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**Settlement Agreement Between**  
**The United States of America**  
**and Dunlap Community Unit School District No. 323**  
**Under the Americans with Disabilities Act**  
DJ No. 204-24-132

This Settlement Agreement (Agreement) is made and entered into by and between the United States of America and Dunlap Community Unit School District No. 323. The parties hereby agree to the following:

**I. INTRODUCTION**

1. The United States initiated an investigation of the Dunlap Community Unit School District No. 323 (“the School District”) under Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131 *et seq.*, (“Title II”), and its implementing regulation, 28 C.F.R. Part 35, following receipt of a complaint filed with the U.S. Department of Justice that the existing outdoor play area at Banner Elementary (“Banner”), where outdoor programs, services and activities are provided for students at the school, is not readily accessible to or usable by individuals with disabilities. The complaint alleged that a child with a disability was routinely unable to access Banner’s existing play area to play with peers and had to play alone, outside of the play area and separate from peers without disabilities.

2. As more specifically identified below and in Exhibit 1, attached, the United States opened an investigation and reviewed the compliance of Banner’s outdoor play areas with the ADA’s requirements, including the 1991 Standards, 28 C.F.R. Part 36, Appendix D and the 2010 Standards, 28 C.F.R. § 35.104, which consist of the 2004 ADAAG, see appendices B and D to 36 C.F.R. part 1191, and the requirements in 28 C.F.R. § 35.151.

**II. JURISDICTION**

3. The parties to this Agreement are the United States of America and Dunlap Community Unit School District No. 323.

4. The ADA applies to the School District because it is a “public entity” as defined by Title II. 42 U.S.C. § 12131(1); 28 C.F.R. §35.104.

5. Title II of the ADA mandates that: “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

6. Public entities are prohibited from affording “a qualified individual with a disability an opportunity to participate in or benefit from [an] aid, benefit, or service that is not equal to that afforded others.” 28 C.F.R. § 35.130(b)(1)(ii). And “[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” *Id.* § 35.150(d).

7. The ADA further provides that “no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity.” 28 C.F.R. § 35.149.

8. For existing facilities, “[a] public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a).

9. For the construction of new facilities, each new facility must be readily accessible to and usable by individuals with disabilities unless ready access is structurally impracticable. 28 C.F.R. § 35.151(a)(1).

10. For alterations to existing facilities, alterations must be made readily accessible to and usable by individuals with disabilities to the maximum extent feasible. 28 C.F.R. § 35.151(b)(1).

11. The United States<sup>1</sup> is authorized to initiate investigations and review compliance with Title II of the ADA and Title II’s implementing regulation, as well as to resolve matters by informal resolution, such as through the terms of this Agreement. 28 C.F.R. Subpart F; 28 C.F.R. §§ 35.172-173, 35.190(e). If informal resolution is not achieved, the United States is authorized to issue a noncompliance Letter of Findings, and if necessary, to bring a civil action to enforce Title II of the ADA and seek injunctive relief and monetary damages. 42 U.S.C. § 12133, 28 C.F.R. § 35.174.

### **III. INVESTIGATION**

12. During the course of its investigation, the United States reviewed the facilities identified above for compliance with the ADA’s accessibility standards, including Banner’s existing outdoor play area, considered past modifications to Banner’s existing outdoor play area, and plans for a proposed new outdoor play area that will be used in conjunction with the existing outdoor play area for Banner students.

13. With respect to Banner’s existing outdoor play area, including alterations to the play area, the investigation revealed obstacles to access for children with disabilities and elements of the outdoor play area that do not comply with the relevant provisions of the ADA. The United States further determined that while the proposed new outdoor play area appears to comply (in the

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<sup>1</sup> Pursuant to 28 C.F.R. § 35.190(e), the Department has exercised its discretion to retain this complaint for investigation under Title II of the ADA.

design stage) with the ADA's requirements, that its integration with the existing outdoor play area will need to be implemented in a way that ensures that children with disabilities are integrated with children without disabilities when using Banner's outdoor play areas.

14. The School District has cooperated with the United States' investigation of this matter. The District responded timely to each and every request made by the United States, including providing a substantial amount of information for review and stating its commitment to providing equal access to people with disabilities.

15. The parties agree that it is in their best interests, and the United States believes it is in the public interest, to resolve this matter without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement.

#### **IV. REMEDIAL ACTIONS AND OTHER RELIEF**

16. In consideration of, and consistent with, the terms of this Agreement, the Department of Justice agrees to close its investigation, except as provided in the section entitled "Enforcement and Miscellaneous Provisions."

17. Program Access in Existing Facilities. The School District will make Banner's outdoor play areas, including all related programs, services, and activities when viewed in their entirety, readily accessible to and usable by people with disabilities so they can participate equally in the School District's programs, services, and activities that pertain to the play areas. For its existing outdoor play area, this means eliminating barriers to use and providing equal play opportunities, as set out in the required modifications in Exhibit 1 and below. The District agrees to remove all existing pea gravel and mulch, then replace them with engineered wood fiber, as well as to remove railroad ties and other barriers to access, as set forth in Exhibit 1. During the period of construction outlined in Exhibit 1, the District will make reasonable modifications so that the existing playground may be utilized by children with disabilities.

18. New Construction or Alterations. The outdoor play areas are for public use and for school use, and must comply with the 2010 Standards. Any new construction, additions or alterations to the outdoor play areas by the School District must be made so as to be readily accessible to and usable by individuals with disabilities, as set out in the ADA regulations and the 2010 Standards.

19. Required Modifications. The School District agrees to the modifications detailed in Exhibit 1 and to complete the modifications on or before the dates specified in Exhibit 1. Elements identified in Exhibit 1 as not complying with the accessibility requirements shall be modified to comply with the 2010 Standards.

20. New Play Area Use. The School District agrees to create, operate, and utilize a new play area in the most integrated setting possible. The School District expressly agrees that operation of the new play area in the most integrated setting includes operating and utilizing the play area for children with and without disabilities. The District will create a new play area by

integrating accessible equipment into the existing play area, effectively creating a single new outdoor play area with accessible equipment and surfaces, as set forth in Exhibit 1.

21. The School District will conduct an ADA compliance review regarding whether outdoor play areas are accessible to the maximum extent possible at each school in the district besides Banner. The review shall be completed within one year and the District shall certify in writing to the Department of Justice that the review has been completed. The District is not required to submit a copy of the review to the Department.

22. Maintenance of Accessible Features. Throughout the term of this Agreement, consistent with 28 C.F.R. § 35.133(a), the School District will maintain the accessibility of its outdoor play areas. This provision, however, does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).

23. Sidewalks and Curb Cuts. In addition to the modifications identified in Exhibit 1 of this Agreement, the School District will ensure that sidewalks, including curb ramps or other sloped areas serving the Banner Elementary outdoor play areas, comply with the ADA's accessibility standards.

24. Architectural Plans and Instructions. For items identified in Exhibit 1, the School District will provide the United States, for its approval, copies of all architectural plans and instructions necessary to make the modifications which remain to be completed as detailed in Exhibit 1. All architectural plans and instructions necessary to make the modifications which remain to be completed as detailed in Exhibit 1 shall be provided to the United States 45 days prior to work beginning on the specific item or items. The United States may make any corrections or modifications to those plans as necessary for ADA compliance. The School District will not begin work (for modifications not already completed as of the effective date of this Agreement) until the United States has made any corrections or modifications to the School District's architectural plans and instructions as necessary for ADA compliance and indicated that the School District may proceed. If the United States has not provided the School District with corrections or modifications to the architectural plans and instructions within 45 days of its receipt of the plans and instructions, the plans and instructions are deemed approved.

25. Monetary Relief. For settlement purposes only, to avoid the time and expense of litigation, the School District will approve a payment of \$2,500 to the complainant. The payment will be made via certified check issued and mailed to the complainant within 60 days of the entry of this Agreement. Approval of any payment is conditioned on execution of a full release and discharge of all claims that otherwise could be asserted by the complainant or the Department of Justice against the School District, and all employees, agents, and assigns of the School District, arising from the facts set forth in this Agreement or raised by the complaint in this matter. In consideration for this Agreement and monetary relief set forth above, the United States will not institute a civil action alleging discrimination under the ADA based on the allegations raised in DJ # 204-24-132, except as provided in Paragraph 30 of this Agreement.

## V. ENFORCEMENT AND MISCELLANEOUS PROVISIONS

26. Reporting. Six months after the date of this Agreement and annually thereafter until it expires, the School District will provide written reports to the United States summarizing its actions taken pursuant to this Agreement. Reports will include photographs showing the modified elements and relevant measurements, final architectural plans, and published notices.

27. Delivery of Materials. All communications including reporting materials sent to the United States pursuant to this Agreement shall be in writing and delivered by e-mail to Joshua.Grant@usdoj.gov (or to any other e-mail address that the United States designates during the term of this Agreement) or by overnight delivery to the following person and address: Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street, NE, Room 6.1612 Washington, DC 20530. The cover letter shall include a subject line referencing the School District and DJ No. 204-24-132.

28. Term. This agreement will remain in effect for two years.

29. Modifications. The School District may seek to modify this Agreement or seek extensions of time for the time limits for performance imposed by the Agreement because of changed conditions making performance impossible. For any such modification, the School District shall notify the United States in writing, setting forth the proposed modification and the facts to support it. Until the United States agrees to the modification in writing, no modification will take effect. The United States will not unreasonably withhold its agreement.

30. Reviewing Timely Compliance: The United States may review compliance with this Agreement at any time. It is a violation of this Agreement for the School District to fail to comply in a timely manner with any of the requirements of this Agreement. The School District will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with timely access to outdoor play areas, surveys, employees, contractors, relevant documents, and other reasonably requested information. If the United States believes that the School District has failed to comply in a timely manner with any requirement of this Agreement, or that any requirement has been violated, the United States will so notify the School District in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within thirty (30) days of the date it notifies the School District, the United States may file a civil action in federal district court to enforce the terms of this Agreement, and/or take any other action to enforce Title II of the ADA.

31. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

32. Non-Waiver. Failure by the United States to enforce any provisions or deadlines in this Agreement shall not be construed as a waiver of the right of the United States to enforce any deadlines or provisions of this Agreement.

33. Publicly Available. This Agreement is a public document. The United States or School District will provide a copy of this Agreement to any person, upon request.

34. Entire Agreement. This Agreement (including its Exhibit) is the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party will be enforceable.

35. Scope. This Agreement is limited to resolving claims under Title II of the ADA related to the facts specifically set forth in Paragraphs 1, 2, and 12 above, concerning physical accessibility relating to outdoor play areas. Nothing in this Agreement relates to other provisions of the ADA or affects the School District's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities.

36. Non-Retaliation Provision. The School District agrees that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA. 42 U.S.C. § 12203. Such retaliatory behavior would constitute an additional, separate violation of the ADA and nothing in this Agreement precludes the initiation of enforcement action or litigation based on alleged retaliation.

37. Signing Authority. The person signing for the School District represents that he or she is authorized to bind the School District to this Agreement.

38. Counterparts. This Agreement may be executed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

39. Binding Nature of Agreement. This Agreement shall be applicable to and binding upon the ICCSD, its officers, agents, employees, and assigns.

40. Effective Date. The effective date of this Agreement is the date of the last signature below.

**AGREED AND CONSENTED TO:**

**FOR THE UNITED STATES**

DOUGLAS J. QUIVEY  
Acting United States Attorney

      /s/        
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Assistant United States Attorney  
United States Attorney's Office  
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Dated:   10/28/21

**FOR DUNLAP COMMUNITY UNIT SCHOOL DISTRICT NO. 323**

DR. SCOTT DEARMAN  
Superintendent

KATHARINE L. SWISE  
Legal Counsel  
Dunlap Community Unit School District No.  
323

/s/  
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Dated: 10/28/21\_\_\_\_\_

Dated: 10/28/21\_\_\_\_\_