

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 impl

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

23. The United States may review UTHSC's compliance with the ADA at the ADA at the duration of this Agreement to preserve and maintain electronically stored information and provide such information to the United States upon request. If this Agreement or any portion of it has been breached, 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 the breach before instituting a civil action in federal court. If UTHSC fails to achieve a satisfactory resolution of the issue or issues raised with UTHSC, it may institute a civil action in federal court under this Agreement or Title II of the ADA.

24. Failure by the United States to enforce this entire Agreement shall not be construed as a waiver of any other rights or remedies.

25. A signatory to this Agreement 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. Any oral or written agreement, either written or oral, made by any party or agents of any party, that is not consistent with this Agreement, including any attachments, shall be unenforceable.

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

EFFECTIVE DATE

28. The effective date of this Agreement is the date of execution.

29. The duration of this Agreement shall be for a period of five (5) years.

AGREED

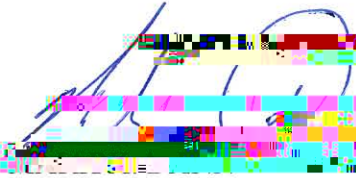
THE UNIVERSITY OF TENNESSEE



JAMES R. MAPLES
Interim Treasurer and Chief Financial Officer

Date: 

U.S. DEPARTMENT OF
CIVIL RIGHTS
EDUCATION OFFICE



Senior Trial Attorney

Dated: July 22, 2016