

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
OLD DOMINION UNIVERSITY**

I. BACKGROUND

1. The parties (Parties) to this Settlement Agreement are the United States of America (United States) and Old Dominion University (University).
2. Old Dominion University is a public university located in Norfolk, Virginia. The University is a public entity within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12131(1)(B), and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-34, as amended (Title II), and its implementing regulation, 28 C.F.R. Part 35. Old Dominion is also a recipient of federal funding from the U.S. Department of Justice and is therefore subject to Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation, 28 C.F.R. Part 42.
3. The United States Department of Justice (Department) is responsible for administering and enforcing Title II and Section 504 and their implementing regulations.
4. This Agreement arises out of a complaint filed by the Complainant with the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section alleging that the University discriminated and retaliated against her because of her disability and request for reasonable accommodations. The Department commenced an investigation into these allegations pursuant to its authority under Title II and Section 504 and their implementing regulations.
5. After conducting its investigation, the Department found that the University violated Title II and Section 504 and their implementing regulations by discriminating against the Complainant for her disability and retaliating against her for engaging in protected activity. The University disputes this finding.

II. STATEMENT OF CONSIDERATION

6. Rather than conduct further investigation into the University and/or litigate the Department's findings, the University and the Department agree to resolve all allegations arising out of this complaint in this Settlement Agreement (Agreement), into which the Parties have voluntarily entered.
7. In consideration of this Agreement, the United States agrees to close its investigation (DJ #169-79-0) without further enforcement action related to the facts in paragraphs 4-5, except as provided in Paragraph 18, below.

8. The Parties agree and acknowledge that this consideration is adequate and sufficient.

THEREFORE, the Parties, through their authorized representatives, hereby stipulate and agree as follows:

III. ACTIONS TO BE TAKEN BY THE UNIVERSITY

9. The University will comply with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131-34, as amended, and its implementing regulation, 28 C.F.R. Part 35, and Section 504 of the Rehabilitation Act, and its implementing regulation, 28 C.F.R. Part 42. Title II mandates that “no qualified individual with a disability will, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a). Similarly, Section 504 provides that “[n]o otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a); *see also* 28 C.F.R. § 42.503. These prohibitions on discrimination require that:
 - a. The University, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service. 28 C.F.R. §§ 35.130(b)(1)(i), 42.503(b)(1)(i);
 - b. The University, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. 28 C.F.R. §§ 35.130(b)(1)(ii), 42.503(b)(1)(ii);
 - c. The University, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. 28 C.F.R. § 35.130(b)(1)(vii); and
 - d. The University will make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the University can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i).
10. The University will comply with the ADA’s prohibition on retaliation, which provides that “No person shall discriminate against any individual because such individual has opposed

any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this Act.” 42 U.S.C. § 12203(a); *see also* 28 C.F.R. § 35.103(b)(1)(vii) (“A recipient may not ... Intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart.”). This prohibition on retaliation requires that:

- a. The University may not discriminate against any individual because the individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under an Act or this part. 28 C.F.R. § 35.134(a); and
 - b. The University may not 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, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part, 28 C.F.R. § 35.134(b), which includes:
 - i. the right to request an accommodation for his or her disability;
 - ii. the right to insist upon an individualized, case-by-case determination for determining a reasonable accommodation; and
 - iii. the right to use that reasonable accommodation.
11. Retaliation Policy: Within ninety (90) calendar days of the effective date of this Agreement, the University will submit to the United States for review and approval a policy on retaliation (Retaliation Policy) that complies with the requirements of the ADA and Section 504. The Retaliation Policy will explain in detail the definition of retaliation and clarify that the University will impose consequences, up to and including termination, on those who violate the Policy.
- a. Within five (5) days of the United States’ approval of the Retaliation Policy, the University shall disseminate the Policy and Policy #4500 (“Accommodations for Students with Disabilities”), to all University employees, including permanent, probationary, and temporary employees. Such dissemination shall occur, at a minimum, via electronic mail.
 - b. Within ten (10) days of the United States’ approval of the Retaliation Policy, the University shall post and maintain the Policy prominently on the University’s general webpage so that it is available to all students, faculty, and employees, and applicable to all schools, offices, agencies, and departments within the University.
 - c. Within ten (10) days of the United States’ approval of the Retaliation Policy, the University shall add a statement to all Faculty Accommodation Letters to the effect that University Policy prohibits retaliation for requesting or using accommodations and the University will impose consequences, up to and including termination, on those who engage in such retaliation.

12. Training. Within ninety (90) calendar days of the effective date of this Agreement the University will provide a training program (ADA Training), to be conducted by the Disability Law Center of Virginia, to the individuals identified in this paragraph. The University will provide ADA training to: (1) the Dean and Associate Dean of the Graduate School; (2) the Chairs of Department and Program Directors for all Graduate Programs; (3) all staff in the Office of Educational Accessibility and the Office of Institutional Equity and Diversity; and (4) all faculty in the Department of Psychology.

- a. The ADA Training will address:
 - i. the requirements of Title II of the ADA and Section 504, with a focus on disability discrimination in the post-secondary education context; and
 - ii. a general overview of the terms and obligations of this Agreement (the University will provide a copy of this Agreement to each training participant).
- b. For persons who must receive ADA Training pursuant to this Agreement, but who did not receive training on the designated training date required under this Agreement (for instance, because they were on leave from the University or because they began their affiliation with the University subsequent to the training date), the University will provide the ADA Training to such persons within sixty (60) calendar days after the individual's affiliation with the University in a position required by the terms of the Agreement to have the ADA Training or within sixty (60) calendar days of their return to the University (for instance, from leave). Any training provided under this subparagraph may either be provided live or via a video recording of a previous live session of the ADA Training.
- c. For each session of the ADA Training conducted under this Agreement (including for each instance of the ADA Training conducted on a non-designated training date pursuant to subsection c of this paragraph), the University will maintain attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures.

13. Reporting.

- a. Initial Report: On June 1, 2021, the University will submit a report to the United States confirming its implementation of the Retaliation Policy as detailed in Paragraph 11 as well as its fulfillment to that date of the training requirements to date in Paragraph 12. The University will provide the United States with copies of the ADA Training attendance logs maintained to date pursuant to Paragraph 12(c).
- b. Subsequent Reports: The University will submit subsequent reports annually on June 1 to the United States regarding its compliance with the Agreement for the remainder of this Agreement. This report will include, for the period subsequent to its immediate prior report to the United States, the following:

- i. All dates of any ADA Trainings conducted pursuant to this Agreement; and
 - ii. Copies of all attendance logs from all ADA Trainings conducted pursuant to this Agreement.
 - c. Immediate Reports: During the term of this Agreement, the University will notify the United States within sixty (60) calendar days of:
 - i. Knowledge of any lawsuit or formal complaint alleging that the University has engaged in disability-based discrimination or retaliation, and any complaint, written or oral, made to the Office of Educational Accessibility or the Office of Institutional Equity and Diversity that the University or any employee thereof has engaged in disability-based discrimination or retaliation against a student. Such notice will include, at a minimum, a description of the nature of the allegations, the name(s) of the individual(s) involved in the complaint, and all documentation relevant to the allegations.

IV. MONETARY DAMAGES TO AGGRIEVED PERSON

- 14. Within sixty (60) calendar days of the University's receipt of the completed release attached hereto as Attachment A and receipt of the completed IRS Form W-9, the University agrees to pay a total of forty thousand dollars (\$40,000.⁰⁰) in damages to the person identified therein. The University will make this payment by check made payable to the Complainant in her full legal name as identified in the completed version of Attachment A. The University will deliver a copy of this check by overnight mail to counsel for the United States.
- 15. The University shall not retaliate in violation of 42 U.S.C. § 12203 against the Complainant or any person based on their cooperation with the Department's investigation of this matter, nor on the basis of any person's involvement in the administration of this Agreement.

V. IMPLEMENTATION AND ENFORCEMENT

- 16. The United States may review compliance with this Agreement at any time. The University agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, the University will permit counsel for the United States to inspect all non-privileged records pertinent to this Agreement.
- 17. The Parties will endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating court action. If the United States believes that the University has failed to perform in a timely manner any act required by this Agreement, or has otherwise not acted in conformance with any provision thereof, whether intentionally or not, the United States will notify the University in writing of its concerns. The University will have thirty (30) calendar days from the date of the United States' notification to cure the breach.

18. If the Parties are unable to reach a resolution within thirty (30) calendar days, the United States may file a lawsuit for breach of this Agreement, or any provision thereof, in the United States District Court for the Eastern District of Virginia. In any such action, the University consents to and agrees not to contest the exercise of jurisdiction over it by this Court. The University further acknowledges that venue in this Court is appropriate and agrees not to raise any challenge on this basis.
19. In the event the United States files a civil action as contemplated by Paragraph 18, above, to remedy breach of this Agreement, the United States may seek, and the Court may grant as relief, the following: (1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; and (2) any additional relief including additional damages that may be authorized by law or equity.
20. Failure by the United States to enforce any provision of this Agreement will not operate as a waiver of the United States' right or ability to enforce any provision of this Agreement.

VI. DURATION, EXECUTION AND OTHER TERMS

21. The effective date of this Agreement is the date of the last signature below. All durations specified in this Agreement run from the effective date of this Agreement unless otherwise indicated.
22. This Agreement may be executed in multiple counterparts, each of which together will be considered an original but all of which will constitute one agreement. Facsimiles of signatures and electronically transmitted signatures will constitute acceptable, binding signatures for purposes of this Agreement.
23. This Agreement will remain in effect until 60 days after the University submits its final annual report due on June 1, 2024.
24. This Agreement and the attachments hereto constitute the complete agreement between the Parties on the matters raised herein. No prior or contemporaneous communications, either written or oral, or prior drafts will be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.
25. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the entities indicated below.
26. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement will not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

27. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions will not be affected thereby and said illegal or invalid part, term or provision will be deemed not to be a part of this Agreement.
28. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the Eastern District of Virginia, the Parties agree that they will seek removal and/or transfer to the United States District Court for the Eastern District of Virginia.
29. This Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.
30. This Agreement is not intended to remedy any other potential violations of the ADA, Section 504 or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement changes the University's obligation to otherwise comply with the requirements of the ADA and Section 504.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA:

GREGORY B. FRIEL
Deputy Assistant Attorney General

SHAHEENA A. SIMONS
Acting Deputy Assistant Attorney General
Civil Rights Division



WHITNEY PELLEGRINO
Acting Chief
RENEE M. WOHLLENHAUS
Deputy Chief
VERONICA ROSE PERCIA
Trial Attorney
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202) 307-0385

Dated: February 3, 2021

FOR OLD DOMINION UNIVERSITY:

Dr. Roger L. DuBois
V.P. for Administration
Dated: 2/3/21 FINANCE