

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

The parties to this Settlement Agreement and Release (“Settlement Agreement”) are:

- A. The National Federation of the Blind, Inc. (“NFB”), H.H. and N.H (on behalf of their minor child, S.H.), the National Federation of the Blind of New Jersey, Inc., and the National Organization of Parents of Blind Children, Inc. (collectively referred to as “Plaintiffs”); and
- B. PARCC, Inc.

II. RECITALS

- A. On or about January 17, 2014, Plaintiffs filed a Complaint entitled *H.H. et al., v. PARCC, Inc.*, in the District Court for the District of New Jersey, Civil Action No. 2:14-CV-00392-ES-JAD (the “Lawsuit”), alleging discrimination on the basis of disability in violation of the Americans With Disabilities Act, 42 U.S.C. § 12101, *et seq.* and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
- B. PARCC, Inc. denies each and every material allegation contained in Plaintiffs’ Complaint, including specifically any liability on its part in favor of Plaintiffs in any amount or for any reason. By entering into this Settlement Agreement, PARCC, Inc. admits no impropriety, wrongdoing or liability of any kind whatsoever, including as to the claims raised in the Lawsuit.
- C. The Parties desire to mutually and amicably settle all claims and controversies existing between them, as more specifically set forth below, in accordance with the terms and conditions of this Settlement Agreement.

III. DEFINITIONS

- A. PARCC Consortium--the Partnership for Assessment of Readiness of College and Careers is a consortium of 17 states plus the District of Columbia that are working together to develop a common set of K-12 student assessments in English language arts/literacy and mathematics pursuant to a grant from the U.S. Department of Education. The PARCC consortium has contracted with PARCC, Inc. to support the management of the test development process and the governance of the consortium.
- B. PARCC Field Tests--an unscored exercise to assess the validity of the test questions to be used in the student assessments, involving a sample of students across 14 states and the District of Columbia during the period March 24-April 11, 2014 (for the performance-based assessment component) and May 6-June 6, 2014 (for the end-of year assessment).

- C. PARCC Operational Assessments--the developed and scored administration of the PARCC student assessments to be first administered in the 2014-2015 school year.
- D. PARCC Practice Tests--collection of sample items and tasks that provide students with the opportunity to experience portions of the PARCC assessments prior to test administration.
- E. User Acceptance Testing--a software development process of verifying that a solution meets the defined needs of the users (in this case PARCC). It is not system testing (ensuring software does not crash and meets documented requirements), but rather testing to ensure that the software works as required and is without issues during normal use. UAT is generally one of the final stages of a project, where the client or customers of the system perform tests in line with what would occur in real life scenarios.
- F. Cognitive Labs-- a general name for a set of procedures used to gain information from individuals about the cognitive processes used in solving a problem or answering questions and about any features of a task that create barriers to showing what the individuals know and can do. A cognitive lab approach will allow PARCC to evaluate the accessibility of test items for students who are blind or have visual impairments.

IV. AGREEMENT

NOW THEREFORE, the Parties agree as follows:

- A. Release and Discharge from Plaintiffs:
 - 1. In consideration of the mutual covenants set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, Plaintiffs do hereby forever release and discharge PARCC, Inc., its administrators, successors, assigns, agents, employees, attorneys and representatives, and all other persons, firms, corporations, associations or partnerships and any and all other parties claiming through or under PARCC, Inc. (collectively, the "Released Parties"), unequivocally and without reservation, release, acquit and forever discharge the Released Parties from any and all liability, actions, causes of action, demands, damages, costs, services, compensation and any and all consequential damages or injuries that Plaintiffs have, or which may hereafter arise, be discovered or accrue, known or unknown, contingent or liquidated, suspected or unsuspected, which were or could have been asserted in the Lawsuit, including but not limited to claims under the Americans With Disabilities Act and the Rehabilitation Act of 1973, and any other federal, statute or common law.

2. Plaintiffs hereby acknowledge and agree that the release set forth in Paragraph 1 is a GENERAL RELEASE, and Plaintiffs understand and expressly agree that this Settlement Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or relating to any alleged violation by the Released Parties occurring prior to the execution of this Settlement Agreement, relating to the accessibility of the PARCC Field Test, referred to herein or not. Nothing in this Agreement prohibits or in any way affects rights to bring any complaints or claims about alleged future violations relating to the accessibility of the PARCC Operational Assessments.
3. The Parties understand and expressly agree that this Settlement Agreement shall bind and benefit Plaintiffs, including their respective heirs, administrator, successors and assigns.
4. Plaintiffs further represent that they have not assigned or transferred in any way any claims against any of the Released Parties.

B. Consideration: In consideration of the release and discharge set forth in this Settlement Agreement, PARCC, Inc. agrees to the following terms. PARCC, Inc. will bring any recommendations that result from these actions to the PARCC consortium.

1. PARCC, Inc. shall involve the National Federation of the Blind in PARCC's efforts to make the PARCC Operational Assessments and any practice tests accessible to blind and visually-impaired test-takers. Specifically, PARCC, Inc. shall take the following actions:
 - a. Promptly arrange for a meeting to be attended by representatives from NFB, PARCC, Inc., and Pearson Education Services ("Pearson"), for the purpose of addressing sufficiently in advance of the PARCC Operational Assessments, the accessibility of the PARCC Operational Assessments, including the provision of Braille test forms and tactile graphics, so as to allow Braille test takers to use hard copy Braille and a refreshable Braille Display for those Assessments and to ensure that the PARCC Operational Assessments are fully compatible with screen reader software used by blind and visually impaired test takers.
 - b. In conjunction with Pearson, (i) arrange a demonstration for NFB in June 2014 of the released version of TestNav 8, (ii) in June 2014 present the further development roadmap of TestNav 8 as related to accessibility features, (iii) in June 2014 provide a summary of findings from the pending review by Knowbility of TestNav 8 (iv) consult with NFB regarding further expectations and milestone dates to monitor progress of the TestNav 8 development, as well as

the system testing plan to verify accessibility features, and (v) engage in periodic consultation with NFB during the TestNav 8 platform's continuing development through 2014, including an assessment of the TestNav 8 accessibility features and functionality when platform development in that regard is completed (estimated for October 2014 but prior to start of operational assessment). These undertakings are for the purpose of working with the NFB in a collaborative effort seeking to assure that the PARCC Operational Assessments are administered to blind and visually impaired test takers using a refreshable Braille display and screen reader software so as to best ensure that the results of the PARCC Operational Assessments represent those test takers' aptitude or achievement level rather than reflecting their sensory impairment. PARCC, Inc. will compensate NFB at customary rates for mutually agreed to services regarding NFB's technical assessment of the TestNav 8 platform, within the limits of and in compliance with all applicable statutory and regulatory requirements related to the expenditure of Federal grant funds.

- c. Engage Dr. Edward Bell or other consultant identified by the Plaintiffs, to consult with PARCC, Inc. regarding the design, sample size, and schedule for Cognitive Labs specifically geared toward blind and visually-impaired test-takers, and compensate him at his customary rates for mutually agreed to services, within the limits and in compliance with all applicable statutory and regulatory requirements related to the expenditure of Federal grant funds.
 - d. PARCC shall consult with the NFB and Dr. Edward Bell-regarding the use of the results of the Cognitive Labs to make recommendations for changes to the PARCC Assessments to ensure accessibility.
 - e. PARCC shall continue to work collaboratively with NFB leadership to ensure that the provisions of this Settlement Agreement are fully implemented.
2. PARCC, Inc. shall work with its vendor to provide the initial PARCC assessment Practice Test, scheduled to be available in Spring 2014, as soon as possible in an accessible format for use with assistive technology used by blind students and in hard copy Braille or tactile graphics when the material cannot be accessibly represented in an online format. All other Practice Tests will be made comparably available as the Practice Test forms are developed. PARCC, Inc. shall also provide a Braille-ready file of all Practice Tests for download.

3. PARCC, Inc. shall engage the NFB to review and quality check Braille forms, including tactile graphics for the PARCC Practice tests, and to test any practice test to ensure accessibility, and compensate NFB at customary rates for mutually agreed to services, within the limits and in compliance with all applicable statutory and regulatory requirements related to the expenditure of Federal grant funds.
 4. PARCC, Inc. shall engage NFB to consult regarding the design and implementation of User Acceptance Testing for Braille and assistive technology, with regard to both the scheduling and methodology of User Acceptance Testing, as well as any remediation required as a result of that Testing to ensure accessibility, and compensate NFB at customary rates for mutually agreed to services, within the limits and in compliance with all applicable statutory and regulatory requirements related to the expenditure of Federal grant funds.
- C. Dismissal of Lawsuit: Upon execution of this Settlement Agreement and Release, Plaintiffs and PARCC, Inc. shall immediately, through attorneys of record in the Lawsuit, enter into a Stipulation for Dismissal with Prejudice and file all documents necessary to secure from the Court entry of an Order for Dismissal with Prejudice in the Lawsuit.
- D. Entire Agreement and Successors in Interest: This Settlement Agreement contains the entire agreement between the Parties, and the terms of this Settlement Agreement are contractual and not a mere recital. This Settlement Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, devisees, agents, employees, officers, directors, trustees, conservators, guardians, beneficiaries, heirs, successors and assigns of each Party.
- E. No Admission of Liability. It is understood and agreed that this Settlement Agreement is a compromise of disputed claims, and that consideration herein is not to be construed as an admission of liability on the part of PARCC, Inc. or its employees and agents, all of whom expressly deny liability.
- F. Mistake. The Parties expressly assume all risks that this Settlement Agreement was a result of any mistake of any kind, waiving all claims or defenses based upon the doctrine of mistake. This Settlement Agreement shall act as an accord and satisfaction with respect to the Parties and all claims designated herein.
- G. Severability. If any provision of this Settlement Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
- H. Headings. The headings of the various paragraphs contained herein are for convenience of reference only and shall not affect the meaning or construction of any of the provisions of this Settlement Agreement.

I. Knowing Waiver.

1. The named-Plaintiffs represent that they have read this Settlement Agreement and discussed it with their attorney, and understand each of the terms of this Settlement Agreement. The named-Plaintiffs further represent that they have had adequate time to consider this Settlement Agreement and enter into and execute this Settlement Agreement voluntarily and willingly.
2. PARCC, Inc. represents that it has read this Settlement Agreement and discussed it with its attorney, and understands each of the terms of this Settlement Agreement. PARCC, Inc. further represents that it has had adequate time to consider this Settlement Agreement and enters into and executes this Settlement Agreement voluntarily and willingly.

J. Agreement of Counsel. The undersigned counsel represent that they have read this Settlement Agreement and have reviewed it with their respective clients. They further represent that this Settlement Agreement accurately sets forth the Parties' understanding and is legally valid and enforceable.

K. Governing Law. Except as may be otherwise provided herein, New Jersey law shall govern the validity, effect, and interpretation of this Settlement Agreement.

L. No Other Agreements. This document constitutes the entire understanding and Settlement Agreement between the Parties. Any modification of this Settlement Agreement must be in writing and signed by Plaintiffs and PARCC, Inc.

M. Signatures. This agreement may be executed in counterparts, with the collective pages executed individually by each signatory constituting the entire executed agreement. The signed counterparts may be exchanged via electronic transmission with those signed pages having the same effect as signed originals.

For H.H. and S.H.:

Date:

For National Federation of the Blind Inc.:

Marc Maurer, President

Date:

For National Federation of the Blind of New Jersey, Inc.

Joseph Ruffalo, President

Date:

For National Organization of Parents of Blind Children, Inc.

Carlton Anne Cook Walker, President

Date:

For PARCC, Inc.

Laura McGiffert Slover, Chief Executive Officer

Date: