

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES OF AMERICA,**  
**MCNEESE STATE UNIVERSITY**  
**AND**  
**THE BOARD OF SUPERVISORS OF THE UNIVERSITY OF LOUISIANA**  
**SYSTEM**  
**UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT, DJ**  
**#204-33-109**

---

[Department of Justice Press Release](#)

**A. DEFINITIONS AND BACKGROUND**

1. This matter is based upon an investigation and compliance review of physical accessibility for individuals with disabilities to the services, programs, and activities of McNeese State University ("the University" or "McNeese") under title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12134, and the Department of Justice's implementing regulation, 28 C.F.R. Part 35. McNeese is a public university in Louisiana. McNeese is part of the University of Louisiana System ("UL System") and is governed by the Board of Supervisors (the "Board") for the UL System pursuant to Louisiana constitutional and statutory authority.
2. Under title II of the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, including a public university, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. 35.130. Title II also requires that, among other things, a public university, like McNeese must:
  - (a) ensure that each facility (or part of a facility) constructed by, on

behalf of, or for the use of the University — where the construction commenced after January 26, 1992 — be designed and constructed in such a manner that the facility (or part of the facility) is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151;

- (b) ensure that for alterations commenced after January 26, 1992, each facility or part of a facility altered by, on behalf of, or for the use of the University in a manner that affects or could affect the usability of the facility or part of the facility, shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151;
- (c) with respect to existing facilities, operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150.

- 3. The United States contends that its investigation and compliance review of the University identified barriers to access on the University's campus, i.e., deviations from the ADA Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A ("ADA Standards"), that, in the absence of alternative measures to achieve program access, rendered many of the University's services, programs, and activities not accessible to and usable by individuals with disabilities. *See* 42 U.S.C. § 12132; 28 C.F.R. §§ 35.133; 35.149; 35.150; and 35.151.
- 4. In November 2008, the Department conducted an initial site visit at McNeese. Examples of barriers to access found at McNeese, that in the absence of alternative measures to achieve program access, render programs not readily accessible to and usable by individuals with disabilities include, but are not limited to, failures to provide the following:
  - (a) Accessible parking (where parking facilities are otherwise provided by the University). Standards §§ 4.1.2(5), 4.6;
  - (b) Accessible approaches from adjacent parking areas, walkways, and public transportation drop-off points to the extent that it is within the University's control and not in the public right-

- of-way. Standards §§ 4.1.2(1) and (2), 4.3;
- (c) An accessible entrance to the building and into those rooms or spaces open to the public where such programs, services, or activities are provided. Standards §§ 4.1.2(1) and (2), 4.1.3(1) and (7), 4.3;
  - (d) Accessible routes between facilities. Standards §§ 4.1.2(1) - (4), 4.3;
  - (e) Accessible amenities (e.g., a water fountain - if a water fountain is provided- on an accessible level, complying with Standards § 4.1.3(10), or an accessible public telephone - if a public telephone is offered - on an accessible level);
  - (f) Accessible men's and women's toilet rooms consistent with § 4.1.3(11), including a standard stall consistent with Standards §§ 4.22 or 4.23, or one unisex accessible toilet room consistent with Standards § 4.17 on an accessible level;
  - (g) Signage (identifying permanent rooms and spaces) with raised and Braille characters, as well as directional signage, as required by the Standards. Standards §§ 4.1.2(7), 4.1.3(16), 4.30;
  - (h) One accessible means of vertical access (an accessible elevator, ramp or lift) if any program, service, or activity offered is located above or below the accessible entry level. Standards §§ 4.1.3, 4.3, and 4.10;
  - (i) Accessible seating in classrooms or auditoriums or other spaces that meets the appropriate ADA Standards. Standards §§ 4.1.3(19), 4.32, 4.33; and,
  - (j) Accessible routes from the accessible entrance to each accessible program, service or activity. Standards §§ 4.1.3(1), 4.3.
5. On March 19, 2009, the United States provided reports to the University that document representative barriers to access (including those listed in paragraph 4 above) and other problems that, in the absence of alternative measures to achieve program access, limit access to various programs and facilities on the University campus.

6. The parties to this Settlement Agreement ("Agreement") are the United States, McNeese State University and the Board of Supervisors. The parties hereby agree to resolve this matter as set forth below:

## **B. JURISDICTION**

7. McNeese State University and the Board are public entities covered by title II of the ADA. Title II defines a public entity to include any department, agency, special purpose district, or other instrumentality of a State or local government. 42 U.S.C. § 12131(1)(B).
8. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine compliance at McNeese with title II of the ADA and the Department's implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
9. In consideration of the terms of this Agreement, McNeese and the Board of Supervisor's agree to complete the remedial work outlined in Section C of this Agreement, and the United States agrees to refrain from filing civil suit in this matter during the term of this Agreement, except as provided in Section D below.[\[1\]](#)

## **C. REMEDIAL ACTION**

10. (a) New construction. The Board of Supervisors and the University shall ensure that each University facility or part of a facility constructed by, on behalf of, or for the use of the University, for which construction was commenced after January 26, 1992, but before the effective date of this Agreement ("new construction"), complies with the accessibility requirements for new construction set forth in the title II regulations. 28 C.F.R. § 35.151 and the ADA Standards

The University shall ensure that new construction violations at Juliet Hardtner Hall College of Nursing and the Recreational Sports Complex are corrected by no later than two years after the effective date of this Agreement.

With respect to all other currently built facilities on the McNeese campus that are newly constructed, as defined by the ADA, the University and the Board, will bring into compliance any violations of the ADA Standards in the Physical Access Plan ("the Plan") required by this Agreement, in accordance with the time frames required by this Agreement and to set forth in the Plan.

(b) Future construction and alterations. The Board and the University shall collaborate with all appropriate parties to ensure that all new construction, structural changes, or any other alteration, as described in 28 C.F.R. §§ 35.150 and 35.151, commenced after the effective date of this Agreement, comply in all respects with title II of the ADA, 42 U.S.C. § 12131 *et seq.*, its implementing regulation, 28 C.F.R. Part 35 and the ADA Standards.

11. If work required by this Agreement begins while the 1991 Standards are in effect, then those Standards will apply. However, to the extent that any work begins after compliance with new Standards is required by the ADA regulations, then those Standards will apply.
12. ADA Coordinator. The University shall designate an ADA Coordinator, who shall have primary authority and responsibility for ensuring that the University meets the terms of this Agreement and the requirements of the ADA. *See* 28 C.F.R. § 35.107(a). The ADA Coordinator and at least two employees from the facilities department shall undergo additional training on the accessibility requirements set forth in the title II regulations and the ADA Standards by no later than three months after the effective date of this Agreement. That training shall be of sufficient quality and duration to enable each of them to achieve a thorough understanding of the requirements of title II of the ADA, the regulation, and the Standards. In addition, all University employees or staff involved in disability access issues, including relevant employees or staff in the Office of Services for Students with Disabilities, or who are or may be responsible for implementing any aspect of this Agreement, shall receive training on the requirements of title II of the ADA within six months of the entry of this Agreement.

## **Physical Access Plan**

13. In order for the University to ensure that individuals with disabilities are afforded access to all of the University's programs, services, and activities, the University shall, as further described below, develop and implement a comprehensive plan, the Plan including structural changes needed to provide program access and nonstructural alternative measures where appropriate. In developing its Plan, the University shall also ensure that alterations to University facilities made after January 26, 1992, but before the effective date of this Agreement, are made to comply with the applicable accessibility requirements in accordance with paragraph 11 and as set forth in the title II regulations. 28 C.F.R. §§ 35.150(b), 35.151(b) and (c), and the ADA Standards. The University shall complete all structural changes required by the Plan in accordance with the time frames set forth in the Plan or this Agreement, by or before September 1, 2016. The University shall implement procedures to ensure the success of all non-structural alternatives, where such alternatives will provide program access, by no later than nine months after the effective date of this Agreement.
14. In preparation for the development of the Physical Access Plan, the University shall:
  - (a) prepare a detailed written response to the United States' reports, referenced in Paragraph 5, which document representative barriers to access at the McNeese campus; and
  - (b) by no later than six months after the effective date of this Agreement, and to the extent necessary to effectuate this Agreement, survey and evaluate facilities or parts thereof that were not surveyed by the United States, in order to determine structural and nonstructural measures needed to achieve program access, or, with respect to new construction, to identify any deviations from the Standards.[\[2\]](#)
15. By no later than nine months after the effective date of this Agreement, the University, with assistance from its ADA Coordinator, shall develop a draft comprehensive Physical Access Plan that addresses the accessibility issues identified in the United States' reports and in the surveys conducted by the University, and that ensures program access to each of the University's programs, services, and activities. The Plan shall identify the structural changes needed to ensure program accessibility as well as any changes needed to repair any violations of the new construction Standards.

16. The University's Physical Access Plan shall include specific remedial actions and time tables to ensure that the University's programs, services, and activities afford program access by no later than September 1, 2016. In addition, the Plan shall provide details as to how the University will achieve program access in each of its programs, services, and activities. *See, e.g.,* Paragraph 4, above (listing examples of barriers to access). In choosing among methods to achieve program access, the University shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with disabilities. 28 C.F.R. § 35.130(d). In addition, the Plan shall provide details on how the University will achieve the following:
  - (a) Where the University chooses not to make structural changes to achieve program access, the University shall ensure that, with respect to programs, services, and activities that require advance registration or notification by all students, faculty, staff or the public, the University's programs, services, and activities are located in, or relocated to, an accessible facility if a person with a disability who needs a level of accessibility greater than would otherwise be provided, gives notice consistent with any advance registration or notification requirements;
  - (b) Accessible routes. The Plan shall list and graphically illustrate the accessible campus routes that will ensure program access. The accessible routes should coincide with the routes for the general public to the maximum extent feasible. Where necessary to ensure program access, at least one exterior route connecting those elements specified in §§ 4.1.2(1)-(2) of the Standards shall comply to the maximum extent feasible with §§ 4.1.2(1) through (4) of the Standards;
  - (c) Housing. All common use areas, and a minimum of three percent of units in the University's housing facilities (and the toilet rooms serving those units) shall be accessible to individuals with disabilities, with those units to be dispersed throughout the University's housing stock so as to provide access to each unique type of housing program.
17. By no later than nine months after the effective date of this Agreement, the University shall make its draft Plan available to students, faculty, and

employees of the University (via the Internet, hard copy, and any other appropriate means). The University shall actively seek comments and suggestions to improve its proposed Physical Access Plan, which shall be made available for comment for thirty (30) days. The University shall accept written comments in any form (including, but not limited to, e-mails), maintain copies of all comments, and, upon request after the close of the comment period, provide copies to the United States within 30 days of such request.

18. By no later than one year after the effective date of this Agreement, the University shall submit its proposed Physical Access Plan to the United States in both hard copy and on disk.
19. The United States shall provide the University with a response to the proposed Plan, including any deficiencies to be addressed.
20. By no later than forty-five days after receipt of the United States' response, the University shall respond in writing to any comments provided by the United States regarding the Physical Access Plan and shall revise its Plan accordingly. The United States shall promptly review the University's response. The parties shall negotiate in good faith any disputes regarding the Physical Access Plan.

### **Mechanism to Resolve Disputes**

21. By no later than eighteen months after the effective date of this Agreement, if the United States and the University have been unable to reach an agreement with respect to the content of the Physical Access Plan:
  - (a) The University shall promptly implement those aspects of the Physical Access Plan that the parties have agreed to;
  - (b) The parties shall engage in mediation with respect to all remaining issues, and the parties shall share equally the cost of mediation; and,
  - (c) Any such mediation shall be conducted by a mediator or mediation organization mutually acceptable to both parties.
22. By two years after the effective date of this Agreement, if the parties have been unable to resolve all remaining issues through mediation and

negotiation, then the provisions of paragraph 31 shall apply as if the United States had provided the 30 days notice required by that paragraph.

## Emergency Plans

23. By no later than four months after the effective date of this Agreement, the University shall create and/or update its campus-wide emergency evacuation, sheltering, and shelter-in-place plans ("emergency plans") for individuals with disabilities. The touchstone for compliance with ADA requirements relating to emergency management is Chapter 7 of the Department's *ADA Best Practices Tool Kit for State and Local Government (ADA Tool Kit)*. See <http://www.ada.gov/pcatoolkit/toolkitmain.htm>. The University shall comply with the ADA requirements as described in Chapter 7 of the *ADA Tool Kit*, to the extent they are relevant to a University setting. The University shall make these emergency plans available on the University's web page as well as in printed form, and shall update them as necessary. The University shall seek comment from the University community on its emergency plans (in accordance with the procedure set forth in paragraph 17) and make changes based upon those comments by six months after the effective date of this Agreement. The emergency plans shall ensure that persons with disabilities are provided a full and equal opportunity to benefit from these services in the most integrated setting appropriate to the needs of the individuals and shall be updated regularly.
24. Modifications to the University's Web Site:
  - (a) Within 1 month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the University will distribute to all persons — employees and contractors — who design, develop, maintain, or otherwise have responsibility for content and format of its website, the technical assistance documents, "Accessibility of State and Local Government Websites to People with Disabilities," available at [www.ada.gov/websites2.htm](http://www.ada.gov/websites2.htm), and "ADA Best Practices Tool Kit for State and Local Governments," available at <http://www.ada.gov/pcatoolkit/chap5toolkit.htm>;
  - (b) Within three months of the effective date of this Agreement, and throughout the life of the Agreement, the University will do the

following:

1. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
  2. Ensure that all new and modified web pages and content are accessible;
  3. Develop and implement a plan for making existing web content more accessible;
  4. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
  5. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.
- (c) By no later than six months after the effective date of this Agreement, the University shall display on its website information to assist individuals with disabilities to identify, among other things, accessible routes through the University campus, accessible parking areas, accessible entrances to buildings, and accessible programs, services, and activities within buildings. The University shall also display detailed information regarding nonstructural alternative measures implemented, on an interim or final basis, to ensure individuals with disabilities access to programs, services, and activities. The University's website shall be updated regularly to reflect newly added or renovated accessible features of the campus.

## **Miscellaneous**

25. By no later than six months after the effective date of this Agreement, at those facility entrances and public and common use toilet rooms that are not accessible, the University shall install directional signage that complies with Standards §§ 4.1.2(7), 4.1.3(16), and 4.30, indicating the location of the nearest accessible entrance and public and common use toilet room. At accessible facility entrances and public and common use toilet rooms, the

University shall install the International Symbol of Accessibility and signage complying with the applicable requirements of Standards §§ 4.1.2(7), 4.1.3(16), and 4.30.

26. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the University will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).

#### **D. ENFORCEMENT AND REPORTING**

27. At any time during the term of this Agreement, the United States reserves the right to inspect, with reasonable notice to counsel, the University's campus, and to request campus records and documentation of compliance with this Agreement. The United States acknowledges that students are entitled to 24 hours notice of an inspection of a University residential facility.
28. Commencing in 2010, and during the term of this Agreement, the University shall provide the United States with an annual report - due on or before November 15 of each year - that lists every project for new construction or alteration (as defined by the ADA or the regulation), and that lists all work done pursuant to the Plan.
29. In addition to the reports required by paragraph 28, by no later than 30 days after the deadline in paragraph 10, the University shall provide the United States with a detailed written report, including digital photographs where appropriate, that demonstrates compliance with the provisions of that paragraph.
30. By no later than September 15, 2016, the University shall provide the United States with a detailed written report, including digital photographs, that demonstrates compliance with the Physical Access Plan. The report does not need to address items that the University previously produced in reports pursuant to paragraphs 28 and 29. That report shall also indicate any areas of noncompliance with the Physical Access Plan as well as the dates when those areas will become compliant with the Physical Access Plan.

31. If, based on the reports provided by the University pursuant to this Agreement or other information, the United States finds that the University has failed to comply with the Agreement, the United States agrees to notify the University in writing of the alleged noncompliance and attempt to seek a resolution of the matter with the University. If the parties are unable to reach a resolution within thirty days of the date of the United States' written notification, the United States may seek enforcement of the terms of this Agreement in the United States District Court for the District of Louisiana. Alternatively, should the parties be unable to reach a resolution within 30 days of the date of the United States' written notification, the United States may bring an action to enforce compliance with the ADA and its implementing regulation.
32. If, during the implementation of the Plan, the University determines that, due to reasons beyond its control, (including funding limitations that rise to the level of an undue financial or administrative burden 28 C.F.R. § 35.150(3), it cannot comply with certain, limited aspects of the Plan by the dates set forth in the Plan, the University may seek a reasonable extension of time to complete the work, and the United States will not unreasonably withhold its consent.
33. This Agreement constitutes the entire agreement between the parties relating to the Department's title II investigation and compliance review referenced in Paragraph 1 above, and Department of Justice Matter Number 204-33-109, and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party that is not contained in this written Agreement, including its attachments, shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the University's continuing responsibility to comply with all aspects of the ADA.
34. Failure by the United States to enforce this entire Agreement, or any provision thereof with regard to any deadline or any other provision herein, shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
35. If any term of this Settlement Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the

Department of Justice and the University shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

36. The United States or McNeese University will provide a copy of the Agreement to any person upon request, and the United States Department of Justice will make this Agreement available on its website, [www.ada.gov](http://www.ada.gov).
37. A signatory to this document in a representative capacity for McNeese State University certifies that he or she is authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.
38. This Agreement is effective as of the date of the last signature below and expires on September 15, 2016.

For McNeese State University and the  
Board of Supervisors

DR. PHILIP WILLIAMS

For the United States of America:

\_\_\_\_\_  
THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

SAMUEL R. BAGENSTOS  
Principal Deputy Assistant Attorney  
General

JOHN L. WODATCH, Chief  
PHILIP L. BREEN, Special Legal Counsel  
ROBERTA KIRKENDALL, Acting Deputy  
Chief  
Disability Rights Section  
Civil Rights Division

By: \_\_\_\_\_  
ALYSE S. BASS

KATHLEEN P. WOLFE  
Trial Attorneys  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W. - NYAV  
Washington, DC 20035  
Tel: (202) 307-0663

Date 9/9/2010

Date 9/10/2010

---

[1] In addition to the specific remedial work required by this Agreement, the Board of Supervisors has agreed to and advised us of the following: with respect to the University and all other schools in the UL System, the Louisiana Division of Administration/Office of Facility Planning has commenced with and will continue procedural changes to emphasize ADA accessibility rules and regulations for capital outlay projects administered by that Office. Procedural changes will include the adoption of an internal plan detailing requirements to comply with the ADA and identifying key ADA features for which design criteria will be field verified during construction thorough inspection.

---

[2] The University shall ensure that these surveys are conducted by individuals who are trained in and knowledgeable about title II of the ADA, the regulations, and the Standards.

---

---

[Cases & Matters by ADA Title Coverage](#) | [Legal Documents by Type & Date](#) | [ADA Home Page](#)