

SEP 12 2014

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is entered into as of this \_\_\_\_ day of September 2014, by The National Federation of the Blind ("NFB" or "Plaintiff") and the Maricopa County Community College District ("MCCCD") and Mesa Community College ("MCC") (collectively "Defendants"). Plaintiff and Defendants may be referred to collectively as the "Parties" in the Agreement.

WHEREAS, MCC provides degree and workforce training programs in response to the needs of Arizona and the Greater Phoenix area. MCC is an individually accredited institution and part of MCCCD. MCCCD and MCC are public entities under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* ("ADA" or "Title II") and recipients of federal financial assistance as that term is used in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504").

WHEREAS, Plaintiff filed a lawsuit against Defendants in the United States District Court, District of Arizona, Case No. 2:12-CV-00907-NVW (the "Lawsuit"). Plaintiff alleged that co-Plaintiff Sebastian Ibanez encountered access barriers while enrolled as a student at MCC and that other access barriers exist for blind students at MCC in violation of Title II and Section 504.

WHEREAS, Defendants deny all allegations and claims in the Lawsuit and state that it acted at all times in compliance with the ADA and Rehabilitation Act. Defendants' entry into this Settlement Agreement does not constitute an admission of liability, wrongdoing or violation of the ADA, Rehabilitation Act or any other statute, regulation, or provision of any federal or state law.

WHEREAS, the Parties agree that it is in their best interest to resolve this dispute amicably and without further litigation. The Parties have fully settled the Lawsuit voluntarily and with finality, and desire to reduce said agreement to writing, agreeing as follows:

### DEFINITIONS

1. "Accessible." The term "accessible" as used in this Agreement means that blind students are able to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

2. "Electronic and information technology" or "EIT" includes information technology deployed by MCCCD for student use, including Automated Teller Machines (ATMs), internet websites published after June 1, 2014 and those which have been updated since, electronic books and electronic book reading systems, search engines and electronic databases, course management systems, classroom technology such as podiums and other multimedia, and personal response systems (also called clickers). EIT also includes any equipment or interconnected system deployed by MCCCD that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information that is used by its students,

including computers, ancillary equipment and software. EIT also includes any subsequently deployed intranet for student use.

## REMEDIAL ACTIONS

1. Technology Accessibility Audit. MCCCCD shall conduct and complete within six months after signing the Agreement a Technology Accessibility Audit of the following electronic and information technologies: MCCCCD's enterprise-wide student facing systems (student email system, learning management system ("LMS"), library website, and student information system), the public Maricopa.edu website, the public MCC website, and MCC's use of personal response systems ("clickers") in classrooms. The Technology Accessibility Audit will be conducted in a professional manner using appropriate methods as determined by Defendants to examine whether these identified electronic and information technologies are accessible.

2. Corrective Action Strategy. Within 120 days after the completion of the Technology Accessibility Audit, Defendants shall develop a Corrective Action Strategy based on the Technology Accessibility Audit findings. Parties acknowledge that Defendants will evaluate the audit results and potential corrective actions to comply with MCCCCD's Privacy by Design effort. The Corrective Action Strategy shall include dates by which corrective action will be completed. No later than sixty days after the Strategy is finalized, MCCCCD shall disseminate the Strategy amongst its colleges and post it on the Maricopa.edu website or other appropriate website as determined by MCCCCD. Except as otherwise specified in this Agreement, remediation will take no longer than 24 months from the date of adoption of the Corrective Action Strategy. MCCCCD will hire or designate an individual or entity to oversee the implementation of the Strategy.

3. Technology Accessibility Policy Statement. Within ninety days of the signing of the Agreement, MCCCCD shall review and revise its current Administrative Regulation (2.8 Students with Disabilities) or other appropriate administrative regulation as determined by MCCCCD to include a commitment to implement accessible electronic and information technologies for student-used EIT for blind students and other visually impaired students in accordance with the Americans With Disabilities Act and Section 504 of the Rehabilitation Act. The revised administrative regulation shall be posted on the public Maricopa.edu website or other appropriate website(s) as determined by MCCCCD within 30 days after its final approval. The revised administrative regulation shall be disseminated to all faculty as well as academic, student affairs, and information technology managers, within thirty days after its posting. Within 120 days of the revised administrative regulation's dissemination, MCCCCD shall develop or augment existing procedures to implement the revised administrative regulation.

4. Training. Within one year of the signing of the Agreement, MCC shall offer training for all full-time and adjunct faculty, as well as academic, student affairs, and information technology managers, which shall address: the requirements of Title II of the ADA and Section 504 of the Rehabilitation Act; MCC's student accommodation process and procedures; MCC's and MCCCCD's resources for students and MCC instructors/managers on disability-related matters, including tools and techniques available for faculty and staff to provide accessible instruction to blind and visually impaired students. MCC shall also review and revise as needed

its current resource materials for faculty and staff on how to make digital information and course materials accessible to blind and visually impaired students.

5. Procurement. Within one year of the signing of the Agreement, MCCCDC shall develop and/or revise procedures to require that MCCCDC purchase or recommend for student purchase only electronic technology purchased for and deployed to students or prospective students that is accessible to those who are blind or visually impaired, except when it would result in an undue financial or administrative burden, when it would result in a fundamental alteration in a program, service or offering, or when it would not be technologically feasible to do so, in which case the procedures will require MCCCDC to provide accessible alternative(s). MCCCDC shall revise its RFP process to include language that requires bidders to minimally meet the accessibility standards set forth in WACG 2.0 AA standards for web-based EIT. WCAG 2.0 standards for non-web based technology will apply to that class of technology. MCCCDC will request vendors to warrant in writing that any EITS provided is accessible as defined in this Agreement except where technologically infeasible.

6. Library. MCCCDC's integrated library system website and its interfaces provided by SirsiDynix and the MCC library website shall be accessible to blind and visually impaired students and other authorized users in accordance with WACG 2.0 Level AA standards. MCC shall conduct an accessibility scan semiannually of content on the MCC library website and shall notify content authors if their pages fail to meet the WACG 2.0 Level AA standards, along with a timeline for corrections.

7. Websites. MCCCDC's public website (Maricopa.edu), MCCCDC's web interface to the student information system (my.Maricopa.edu), and MCC's public website (excluding pages found at <http://www.mesacc.edu/~meid>) shall be accessible to blind and visually impaired students in accordance with WACG Level AA standards. All pages hosted on these sites that have been published or updated on or after the date of this Agreement shall be accessible to blind and visually impaired users. Any other pages shall be made accessible upon request.

8. Learning Systems. MCCCDC shall also work with its current learning management system provider, Instructure, to ensure that Canvas is accessible and complies with guidelines under Section 508 of the Rehabilitation Act and Title II of the ADA. It shall be made accessible or replaced with an accessible learning management system in accordance with the timeline and exceptions specified in paragraph 1 of this Agreement. MCC shall ensure that any personal response system ("clickers") used by MCC faculty include an option that is accessible to blind and visually impaired students.

9. ATMs. MCCCDC shall request that all Automated Teller Machines (ATMs) located on any campus within the district meet the requirements of <http://www.ada.gov/regs2010/2010ADAstandards.htm>. If the ATM is neither made accessible within three (3) months after MCCCDC's request nor plans for accessibility made within that time, the banks shall be requested to remove the ATM.

10. Grievances. MCCCDC shall review and revise its established student grievance procedures to address EITS accessibility barriers. MCCCDC shall also provide a process for

faculty to follow if he/she encounters an EITS that he/she believes poses accessibility barrier(s) for blind or visually impaired students. The revised grievance procedures shall be posted on the appropriate MCCC website(s).


11. Reporting. MCCC shall provide NFB with a report on the first anniversary of this Agreement that summarizes the progress it is making in meeting its obligations as set forth in this Agreement. Additional communication will occur before and after the first anniversary to address any possible delays or other obstacles encountered with the implementation of this Agreement.

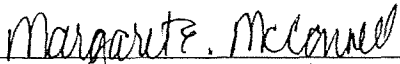
12. Dispute Resolution. Any dispute between the Parties arising out of or related to this Agreement shall be subject to the following dispute resolution process. If at any time a Party believes that another Party has not complied with any provision of this Agreement, the complaining Party shall deliver prompt written notice to the other Party identifying the provision(s) of the Agreement that is at issue, a statement of the alleged breach and what remedial action is requested. The Party receiving the Notice will respond within 45 days of its receipt as to the alleged non-compliance and next steps. Within 45 days of the written response, the Parties shall meet and confer to reach an agreement on the issues. Before seeking any other legal remedy, the Parties must mediate any unresolved dispute. Any such mediation shall take place within 45 days of the Parties' initial meet and confer.


13. Resolution of Lawsuit. Upon execution of this Agreement, the Parties will jointly request that the Court enter final judgment dismissing with prejudice the Plaintiff's claims asserted in the Lawsuit against Defendants. The Parties agree, however, that the obligation to negotiate or arbitrate the issue of attorneys' fees and costs shall survive execution of this Agreement. This Agreement shall expire the earlier of five years from its execution or completion of all requirements under this Agreement.

14. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Arizona without regard to conflict of law principles.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed as of the dates set forth below.

Dated: 09/11/14 By:   
Mark Riccobono for Plaintiff National  
Federation of the Blind

Dated: 9-17-14 By:   
Margaret McConnell for Defendant MCCCCD

Dated: 9-18-14 By:   
Shouan Pan, Ph.D. for Defendant MCC