

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered this 28th day of May, 2020, by and between the National Federation of the Blind, Inc. (“NFB”), Kaleigh Brendle, (“Ms. Brendle”) by and through her mother, Heather Brendle, and College Board, a non-stock, not-for-profit education corporation organized under the laws of the State of New York (“College Board”), each a “Party” and collectively, “the Parties.”

I. BACKGROUND

In May 2020, the NFB and Ms. Brendle, who is blind, filed complaints with the United States Department of Education, Office of Civil Rights and the United States Department of Justice, collectively, the “Complaints,” alleging that College Board was not in compliance with the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”), respectively, by not providing certain accommodations to blind and visually impaired students during the 2020 Advanced Placement Exams (“AP Exams”), which are being administered online in students’ homes due to school closures caused by Covid-19. Among other accommodations, the Complaints alleged that the College Board was failing to provide hard copy, non-electronic Braille testing materials and tactile graphics to be used alongside electronic versions of the AP Exams to students who had been approved for such accommodations before College Board adjusted the format of the 2020 AP Exams due to Covid-19.

AP Exams are available in Braille refreshable display and are supported by screen reading software and human readers, and College Board’s position is that the 2020 AP Exams are in compliance with the ADA and Section 504.

The NFB, acting on behalf of itself and Ms. Brendle, engaged in discussions with College Board about giving students the option to take the 2020 AP Exams in hard-copy, non-electric

Braille format.

Without any admission of liability, wrongdoing, or violation of the ADA, Section 504, or any other statute, regulation, or provision of federal or state law on the part of College Board, the Parties agree as follows:

II. DEFINITIONS

1. “All Braille exam” or “all Braille format.” The terms “all Braille exam” and “all Braille format” mean an exact transcription of all elements of any AP Exam offered by The College Board including all instructions, questions, descriptive text, and tactile graphics, into hard copy, non-electronic, Braille.

2. “Tactile graphics.” The term “tactile graphics” means an exact duplication of any non-text element of any AP Exam in a raised and textured format, including, but not limited to, diagrams, graphs, charts, and maps. The term “tactile graphics” does not include political cartoons and artwork if braille descriptions of each such political cartoon and artwork are provided in each exam where they appear.

III. TERMS

1. This Agreement shall not become effective until the withdrawal and/or dismissal of all of the Complaints.

2. College Board shall provide tactile graphics for three students, previously identified to College Board, for the following AP Exams during a mid-to-late June 2020 administration: US History, European History, AP Calculus AB and AP Chemistry (collectively, the “tactile graphics exams”). By no later than June 8, 2020, College Board shall notify each such student and the NFB of the date on which each of the tactile graphics exams will be administered. Answers received for the tactile graphics exams shall replace any previously submitted answers by the student for

that AP Exam subject. In other words, if the student participated in another administration of the 2020 AP Chemistry Exam and successfully submitted answers, those answers will not be scored and will not be reported.

3. If a blind student who was approved for braille encounters a technology barrier while taking a tactile graphics exam or while taking an AP Exam during the regular June 1-5 make-up test administration, College Board shall offer the student the option of re-taking the test as an all Braille exam. Any student encountering a technology barrier must immediately notify College Board that such a technology barrier occurred. If the student elects to take the all Braille Exam, the student's previously submitted answers for that AP Exam shall not be scored or reported.

4. By no later than May 29, 2020, College Board shall notify all students who registered for the 2020 AP Exams and for whom Braille was granted as an accommodation that they shall be entitled to take any of the 2020 AP Exams for which they registered in an all Braille format. The notification shall include detailed instructions for requesting an all Braille exam and will explain that by taking the all Braille exam any previously submitted scores for that AP Exam will not be scored or reported. College Board will send a copy of this notification to the NFB.

5. By no later than May 29, 2020, College Board shall notify the school district coordinators for all students who registered for the 2020 AP Exams and for whom Braille was granted as an accommodation that those students shall be entitled to take any of the 2020 AP Exams for which they registered in an all Braille format. The notification shall include instructions for doing so. College Board will send a copy of this notification to the NFB.

6. By no later than September 15, 2020, College Board shall provide all Braille exams for all students who registered for the 2020 AP Exams and for whom Braille was granted as an accommodation, provided that the student requested to take their AP Exams in an all Braille

format, in response to and in accordance with the notices described in paragraphs 4 and 5 above. The all Braille exams will include tactile graphics where graphics are part of the question. Digital exams will not be available during the administration of the all Braille exams.

7. The all Braille exams shall be administered either in the student's home if their school district is not yet open as a result of the COVID-19 pandemic, or a site selected by their school if their school district is open. The exams shall be administered in accordance with procedures designed by College Board to ensure the security and confidentiality of the content of the all Braille exams.

8. Notwithstanding anything in the foregoing paragraphs, spoken AP World Language Exams will not be available in all Braille format, as these exams are spoken exams for which students submit audio recordings only. For the avoidance of doubt, AP Spanish Literature and Latin are not spoken AP World Language Exams and will be available as all Braille exams in accordance with paragraph 6 above.

9. On or before July 15, 2020, College Board shall provide a letter to any graduating senior who elects to take an all Braille exam. The letter shall clearly explain that the student will take certain AP exams in all Braille format in September, which are only offered in September, 2020, and that the scores for those AP exams will not be reported by College Board until date(s) identified in the letter. College Board will send a copy of the template of this letter to the NFB without any student names included on or before July 8, 2020.

10. On or before June 20, 2020, College Board shall provide the NFB with a report describing the number of students who will be taking all Braille exams broken down by examination subject, indicating the number of those students who are seniors. On or before October 1, 2020, College Board shall provide NFB with a report describing the number of students

who took all Braille exams broken down by examination subject, indicating the number of those students who were seniors.

11. College Board shall provide timely and clear communications to all blind students registered to take any of the exams described in paragraph 10 above to ensure that they have information concerning all changes being made and any actions that they must take to ensure that they receive their approved accommodations.

12. College Board shall expedite any request submitted by blind and deaf-blind students for extended time for the 2020 AP make-up exams with tactile graphics and 2020 AP exams in all Braille format.

13. College Board shall post an update concerning availability of all braille format for 2020 AP exams in a clearly identifiable location on its website.

14. The Parties shall coordinate any press releases and public statements related to this Agreement (“PR Releases”), and neither Party shall issue a PR Release without first providing (a) the other Party an opportunity to review the PR Release and (b) advance notice as to the date and time of the PR Release.

15. It is expressly understood and agreed that: (a) neither the fact of this Agreement (or any of its terms), nor the obligations of College Board herein, shall constitute or be deemed an admission of liability by College Board (and/or its affiliates, trustees, directors, officers, agents, members, employees, successors and assigns); (b) no Party shall state, suggest or imply that College Board’s decision to enter into this Agreement and/or to provide the accommodations made pursuant to this Agreement constitutes an acknowledgement of any legal obligation to provide any of the accommodations provided hereunder; and (c) this Agreement shall not be offered, used or considered as evidence by the NFB or by any Student, including by and/or

through their respective parents and/or guardians, in any proceeding except to the extent necessary to enforce the terms of this Agreement.

16. In exchange for good and valuable consideration, the receipt and adequacy of which is acknowledged, NFB and Ms. Brendle, individually and by and through her mother, Heather Brendle, unconditionally discharges, and releases College Board (and its affiliates, trustees, directors, officers, agents, members, employees, successors and assigns) and waives any and all actions, causes of action, suits, controversies, claims, contentions, liabilities, costs and expenses, damages, obligations or demands whatsoever, of any kind or description, at law or in equity, whether now known or unknown, whether accrued or not yet accrued, whether or not well-founded in law or in fact, which NFB and/or each Student has or may have in the future, related to the 2020 AP Exams.

17. If at any time, any Party believes that any portion of this Agreement has been violated, the Party will give written notice to the Party they believe has violated this Agreement. The Party providing such notice and the Party receiving such notice shall then negotiate in good faith to attempt to resolve the alleged dispute. Nothing in this paragraph, however, shall be construed as a release of, or waiver of, any Party's right to pursue any remedy, in law or in equity, for breach of this Agreement.

18. The NFB and Ms. Brendle shall promptly withdraw each of the Complaints and notify College Board upon the completion of such withdrawals and/or dismissals.

19. NFB and Ms. Brendle agrees and represents that other than the Complaints it has no other pending legal actions, claims, complaints or letters against College Board including without limitation in any court, arbitration forum, governmental or administrative forum or agency, or other dispute resolution forum that are in any way related to the 2020 AP Exams.

20. This Agreement comprises the entire agreement between the Parties and supersedes any and all prior oral and written agreements between them concerning the 2020 AP Exams. This Agreement may not be altered, amended, or modified except by a further writing signed by the Parties.

21. This Agreement may be executed in two or more identical counterparts, all of which constitute one and the same Agreement. Facsimile or other electronically transmitted signatures on this Agreement shall be deemed to have the same force and effect as original signatures.

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

The National Federation of the Blind, Inc.



Mark A. Riccobono, President

May 28, 2020

Date

Kaleigh Brendle, through her mother, Heather Brendle



Kaleigh Brendle

May 28, 2020

Date



Heather Brendle

May 28, 2020

Date

College Entrance Examination Board

Steven Pereira, Executive Director
Accessibility Policy & Compliance

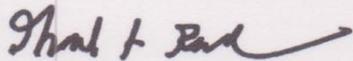
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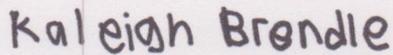


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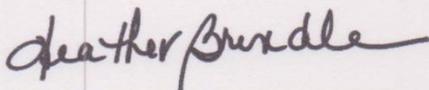
Kaleigh Brendle, through her mother, Heather Brendle



Kaleigh Brendle

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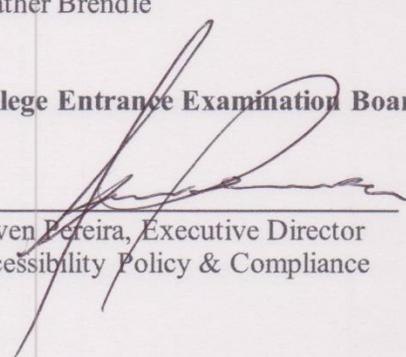


Heather Brendle

May 28, 2020

Date

College Entrance Examination Board



Steven Pereira, Executive Director
Accessibility Policy & Compliance

5/28/20

Date