

United States District Court
For the District of New Jersey

Civil Action No.: CV 15-3656 (JEI)(JS)
ANTHONY LANZILOTTI;
MITCHELL COSSABOON

And

NATIONAL FEDERATION OF THE BLIND,
On behalf of its members and itself,

Plaintiffs,

v.

ATLANTIC CAPE COMMUNITY COLLEGE,

Defendant.

CONSENT DECREE

1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 12188(b). Venue is appropriate in this District pursuant to 28 U.S.C. § 1391.

2. Plaintiffs, Anthony Lanzilotti, Mitchell Cossaboon, and the National Federation of the Blind ("NFB"), have alleged that Atlantic Cape Community College ("ACCC") has engaged in discriminatory treatment prohibited by Title II of the ADA and Section 504 of the Rehabilitation Act, which allegations ACCC categorically denies. The parties have engaged in extensive negotiations resulting in resolution of such claims that are memorialized in the instant Consent Decree. On June 1, 2015, Plaintiffs filed a Complaint against Atlantic Cape Community College for the purpose of affording jurisdiction to the Court to review and adopt the negotiated terms and conditions of this Consent Decree.

3. ACCC is a comprehensive two-year nonprofit publicly-supported educational institution with several campuses in New Jersey that awards associate's degrees and offers continuing education. ACCC is governed by a Board of Trustees pursuant to New Jersey statutory authority. ACCC is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131, and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA and its implementing regulations, 28 C.F.R. Part 35. ACCC is also a "recipient of federal financial assistance" within the meaning of Section 504, 29 U.S.C. § 794, and 34 C.F.R. § 104 and is therefore subject to Section 504 and the relevant implementing regulations, 34 C.F.R. Part 104.

4. ACCC denies the allegations against it and claims that it acted at all times in compliance with the ADA and Rehabilitation Act and asserts that its entry into this Consent Decree 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.

5. This Consent Decree is entered into by the Plaintiffs and ACCC and it resolves the allegations set forth above.

6. The Plaintiffs and ACCC agree that it is in all parties' best interest to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the parties agree to the entry of this Consent Decree, subject to the approval of this Court, without trial or further adjudication of any issues of

fact or law raised in the Plaintiffs' Complaint. In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS, AND ORDERS the following:

iii. DEFINITIONS

7. "Accessible" means fully and equally accessible to, and independently usable by, blind individuals, so that blind students and faculty members are able to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students and faculty with substantially equivalent ease of use.

8. "Information Technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term

be provided in an Accessible format to all students with disabilities at orientation, be posted in Accessible format on ACCC'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.

- h. Ensure that ACCC's Americans with Disabilities Policy includes the correct contact information for filing complaints with the Department of Justice Civil Rights Division (via mail, email, and via telephone/T

- i. Common assistive technologies and other auxiliary aids and services used by individuals with disabilities in interacting with computers, websites, equipment, and in learning in and outside of the classroom, including non-electronic formats;

21. ACCC shall conduct and complete within one year after signing the Decree a Technology Accessibility Audit of all student-facing Electronic and Information Technology, including, but not limited to ACCC's enterprise-wide student facing systems and the public atlantic.edu web site. The Technology Accessibility Audit will be conducted in a professional manner using appropriate methods to examine the accessibility of the identified EIT. ACCC agrees to accept and consider a list of recommendations from the NFB with regard to the Technology Accessibility Audit. For the purposes of this Decree, conformance with the following standards, where applicable, shall constitute Accessibility:

- a. WCAG 2.0 AA and WAI-ARIA 1.0 for web content;
- b. ATAG 2.0 for software used to create web content;
- c. UAAG 1.0 for web browsers, media players and assistive technologies;
- d. WCAG2ICT for non-web software and content;
- e. MathML 3.0 specifications for digital mathematical and scientific notation;
- f. DAISY or ePub3 for digital publications and documents;
- g. 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.

22. Within 180 days after the completion of the Technology Accessibility Audit, ACCC shall develop a Corrective Action Strategy based on the Technology Accessibility Audit findings that will make all inaccessible EIT Accessible no later than 3 years after the completion of the Technology Accessibility Audit, except that for students with print disabilities currently enrolled at ACCC or enrolled for any semester prior to completion of the Corrective Action Strategy, ACCC will timely provide Accessible EIT or equally effective alternate access for every class in which such a student is enrolled. No later than (y)4()-8 er

30. Within 30 days of the effective date of this Decree, ACCC shall pay Mr. Cossaboon \$500, in full satisfaction of all claims for monetary relief alleged by him in the Complaint, with no admission of wrongdoing by ACCC.

31. ACCC shall not condition Mr. Lanzilotti's or Mr. Cossaboon's access, or that of any other blind person, to any portion of its campuses on a requirement that the blind person be accompanied by a sighted aide.

32. Within 30 days of the effective date of this Decree, ACCC shall pay Brown, Goldstein & Levy LLP the sum of \$128,620 in full satisfaction of all claims for attorneys fees and expenses incurred by plaintiffs in this matter, with no admission of wrongdoing by ACCC.

A. If it appears to ACCC that a deadline contained in this Decree will prove difficult to meet either because of unforeseen circumstances or with the support or recommendation of the third-party consultant, ACCC shall notify NFB that it wishes to modify the Decree and the Parties, fully taking into account the requirements of the ADA and the needs of students with disabilities, shall attempt to determine whether to seek a modification from this Court.

B. If the Plaintiffs believe that this Consent Decree or any portion of it has been violated, they shall give notice (including reasonable particulars) of such violation to ACCC. ACCC must respond to such notice as soon as practicable but no later than fifteen (15) days thereafter. The Plaintiffs and ACCC shall negotiate in good faith in an attempt to resolve any dispute relating to the alleged violation; if the parties are unable to reach a mutually acceptable resolution, the Plaintiffs may seek court enforcement of compliance with this Decree. Nothing in this Decree, however, shall prevent the Plaintiffs from filing a separate lawsuit against ACCC for any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in the Plaintiffs' Complaint in the above-titled action, and other than all claims, demands, obligations, damages, including punitive damages, liabilities, causes of action and rights, in law or in equity, known and unknown, that Plaintiffs may have against the Defendant, its officers, agents, representatives and employees (present and former), and its respective successors and assigns, heirs, executors and personal or legal representatives, based upon any act, event or omission relating to Accessibility issues occurring before the execution of this Consent Decree including, but not limited to, any events related to, arising from, or in connection with Plaintiff's interactions with ACCC. This Consent Decree shall become effective as of the date of the Court's entry of it and shall remain in effect for five (5) years from that date.

C. This Consent Decree does not purport to remedy any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in the Plaintiffs' Complaint in the above-titled action.

D. Failure by Plaintiffs to seek enforcement of this Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

A. Plaintiffs understand and agree that an IRS Form 1099 designating the settlement amount identified in this Consent Decree as "other income" may be issued. Plaintiffs agree to assume full liability

for applicable state, federal and local taxes that Plaintiff may be required by law to be paid with respect to any settlement payment described herein. Plaintiffs further agree that in the event that the Internal Revenue Service or any other taxing authority deems any tax, interest, penalties or other amounts to be due from the ACCC as a result of Plaintiffs' responsibilities/duties to any taxing authority with respect to the settlement amounts in this Consent Decree, Plaintiffs will indemnify the ACCC for any sums ACCC may be required to pay.

B. The Parties agree that they shall not disparage each other whether to any current or former employee of ACCC, the press, general public, media, or any other business entity or third party. The parties also agree not to authorize any person to make any disparaging statements about the other or to defame them to any person, entity or third party.

C. All notices and reports that ACCC is required to send to counsel for the Plaintiffs under this Consent Decree, shall be sent by e-mail, to counsel for the Plaintiffs, Daniel F. Goldstein, Esq. at dfg@browngo1d.com.

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

So ORDERED this 7th day of July 2015.

A handwritten signature in black ink, appearing to read "Joseph E. Brown", is written over a redacted area. The redaction consists of a solid black rectangular block covering the lower portion of the signature and the text below it. The signature is written in a cursive style.