

## **RESOLUTION AGREEMENT**

This Agreement is entered into between Wichita State University (“WSU”), Emily Schlenker and the National Federation of the Blind (“NFB”).

### **I. BACKGROUND**

On March 14, 2016, Emily Schlenker filed a Complaint of disability discrimination against WSU with the United States Department of Education’s Office for Civil Rights (OCR Reference No. 07162056). The Complaint alleged that WSU discriminated against her, as a blind student, in violation of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 by:

- using inaccessible electronic and information technology, including: inaccessible class assignments, materials, and tests;
- using inaccessible student computer workstations; and
- not providing alternative accessible formats of print material, class assignments, and tests in a time and manner that would provide equally effective communication to blind students.

### **II. DEFINITIONS**

A. “Blind” is used in its broadest sense to include all persons who have a vision-related disability that requires the use of alternative techniques or assistive technology to access visual information.

B. “Accessible” means that blind individuals are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as non-blind individuals, with substantially equivalent ease of use.

C. “Electronic and information technology” or “EIT” includes information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation,

conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, the internet and intranet websites, content delivered in digital form, electronic books and electronic book reading systems, search engines and databases, learning and other content management systems, classroom technology and multimedia, personal response systems (“clickers”), and office equipment such as classroom podiums, copiers and fax machines. It also includes any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, creation, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This term includes telecommunications products (such as telephones), Automated Teller Machines (ATMs) transaction machines, computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

D. “Learning management system (LMS)” means a software application, whether used in a single course, by a Department, by a college or by a school, or across WSU which WSU makes available to students and uses to plan, create, administer, document, track, report, deliver, or maintain electronic educational courses, course content, or assess student performance.

E. “Equally effective” means that the alternative format or medium communicates the same information in as timely a fashion as does the original format or medium.

F. “Timely” and “timeliness” mean access in sufficient time for the blind person to have an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as non-blind persons.

G. “School calendar days” means any day that school is in session.

H. “Instructors” means all individuals who provide any course-related instruction to WSU students, including, but not limited to, professors, lecturers, fellows, and teaching assistants.

“Accessibility standards” means:

1. WCAG 2.0 AA and WAI-ARIA 1.0 for web content;
2. ATAG 2.0 for software used to create web content;
3. UAAG 1.0 for web browsers, media players and assistive technologies;
4. WCAG2ICT for non-web software and content;
5. MathML 3.0 specifications for digital mathematical and scientific notation;
6. DAISY or ePub3 for digital publications and documents;
7. BANA Guidelines and Standards for Tactile Graphics (2010) and Guidelines for the Production of Braille Materials through the Use of Braille Production Software (2007) for hardcopy Braille; and
8. ADAAG and other standards for the accessible design of ATMs, personal computers, and other classroom technology.

I. “Accessibility requirements and norms” means:

1. The general requirements of the ADA, Section 504, and their applicable regulations;
2. Accessibility and usability of web content;
3. Accessible document development and remediation;
4. Accessibility and usability of technology, including equipment and devices used in classrooms and laboratories (e.g., clickers, lab equipment, smart boards);
5. Testing and evaluating the accessibility of web and other technologies;

6. Accessibility standards;
7. The appropriate provision of auxiliary aids and services for blind students in non-electronic or non-digital formats, such as Braille hard copy, tactile graphics, large print hardcopy; and
8. Reasonable modifications to policies, practices and procedures in higher education to achieve equal access for blind students.

### **III. REMEDIAL ACTIONS**

To resolve the concerns identified in the Complaint, WSU will take effective steps, the specifics of which are described below, designed to ensure that all WSU programs and activities are accessible to blind individuals.

#### **A. Accessibility Coordinator**

1. Within 60 days of the effective date of this Agreement, WSU will hire or designate, an Accessibility Coordinator who reports directly to the Vice President of Student Affairs.
2. The Accessibility Coordinator will, within 60 days of hire or designation thereafter:
  - a. Be knowledgeable concerning all related accessibility requirements and norms;
  - b. Coordinate WSU's compliance with this Agreement with respect to digital and non-digital technology. While the Office of Disability Services may have primary responsibility for WSU's provision of non-digital technology (e.g., tactile graphics, Braille hard copy) to blind students, the Accessible Technology Coordinator will coordinate with the Office of Disability Services to oversee WSU's compliance with this Agreement's non-digital-technology requirements.

- c. Assist WSU in the development of policies and initiatives required by this agreement;
- d. Report and document semi-annually to the Vice President of Student Affairs whether:
  - i. WSU's websites conform to WCAG 2.0 AA and this Agreement;
  - ii. Third party websites on which WSU places content or uses for web services conform to WCAG 2.0 AA and this Agreement, or how equally effective alternate access is provided, if appropriate, under this Agreement;
  - iii. LMS's and other technologies used by WSU conform to WCAG 2.0 AA and this Agreement, or how equally effective alternate access is provided, if appropriate, under this Agreement;
  - iv. WSU has received any complaints or grievances concerning the use of inaccessible technologies; and
  - v. The requirements of this Agreement have been met, and, if not, what requirements have not been met and why.

## **B. Adoption and Dissemination of Policies**

- 1. Within 240 days of the effective date of this Agreement, WSU shall, if necessary, revise its existing policies or adopt and implement policies that:
  - a. Ensure no qualified individual with a vision related disability shall be, by reason of such disability, excluded from participation in or be denied the benefits of the services, programs, or activities of WSU, or be subjected to discrimination by WSU. Such policy shall specifically refer to the requirement of deploying

Accessible technology and course content in a post-secondary setting that conforms to applicable accessibility standards.

b. Ensure that electronic technology purchased or licensed for, or deployed to students or prospective students is Accessible to those who are blind. WSU shall advise vendors of its desire to procure web-based EIT that complies with the WCAG 2.0 AA standards. WSU will require vendors to warrant in writing that any technology provided is Accessible as described in this Agreement.

c. Ensure that WSU commits to implementing accessibility of EIT as defined above for blind students in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

d. Ensure that WSU-recognized modifications for students (those granted to individual students through “Accommodations Letters”) are timely implemented under the supervision of WSU’s Office of Disability Services. The decision to request accommodations from an instructor shall remain solely the decision of individual students.

e. Ensure that WSU’s Office of Disability Services timely responds to reasonable requests for assistance by blind students, when such requests were not anticipated, and therefore perhaps not enumerated, in WSU-prepared “Accommodations Letters.”

f. Ensure that, consistent with the requirements of the ADA, opportunities afforded generally to WSU students are equally afforded to blind students.

g. Ensure that WSU’s Office of Disability Services acts as a liaison between students and faculty. To this end the policy shall require the Office of Disability

Services to take an active role in working with all persons within WSU, including but not limited to all persons involved in providing class instruction to students, to promptly and effectively resolve access issues.

h. Ensure that WSU'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 WSU. If a student makes a vision related disability complaint to a person involved in providing class instruction, that person must notify the Office of Disability Services as soon as reasonably possible but no later than 3 school calendar days so that the Office of Disability Services can ensure appropriate resolution of the complaint and, where appropriate, be involved in facilitating such resolution.

i. Develop a "Grievance Process" for vision related disability issues that will be triggered any time the student notifies the Office of Disability Services, in writing, that the student believes their initial complaint has not been resolved. In such an instance, the Office of Disability Services shall notify the Accessibility Coordinator of the appeal within two (2) school calendar days. The initial concern by the student with a vision related disability issue to the WSU Office of Disability Support Services should then be reduced to writing to clearly document the process. It can be written by either the student or the Office of Disability Support Services. The resolution of any such concern shall be documented by a statement signed by the student that the concern was resolved with a description of how the concern was resolved. WSU's Grievance Process on vision related disability issues shall be provided in an Accessible format to all blind students at orientation, be posted in

Accessible format on WSU's website and described on all forms used to record the grievance and the student's assent, when appropriate, of the resolution of the grievance.

j. Ensure that WSU's ADA Policy includes the correct contact information for filing complaints with the Department of Justice Civil Rights Division (via mail, email, and via telephone (TTY), as reflected at [http://www.ada.gov/fact\\_on\\_complaint.htm](http://www.ada.gov/fact_on_complaint.htm).

2. Within 240 days of the effective date of this Agreement, WSU will post the policies referred to above on its website unless they are already posted. Prior to posting, the NFB will have the opportunity to comment. The NFB will contact the General Counsel of WSU if there is a need to discuss the policies referred to above in which case NFB and WSU will work together in good faith to resolve any modifications to the policies.

3. Within 240 days of the effective date of this agreement, WSU shall continue to ensure the policies referred to in the preceding paragraph are available to all Instructors and all WSU administrators. Instructors and administrators will be notified of the change in these policies.

### **C. Training**

1. WSU shall develop a training program that shall begin with a live or online training session in the Spring of 2017 for its instructors that addresses the requirements of the ADA, this Agreement, available resources and grievance processes. ("ADA Training"). Beginning with the Fall 2017 semester and thereafter on a regular, not less frequent than annual basis, WSU shall provide ADA Training to all Instructors and appropriate WSU administrators as determined by WSU. This training may be provided in live or online sessions. WSU will solicit comments from

the NFB with respect to the development of its ADA Training program, and NFB will share lists of resources relating to the training curriculum.

2. The parties agree WSU will consider including the following in the scope of the ADA Training:

- a. In all instances, the ADA Training must address the requirements of Title II of the ADA; WSU's resources for students and Instructors on vision related disability- matters (including, but not limited to, the identity and functions of WSU's Office of Disability Services, the Accessibility Coordinator, and the functions and identity of WSU's designee for coordinating WSU's response to disability-related grievances; WSU's student accommodation process and procedures including Instructors' obligations to provide all accommodations recognized by WSU via "Accommodations Letters" given to students registered with WSU's Office of Disability Support Services; and Title II "best practices" to ensure WSU's compliance with the ADA.)
- b. Common assistive technologies and other auxiliary aids and services used by blind individuals in interacting with computers, websites, equipment, and in learning in and outside of the classroom, including non-electronic formats;
- c. Common technological accessibility barriers encountered by blind individuals, including those found on websites, in various document formats, and equipment and devices used in laboratories and classrooms;
- d. Common methods, resources, personnel and time frames used in ensuring that word processing, spreadsheet and presentation documents, converted and

digital textbooks, informational images, multimedia, and course equipment and devices are Accessible;

- e. The means by which one creates and provides Accessible instructional materials in the classroom setting or by delivery electronically through course websites, LMS's, or email;
- f. An overview of accessibility standards;
- g. Consideration of selecting course texts that have accessible electronic formats, such as DAISY or ePub3; and
- h. Reporting obligations under this Agreement.

3. 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 WSU, because they began their affiliation with WSU subsequent to the training date or because they assumed a position within WSU subjecting them to coverage under this paragraph subsequent to the training date), WSU shall provide the ADA Training to such persons within sixty (60) days after the individual's commencement of service to WSU in a position covered by this paragraph or within sixty (60) days of their return to WSU (for instance, from leave).

4. During all orientation sessions offered during the term of this Agreement to incoming students (including first-year and transfer students), WSU shall include a mandatory presentation by a member of WSU's Office of Disability Services, either as a stand-alone module or as part of other orientation on the resources available to students ("ADA Student Training").

5. The ADA Student Training shall include, but not be limited to, the functions of WSU's Accessibility Coordinator and WSU's Office of Disability Services, the process for obtaining a WSU-issued "Accommodations Letter," and the "Grievance Process pertaining to disability-related issues. During the ADA Student Training, WSU shall distribute written information (in an Accessible format where appropriate) on the functions of WSU's Accessibility Coordinator and WSU's Office of Disability Services (including the process for obtaining an initial or a renewal WSU-issued "Accommodations Letter"). WSU will determine what other matters will be included in ADA Student Training. WSU shall produce a curriculum for the ADA Student Training required under this Agreement. NFB can make recommendations to WSU regarding the curriculum for the ADA Student Training.

6. WSU will make a record of all attendees to the training. WSU will keep those records for a reasonable period of time as determined by WSU.

#### **D. Technology Audit**

1. Within 180 days of the effective date of this Agreement, WSU shall retain, hire, or designate an Accessible Technology Specialist (Accessible Technology Specialist). The Accessible Technology Specialist shall have expertise concerning all accessibility requirements and norms.

2. Within one year of the effective date of this Agreement, the Accessible Technology Specialist shall conduct and complete a Technology Accessibility Audit of all student-facing Electronic and Information Technology, including, but not limited to all of WSU's student facing systems and websites, all LMS's used in conjunction with any WSU courses, and all technology used or provided for use by students on the WSU campus. The Technology Accessibility Audit will be conducted in a professional manner using appropriate methods to examine the accessibility

of the identified EIT. WSU agrees to receive and consider a list of recommendations from the NFB with regard to the Technology Accessibility Specialist. For the purposes of the audit, conformance with accessibility standards, where applicable, shall constitute Accessibility.

3. Within 60 days after the completion of the Technology Accessibility Audit, the Accessible Technology Specialist will provide written audit findings and recommendations on accessibility improvements to the Accessibility Coordinator.

4. Within 180 days after the completion of the Technology Accessibility Audit, WSU shall develop a Corrective Action Strategy based on the Technology Accessibility Audit findings that will make all inaccessible EIT accessible no later than three years after the completion of the Technology Accessibility Audit, except that for blind students currently enrolled at WSU or enrolled for any semester prior to completion of the Corrective Action Strategy, WSU will timely provide Accessible EIT or equally effective alternate access for every class in which such a student is enrolled. No later than sixty days after the Strategy is finalized, WSU shall disseminate the Strategy and post it on the Wichita.edu web site. The Accessibility Coordinator, or another designee of WSU who is knowledgeable concerning all accessibility requirements and norms, shall oversee the implementation of the Strategy.

#### **E. Instructional materials**

1. All instructional materials, co-curricular materials, EIT, and online courses created or used by an WSU department or professor in connection with any WSU course offering will, to the best of WSU's ability, be accessible to blind individuals at the same time they are available to any other student enrolled in that program. For example, all content presented visually in a classroom, test, or homework setting for a class that includes a blind student must be made accessible in a non-visual format in time to be used by that student in those same settings,

including, for non-textual information, tactile graphics or high resolution magnification, as appropriate. WSU shall develop a plan for making accessible instructional materials, co-curricular materials, EIT, and online courses created or used by an WSU Department or professor in connection with any WSU course offering accessible to blind individuals at the time they are made available to any other student enrolled in that program. The Accessible Technology Specialist, or another designee of WSU who has expertise in all accessibility requirements and norms, shall assist in fulfilling the requirements of this paragraph. All instructional materials, co-curricular materials, EIT, and online courses created or used by a WSU Department or professor in connection with any WSU course offering will be made accessible no later than four years from the execution of this Agreement. WSU agrees to implement accessibility earlier than the four-year time frame in the event that the Accessibility Technology Specialist or other designee with expertise in all accessibility requirements and norms concludes that such materials may reasonably be made accessible in a period shorter than four years from the execution of the Agreement. This plan shall be posted on the Department, program, unit, or professor's website and updated as implementation proceeds. For blind students currently enrolled at WSU or enrolled for any semester prior to completing implementation of the plan, WSU shall timely provide such materials in accessible format for every class in which such a student is enrolled.

2. WSU shall timely make available print textbooks in the alternate Accessible format requested by a blind student, including Braille or an electronic format satisfying the ePub3 standard, together with tactile graphics or high resolution magnification, as appropriate, for non-textual information. The process for requesting an alternate format for a textbook shall include an Accessible form that can be independently completed by a blind student. WSU shall continue to recommend students register early if they need accessible books, but WSU will not condition the

provision of accessible information upon such early registration. However, untimely notification may result in a delay in materials, although WSU will work to get the materials as quickly as possible. Students must provide written notice to the Office of Disability Services regarding their need for accommodation. Before providing an electronic textbook to a student, WSU shall verify that it is Accessible.

3. Tactile graphics must comply with the Braille Authority of North America's "Guidelines and Standards for Tactile Graphics."

#### **F. Websites**

Within 18 months of the effective date of this Agreement, WSU's public website (Wichita.edu) and WSU's web interface to student and library information systems, as well as any online forms, shall be made Accessible to blind users in accordance with WCAG 2.0 Level AA standards. WSU shall develop a process to periodically monitor and remediate any barriers on any subsequently added or updated pages or content, provide a prominent link on each website to an Accessible form for reporting any barriers, and do user testing for accessibility barriers of any revisions of these sites to ensure compliance prior to implementation of those revisions. WSU shall inform authors of content that fails to meet WCAG 2.0 AA standards of such failure, and provide those authors with access to ADA Training. WSU is not responsible for the inaccessibility of third-party databases. However, should a blind user request any inaccessible content, whether from such a database or from a WSU-controlled source, WSU shall provide timely equally effective alternate access to the requested content.

#### **IV. Reporting**

Beginning 13 months after the date of this Agreement and annually thereafter for 5 years, WSU will prepare a summary of the progress being made with regard to obligations set forth in this Agreement.

#### **V. AGREEMENT MODIFICATION**

If WSU determines that it is unable to fulfill the terms of this Agreement, including timeframes provided for by this Agreement, it will make a written request to the NFB for a modification to the substantive terms of this Agreement or for an extension of the Agreement timeframes. The NFB will respond to WSU's modification request in writing and will notify WSU in writing if it agrees to significant modifications to this Agreement. NFB must respond within 10 business days and cannot unreasonably withhold its response.

#### **VI. AGREEMENT IMPLEMENTATION DEFICIENCIES**

A. The parties to this Agreement will communicate and work in good faith to fully implement the terms of this Agreement.

B. The NFB will promptly provide written notice to WSU if it believes there are any deficiencies in WSU's implementation of the terms of this Agreement, and will recommend specific action to address such deficiencies. In the case that WSU notifies the NFB that it will not be able to carry out a provision of the Agreement in the agreed-upon time or manner, or if NFB provides the written notice described, above, the parties agree to meet to discuss the issues identified in such notice.

C. The parties agree to arbitration in lieu of filing an OCR complaint or initiating judicial proceedings to enforce the terms of this Agreement unless a new act occurs, subsequent to the execution of this Agreement. Before requesting arbitration, the NFB shall give WSU written

notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach. The parties will share, equally, the fees and expenses of the arbitrator but be responsible for their own attorney fees and expenses.

## VII. RESTITUTION AND AMENDS

A. WSU shall expunge and remove, from its internal records, all indications and grades from Emily Schlenker's transcript for Organic Chemistry I (Chem 531), Organic Chemistry II (Chem 532), and Medicinal Chemistry (Chem 605). NFB and Schlenker understand and agree this will likely alter Schlenker's grade point average, credit hours earned toward completion, require reimbursement of any federal or other financial aid received for these courses and delay her ability to take the MCAT or other comparable exam.

B. WSU shall waive all tuition and fees, including costs for books and materials, for Emily Schlenker to enroll in and complete any course and corresponding lab from those listed in paragraph VII. A, above, that she elects to have expunged and removed.

C. WSU shall waive all tuition and fees, including costs for books and materials, for Emily Schlenker to enroll in and complete any course and corresponding lab from those listed in paragraph VII. A, above, that she elects to have expunged and removed and the following courses, all of which must be completed within 4 years from the date of this agreement:

- General Biology I (Biology 210)
- General Biology II (Biology 211)
- Introductory Biochemistry (Chem 661)
- Calculus I (Math 242)
- Physics II (Phys 214)
- Biological Psychology (Psyc 320)

D. WSU shall provide Emily Schlenker with accessible MCAT test preparation books and materials that are the same or substantially similar to those materials regularly made available to other WSU students.

### **VIII. GENERAL**

A. This Agreement resolves the allegations in the Complaint (OCR Reference No. 07162056) and does not constitute an admission by WSU of a violation of Section 504 or Title II or those statutes' implementing regulations or any other law.

B. Emily Schlenker agrees to withdraw the Complaint based upon WSU's commitment to take the actions specified in this Agreement, which, when fully implemented, will resolve the allegations made therein. NFB and Schlenker are precluded from bringing any cause of action against WSU arising from the specific facts alleged by Schlenker in the Complaint (OCR Reference No. 07162056). Each party is responsible for their own attorney fees, expert fees, expenses and costs.

C. WSU agrees to provide reports, data, and other information in a timely manner in accordance with the reporting provisions of this Agreement. WSU also agrees to inform the NFB of any "benchmark actions" within 10 business days of taking such action. For purposes of this agreement, the "benchmark actions" are those action items for WSU described above accompanied by a time limit. During the pendency of this agreement, a designee of the NFB may visit WSU with advance notice to the Accessibility Coordinator; and request such reasonable additional reports, data, and other information as may be necessary for the NFB to determine whether WSU has fulfilled the terms of this Agreement.

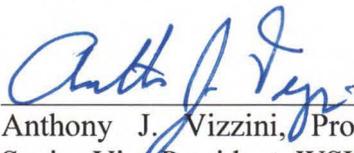
**AGREED BY:**

Date: July 29, 2016



Emily Schlenker

Date: 28 July 2016



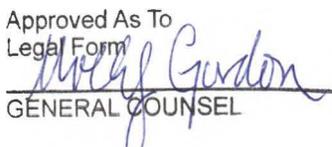
Anthony J. Vizzini, Provost and Senior Vice President, WSU

Date: July 29, 2016 -



Mark A. Riccobono, President, NFB

Approved As To  
Legal Form



GENERAL COUNSEL