process and appeal rights in

detail to any student with a disability in a mode of communication accessible to the student before obtaining any information about the student from his or her health care provider otherwise authorized by law and/or making any referrals or recommendations concerning the student. UTHSC also shall ensure that any threat or safety assessment and subsequent actions are based on legitimate safety concerns, and not on speculation, stereotypes, or generalizations about people with disabilities. The Agreement also does not require UTHSC to permit an individual to continue to participate in or benefit from UTHSC's services, programs, or activities after UTHSC conducts an individualized assessment and documents on the record that the individual poses a direct threat to the health or safety of others in accordance with 28 C.F.R. § 35.139(b).

c. Nothing in this Agreement shall be construed to prevent UTHSC from taking appropriate disciplinary actions against students who violate its student code of conduct, although UTHSC must reasonably modify policies, practices, and procedures where necessary to avoid discrimination against students on the basis of disabilities. Absent exigent circumstances, UTHSC shall give the student written notice that such a disciplinary process will be conducted and explain the process and appeal rights in detail in an accessible mode of communication. UTHSC also shall ensure that disciplinary actions taken against a student with a disability are supported by an appropriate factual record, and not based on speculation, stereotypes, or generalizations about people with disabilities. .

15. At all times, UTHSC will fully comply with anti-retaliation provisions in 28 C.F.R. § 35.134, and shall prohibit actions by UTHSC employees that coerces, intimidates, threatens, or interferes with an individual because he or she has opposed any act or practice that violates the ADA. UTHSC also agrees to instruct the applicable deans, faculty and student affairs staff to not take any action which is intended, or would reasonably be expected, to harm the Complainant or her reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity. UTHSC agrees that all future inquiries concerning the Complainant, including all requests for transcripts, academic or employment records, and/or references, shall be directed to the Associate Vice Chancellor – Student Affairs, who shall be the only UTHSC employee authorized, consistent with paragraph 16 below, to disseminate any information about the Complainant to third parties. UTHSC shall respond to all requests for information concerning the Complainant, including requests related her admission to another university or future employment, in a timely manner.

16. UTHSC agrees to destroy all documents related to the Complainant's interactions with the SASS, the Behavioral Intervention Team, her resulting complaint, and all related appeals, including all of her medical records, all communications between her and the OED, and all Progression Committee notes and related documents, other than one copy of any official findings or determinations, which shall be retained by UTHSC's counsel. Consistent with its obligations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, UTHSC will only disseminate documents related to the Complainant's tenure as a student, including her academic records, to third parties with Complainant's prior written consent or as required by law.

17. Within 10 calendar days of the effective date of this Agreement, UTHSC shall make the following permanent adjustments to the Complainant's academic records to show that she was making satisfactory academic progress during her tenure at UTHSC:

- a. Grade for NSG 616 is a “B”;
- b. Grade for NSG 617 is a “W” (“withdrawn”);
- c. Grade for NSG 618 is a “B”;
- d. Grade for NSG 619 is a “WP” (withdrawn passing);
- e. Grade for NSG 653 is a “W”; and
- f. Ensure that no grade of “W” or “WP” is used in calculating the Complainant’s grade point average or any other measures of academic standing.

18. Within 120 days of the effective date of this Agreement, and annually thereafter, UTHSC shall provide training on Title II of the ADA, with a focus on mental health-related disability discrimination and the prohibition on retaliation, to all faculty and staff members affiliated with UTHSC who have professional responsibility to address disability issues or to work with students with disabilities. The content and format of the training, together with the text of all written materials used in the training, shall be consistent with the provisions of this Agreement and approved in advance by counsel for the United States. UTHSC shall provide a copy of proposed training materials to counsel for the United States for prior review and approval within 60 days of the effective date of this Agreement. If the United States chooses to provide comments on UTHSC’s proposed Policy, UTHSC will incorporate the United States’ comments unless there is disagreement, in which case UTHSC and the United States will work together in good faith to resolve the disagreement. If the parties are unable to agree on the Policy within 30 days of the United States providing notice of any concerns, the United States may pursue relief under the enforcement provisions of paragraph 23, below. Within 30 calendar days of the United States’ approval, UTHSC shall initiate training.

19. UTHSC will notify the United States when it has completed each of the actions described in paragraphs 12-13 and 15-18.

20. UTHSC agrees to pay \$45,000 to the Complainant to compensate her for the harm that she alleges that she has endured (including but not limited to, emotional distress, pain and suffering, and other consequential injury) as a result of UTHSC’s alleged actions. Within 30 days of the effective date of this Agreement, UTHSC will send by certified mail or Federal Express, return receipt requested, a check in the amount of \$45,000 made out to the Complainant. The check shall be mailed to: Educational Opportunities Section, Civil Rights Division, U.S. Department of Justice, 601 D Street NW, PHB Suite 4300, Washington, DC 20004, Attention: Mark A. Dann.

21. Within 30 days of the payment set forth in paragraph 20 of this Agreement, the United States will deliver a release signed by the Complainant substantially in the form attached as Attachment A to this Agreement.

OTHER PROVISIONS

22. In consideration for this Agreement, the United States will not institute any civil action alleging discrimination under the ADA based on the allegations raised in this matter, except as provided in the immediately following paragraph.

23. The United States may review UTHSC's compliance with this Agreement or Title II of the ADA at any time. Except as provided for pursuant to paragraph 16 above, UTHSC shall, for the duration of this Agreement, preserve and maintain all records and documents, including all electronically stored information, pertinent to its compliance with the Agreement, and shall provide such information to the United States upon request. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with UTHSC and the parties will attempt to resolve the concerns in good faith. The United States will give UTHSC 30 days from the date it notifies UTHSC of any breach of this Agreement to cure that breach before instituting an enforcement action. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to UTHSC, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or Title II of the ADA.

24. Failure by the United States to enforce this entire Agreement or any of its provisions shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.

25. A signatory to this document in a representative capacity for UTHSC represents that he or she is authorized to bind UTHSC to this Agreement.

26. This Agreement constitutes the entire agreement between the United States of America and UTHSC on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable.

27. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement changes UTHSC's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

28. The effective date of this Agreement is the date of the last signature below.

29. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

THE UNIVERSITY OF TENNESSEE



JAMES R. MAPLES
Interim Treasurer and Chief Financial Officer

Dated: 7/22/14

**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
EDUCATIONAL OPPORTUNITIES SECTION**



MARK A. DANN
Senior Trial Attorney

Dated: July 22, 2016