

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA,
LOUISIANA TECH UNIVERSITY,
AND THE BOARD OF SUPERVISORS
FOR THE UNIVERSITY OF LOUISIANA SYSTEM
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ #204-33-116**

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America, Louisiana Tech University (“the University”), and the Board of Supervisors for the University of Louisiana System (“the Board”).
2. Louisiana Tech University is a public, four-year selective admissions research university that awards bachelor’s, master’s, and doctoral degrees. The University is part of the University of Louisiana System and is governed by the Board pursuant to Louisiana constitutional and statutory authority.
3. This matter is based upon a complaint filed with the United States Department of Justice (“Department”) by a University student who is blind (“Complainant”), who alleged that he was unable to participate in a University course based on the professor’s adoption of an internet-based application (used for numerous aspects of coursework) that was inaccessible to him.
4. The parties agree that it is in the parties’ best interests, and the United States believes that it is in the public interest, to resolve this dispute amicably and without litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE II COVERAGE AND FINDINGS

5. The Attorney General is responsible for administering and enforcing title II of the ADA, 42 U.S.C. §§ 12131 *et seq.* (“title II”), and the regulations implementing title II, 28 C.F.R. Part 35.
6. Under title II of the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132.
7. The University, located in Ruston, Louisiana, and the Board are public entities under the meaning of title II.
8. The United States has determined that the University’s exclusion of a student who is blind from its course offerings through the use of MyOMLab, an online learning product

that was inaccessible to the Complainant, violates title II of the ADA. The online learning product, which was available to other students twenty-four hours per day, was used for tutorials on course subject matter; was required for the completion of homework in the course (including an interactive aspect that allowed for immediate feedback to students on the correctness of answers provided and an opportunity to re-answer any questions for full credit); and was used for the administration of tests in the course. On March 15, 2011, the Complainant raised concerns about the inaccessibility of MyOMLab with the professor, who directed the Complainant to consult with the MyOMLab vendor for resolution of the issue. The Complainant first did so that same day. On March 25, 2011, still unable to access MyOMLab despite contact with its vendor, the Complainant notified University administrators in the University's Office of Disability Services of his lack of access to the online learning product.

9. The United States has determined that the Complainant's lack of access to the online learning product persisted nearly one month into the University quarter, at which time the Complainant felt that he was so far behind in his studies and coursework that he was compelled to withdraw from the course.
10. During the pendency of the investigation of the complaint referenced above, the professor who deployed MyOMLab also distributed inaccessible, hard copy course materials to the Complainant in a different and subsequent course. The inaccessible materials, copied by the professor for distribution immediately prior to the class session, were distributed during class for students to use during that class session and as out-of-class study materials for a future exam. When contacted by the Complainant to receive the materials in an accessible, electronic format, the professor delegated to another student in that course the responsibility of providing the materials to the Complainant, which ultimately occurred several days after the class session in which they were provided. The delay prevented the Complainant from having the same opportunity that students without disabilities had to participate in the class session and to study and prepare for the exam.
11. In the course of the Department's investigation of facts brought to its attention by the Complainant, the Department has identified additional disability-related University policies and/or practices (including, but not limited to, the assurance of the delivery of agreed-upon modifications for students with disabilities) to be addressed in this Agreement.
12. The University disputes the Department's determinations and the University's entering into this Agreement shall not be construed as an admission of liability or wrongdoing.

ACTIONS TO BE TAKEN BY THE UNIVERSITY

Adoption and Dissemination of Policies

13. Within one hundred twenty (120) days of the effective date of this Agreement, the University shall revise its existing Policies 1433 and 2220 in line with the following, and/or adopt and implement policies that:
 - a. Ensure no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the University, or be subjected to discrimination by the University. Such policy shall specifically reference the requirement of deploying accessible technology and course content in the University setting, as more specifically outlined in Exhibit 1 to this Agreement (which is incorporated fully herein and made part of this Agreement).
 - b. Ensure that the University's Office of Disability Services acts, in accordance with its stated role, "as a liaison between students and faculty." Namely, the policy shall ensure that the Office of Disability Services takes an active role in working with all persons involved in providing class instruction to students (and others within the University) to promptly and effectively resolve students' disability-related concerns.
 - c. Ensure that the University's Office of Disability Services serves as the main point of contact on issues related to ADA compliance for all persons involved in providing class instruction at the University. If a student makes a disability-related complaint to a person involved in providing class instruction, that person must notify the Office of Disability Services immediately so that the Office of Disability Services can ensure appropriate resolution of the complaint and, where appropriate, be involved in facilitating such resolution.
 - d. Ensure that University-recognized modifications for students (those granted to individual students through "Accommodations Letters") are implemented with the supervision of the University's Office of Disability Services. This shall occur, for example, through contact (prior to midterm and final exam periods) by the Office of Disability Services to instructors of students with disabilities whose Accommodations Letters allow them to receive alternative examination formats or locations, in order to confirm that instructors have made arrangements for appropriate administration of exams. The University will continue to enhance training of persons involved in providing class instruction regarding adherence to the accommodations identified in Accommodations Letters in cases where students choose to provide such letters to instructors. The decision to request accommodations from an instructor shall remain the decision of individual students.
 - e. Ensure that the University's Office of Disability Services timely responds to reasonable requests for assistance by students with disabilities that may not be anticipated (and therefore perhaps not enumerated) in University-prepared "Accommodations Letters."

- f. Ensure that, consistent with the requirements of the ADA, opportunities afforded generally to University students are equally afforded to students with disabilities. For instance, when the University allows students in a course to take exams outside of the operating hours of University administrative offices, the University shall ensure that students with disabilities are afforded that same opportunity.
- g. Ensure that the University's "Grievance Policy" on disability-related issues, as currently stated in the University's Policy 1433 ("Americans with Disabilities Policy") is triggered any time the Office of Disability Services has not fully resolved a student's complaint, as was the case in the facts giving rise to the complaint to the Department in this matter. In such an instance, the Office of Disability Services shall self-report to the "appropriate university official" (as already identified in Policy 1433), within two (2) business days of the failure to resolve the student's complaint. The appropriate university official shall then take the steps currently required by Policy 1433 to resolve the matter. No written complaint by the affected student to either the University's Office of Disability Services or the "appropriate university official" shall be required in such instance.
- h. Ensure that the University's Policy 1433 ("Americans with Disabilities Policy") is revised to include the correct contact information for filing complaints with the Department (via mail, email, and via telephone/TTY), as reflected at http://www.ada.gov/fact_on_complaint.htm.

14. The policies revised or adopted pursuant to the immediately prior paragraph shall be implemented within one hundred twenty (120) days of the effective date of this Agreement. Such policies shall be made part of the University's "Manual of Policies and Procedures," and included in the print version of the "Manual of Policies and Procedures" (starting with the next printing of the "Manual of Policies and Procedures"). Within one hundred twenty-five (125) days of the effective date of this Agreement, the University shall post the new policies in its online "Manual of Policies and Procedures" at <http://www.latech.edu/administration/policies-and-procedures/>.

15. Within one hundred twenty (120) days of the effective date of this Agreement, the University shall disseminate the policies referenced in Paragraph 13 to all individuals who provide any course-related instruction to University students and all University administrators, including, but not limited to, all persons identified in the "Organizational Chart for Louisiana Tech University," (currently posted at <http://www.latech.edu/administration/policies-and-procedures/1107.shtml>). Such dissemination shall occur via electronic mail to each covered individual.

Training

16. Within one hundred twenty (120) days following the effective date of this Agreement, the University will develop a training program ("ADA Training") that shall be implemented during the fall 2013 quarter and every year thereafter for the term of this Agreement. The University shall provide ADA Training to 1) all individuals who provide any course-related instruction to University students (including, but not limited to, professors,

instructors, other faculty, and teaching assistants) (collectively, "Instructors"), and 2) all University administrators, including, but not limited to, all persons identified in the "Organizational Chart for Louisiana Tech University," (currently posted at <http://www.latech.edu/administration/policies-and-procedures/1107.shtml>) (collectively, "Administrators"). The ADA Training shall address the requirements of title II of the ADA; the existence of this Agreement and a description of where training participants may access a copy of this Agreement; the University's resources for students and Instructors on disability-related matters (including, but not limited to, the functions of the University's Office of Disability Services and the functions and identity of the University's ADA Coordinator, who, among other things, is the University's designee for coordinating the University's response to disability-related grievances and who convenes the University's ADA Advisory Council at least annually); Instructors' obligations to provide all accommodations recognized by the University via "Accommodations Letters" given to students registered with the University's Office of Disability Services; title II "best practices" to ensure the University's compliance with the ADA; and reporting obligations under Paragraph 21(d) of this Agreement.

17. For persons who must receive ADA Training pursuant to this Agreement, but who did not receive training on a designated training date required under this Agreement (for instance, because they were on leave from the University, because they began their affiliation with the University subsequent to the training date, or because they assumed a position within the University subjecting them to coverage under this paragraph subsequent to the training date), the University shall provide the ADA Training to such persons within sixty (60) days after the individual's commencement of service to the University in a position covered by this paragraph or within sixty (60) days of their return to the University (for instance, from leave).
18. The University shall send via electronic mail to the Department the proposed curriculum for the training, as well as the name(s), qualifications (including resume(s)), and contact information of the individual(s) who will conduct the training, no later than ninety (90) days after the effective date of this Agreement. The University shall adopt any changes to the curriculum made by the Department. The University shall maintain attendance logs reflecting the names and titles of attendees for each session of the ADA Instructor/Administrator Training conducted under this Agreement.
19. During all orientation sessions offered during the term of this Agreement to incoming students (including freshmen and transfer students), the University shall include a mandatory presentation by a member of the University's Office of Disability Services, either as a stand-alone module or as part of other mandatory orientation on the resources available to students ("ADA Student Training"). The ADA Student Training shall include, but not be limited to, the functions of the University's ADA Coordinator and the University's Office of Disability Services (including the process for obtaining a University-issued "Accommodations Letter"). During the ADA Student Training, the University shall distribute written information on the functions of the University's ADA Coordinator and the University's Office of Disability Services (including the process for

obtaining an initial or a renewal University-issued "Accommodations Letter"). The University shall send via electronic mail to the Department the proposed curriculum for the training no later than thirty (30) days prior to the first ADA Student Training required under this Agreement. The University shall adopt any changes to the curriculum made by the Department. Should there be a disagreement on inclusion of any changes made by the Department, the University is entitled to provide its rationale or reasons for any objection thereto, which shall be fully considered by the Department.

Reporting

20. **Initial Report.** Ninety (90) days following the commencement of the fall 2013 quarter, the University's ADA Coordinator shall submit a report to the Department confirming its implementation of the policies referenced in Paragraph 13 and its fulfillment to that date of the requirements of Paragraphs 14, 15, 16, 17, and 19. The University shall provide the Department with the attendance logs associated with its ADA Training.
21. **Subsequent Reports.** Every year on the anniversary of the due date of the first report, the University's ADA Coordinator shall submit a report to the Department regarding its compliance with this Settlement Agreement. The report shall include, for the period subsequent to its immediately prior report to the Department, the following:
- a. The dates of the University's ADA Training;
 - b. All attendance logs associated with ADA Training;
 - c. The dates of the University's ADA Student Training;
 - d. Notification to the Department of all complaints, formal or informal, received by the University since the immediately prior report under this Agreement (including complaints made directly to the Office of Disability Services or to any individual who provides course-related instruction to University students) about technology-related accessibility issues for people with disabilities in any University course. Such notification shall include the name of the University course; the professor(s) or instructor(s) teaching it; and a detailed description of the status or resolution of the matter.
22. All reports required pursuant to this Agreement shall be delivered to the undersigned counsel via electronic mail at anne.langford@usdoj.gov.

RELIEF TO THE COMPLAINANT

23. Within ten (10) days of the effective date of this Agreement, the University shall permanently purge from the Complainant's transcript any reference to the course from which he had to withdraw during Spring Quarter 2012 (including any "withdrawal" designation currently reflected) due to the University's violation of the ADA.
24. Within forty-five (45) days after the effective date of this Agreement, and in exchange for an executed copy of the Release Agreement attached hereto as Exhibit 2, the University,

the Board, and/or any agent acting on behalf of either the University or the Board shall pay the Complainant a total sum of \$23,543.00 (with such amount to be divided among the University and the Board at their discretion). Such payment(s) shall be made by check(s) payable to the order of the Complainant (in his legal name) and delivered to the Complainant via overnight, private courier.

OTHER PROVISIONS

25. In consideration for this Agreement, the United States will not institute any civil action alleging discrimination based on the allegations contained in DJ #204-33-116, except as provided in the immediately following paragraph.
26. The United States may review the University's compliance with this Agreement or title II of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, such concerns will be brought to the attention of the other parties to this Agreement, and the parties will attempt to resolve the concerns in good faith. The United States will provide the University thirty (30) days from the date it notifies the University of any breach of this Agreement to cure that breach before instituting a civil action in the appropriate United States District Court to enforce this Agreement or to otherwise enforce title II of the ADA.
27. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of the right to do so with regard to other provisions of this Agreement.
28. 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. However, if the severance of any such provision materially alters the rights or obligations of the parties, the Department and the University shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially negotiated terms.
29. A signatory to this document in a representative capacity for any party represents that he or she is authorized to bind that party to this Agreement.
30. This Agreement constitutes the entire agreement between the parties 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.
31. 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 the University's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

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

33. The term of this Agreement will be five years from the effective date.

AGREED AND CONSENTED TO:

The Board of Supervisors for the University
of Louisiana System, with and on behalf of
Louisiana Tech University



Leslie K. Guice
President
Louisiana Tech University
P.O. Box 3168
Ruston, LA 71272

7/12/13
Date

THOMAS E. PEREZ
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Civil Rights Division

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REBECCA B. BOND, Chief
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Disability Rights Section
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950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

7/22/2013
Date

EXHIBIT 1

POLICY REGARDING THE REQUIREMENT OF DEPLOYING ACCESSIBLE TECHNOLOGY IN THE UNIVERSITY SETTING

This Exhibit clarifies the requirements of Paragraph 13(a) of the Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (“Settlement Agreement”).

Under Paragraph 13(a), the University must implement a policy that requires the deployment of accessible technology and course content in the University setting. To that end, the University shall conduct a review of the accessibility of its technology and instructional materials and shall ensure that, from the effective date of and consistent with the Settlement Agreement, all technology, including websites, instructional materials and online courses, and other electronic and information technology for use by students or prospective students, is accessible. The required policy will include provisions to the following effect:

- The University will only purchase, develop or use technology and instructional materials that do not exclude persons who are blind or who have other vision disabilities; and
- The University will only purchase, develop or use technology and instructional materials that allow persons who are blind or who have other vision disabilities the equal opportunity to access, use, and avail themselves of such technology or instructional materials in as full, equal, and independent a manner as persons without disabilities.

Web Pages

- New Pages: All new and redesigned web pages, web applications and web content (“web pages”) published by any college, department, program, unit, or professor that are available to students, prospective students, or applicants must comply with the Web Content Accessibility Guidelines 2.0 level AA (“WCAG 2.0 AA”).
- Pre-Existing Pages (published prior to the effective date): Each college, department, program, unit and professor that controls or operates a web page(s) available to students, prospective students, or applicants will develop and implement a plan to make pre-existing web pages posted since January 2010 comply with WCAG 2.0 AA by December 1, 2014.
 - The plan should prioritize pages that are most used or of most importance to students, prospective students, or applicants.
 - The plan should be posted on the department, program, unit, or professor’s website and updated as implementation proceeds.
- Each University web site, including pre-existing pages, must indicate, in plain text, a method of contact for users having trouble accessing content within the site.

- Legacy and Archive Pages: Upon a specific request for access by an individual with a disability, pre-existing pages, legacy pages (*i.e.*, published prior to January 2010) and pages in archive status (*e.g.*, no longer in use but subject to records retention schedules) containing core administrative or academic information, official records, and similar information must be updated to be in compliance with WCAG 2.0 AA or the content must otherwise be made available to the requesting individual in a timely and accessible manner. Timeliness should be considered in the context of the type of information or service a page provides and generally within ten (10) business days.
- For pre-existing pages, if timely access cannot be accomplished, equally effective alternate access must be provided in a timely manner.

Instructional Materials

- All instructional materials and online courses created by a college, department, program, unit or professor must be fully accessible to individuals with disabilities at the same time they are available to any other student enrolled in that program.
- Each college, department, program, unit and professor using pre-existing instructional materials and online courses created or used since January 2010 will develop and implement a plan to make them accessible in compliance with WCAG 2.0 AA by December 1, 2014. The plan should be posted on the department, program, unit, or professor's website and updated as implementation proceeds.

Other Technology for Effective Communication

- The University will ensure that any new technology it makes available to students, prospective students or applicants, including web applications, hardware, software, telecommunications, and multimedia is accessible, if such new technology is commercially available and its purchase does not result in undue financial and administrative burdens or a fundamental alteration. If a product is available and meets some, but not all, of the relevant accessibility provisions of WCAG 2.0 AA, the product that best meets the standard must be procured.
- The University will develop and implement a process to ensure electronic and information technology purchased by the University is accessible, including:
 - a. Language in all technology contracts requiring contractors to warrant their compliance with WCAG 2.0 AA, to provide accessibility testing results and written documentation verifying accessibility, to promptly respond to and resolve accessibility complaints, and to indemnify and hold the University harmless in the event of claims arising from inaccessibility.
 - b. A process for determining whether providing effective communication in the University's electronic and information technology would result in undue financial and administrative burdens or a fundamental alteration.

- c. Procedures for providing equally effective alternate access for technology acquisitions that are approved for exception (see below).
- d. Milestones and timelines.

Technical Assistance, Exceptions, and Monitoring

- An appropriate office will provide resources, information and assistance to programs on plan development and implementation, as well as on achieving accessibility of web pages, instructional materials, and other technology.
- When compliance is not technically possible, would require a fundamental alteration, or would result in undue financial and administrative burdens, exceptions to the policy may be granted by an appropriate official. Requests for exceptions must be in writing. Whenever an exception is granted, the University must develop a plan to provide equally effective alternate access to the information or service of the technology to students, prospective students, and applicants.
- The University will periodically conduct audits of websites, instructional materials, and other technology used by colleges, departments, programs, units and professors, inform them of the results, and initiate remedial action for accessibility problems identified.
- *Equally Effective Alternate Access:* “Equally effective alternate access” to electronic and information technology for persons with disabilities is based on (1) timeliness of delivery, (2) accuracy of translation, and (3) delivery in a manner and medium appropriate to the disability of the person. Such alternate(s), to be equally effective, are not required to produce the identical result or level of achievement for disabled and non-disabled persons, but must afford disabled persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person’s needs.
- *Fundamental Alteration:* A change to a university program or service may constitute a fundamental alteration if it alters the essential purpose of the program or service or any of its components. In situations where a fundamental alteration can be documented, equally effective alternate access must still be provided.
- *Undue Financial and Administrative Burdens:* Undue financial and administrative burdens are created when a proposed course of action causes significant difficulty or expense. Because an institution must consider all resources available when reviewing claims of undue financial and administrative burdens, the decision to invoke undue financial and administrative burdens should be carefully weighed and sufficiently documented. In situations where undue financial and administrative burdens can be documented, equally effective alternate access must still be provided.

EXHIBIT 2

RELEASE OF CLAIMS

For and in consideration of the relief offered to me by Louisiana Tech University (“the University”) and the Board of Supervisors for the University of Louisiana System (“the Board”) pursuant to the Settlement Agreement between the United States of America, the University and the Board arising out of Department of Justice Investigation No. 204-33-116:

I, _____, the Complainant who initiated Department of Justice Investigation No. 204-33-116 (“Complainant”), hereby release and forever discharge the University and the Board and their current, past, and future officials, employees, and agents, of and from any Americans with Disabilities Act-related legal and/or equitable claims arising out of the facts identified in the Settlement Agreement related to Department of Justice Investigation No. 204-33-116. As a result, I agree and promise that I will not file any Americans with Disabilities Act-related suit, charge, complaint, proceeding or action at law, in equity, or otherwise in any court, or any other judicial or administrative forum against the University and/or the Board arising out of the facts identified in the Settlement Agreement related to Department of Justice Investigation No. 204-33-116. Excluded from this Release are any rights and claims that cannot be waived by law.

This Release constitutes the entire agreement between myself, the University, and the Board, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement has been made available to me. By signing this Release, I acknowledge that I have been provided the opportunity to review the same with an attorney of my choosing.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Date: _____

Complainant’s Signature