SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

GWINNETT COLLEGE

UNDER THE AMERICANS WITH DISABILITIES ACT

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America ("United States") and the Gwinnett College ("Gwinnett College" or "Gwinnett").

2. This matter is based upon a complaint filed with the United States Attorney's Office, Northern District of Georgia, that alleged that Gwinnett College discriminated against an individual with a disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181, *et seq.* Specifically, the Complainant alleged that Gwinnett forced the Complainant to withdraw from the Gwinnett College Medical Assistant Program on the basis of HIV.

3. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

TITLE III COVERAGE AND FINDINGS

4. The Attorney General is responsible for administering and enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. Part 36.

5. The Complainant, an individual who has HIV, has a physical impairment that substantially limits one or more major life activities, including the functions of

her immune system, which is a major bodily function. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.104.

6. Gwinnett College is a private educational institution, with its principal place of business located at 6690 Roswell Road, NE, Ste 2200, Sandy Springs, Georgia, 30328.

7. Gwinnett College owns, leases (or leases to), or operates a place of public accommodation within the meaning of 42 U.S.C. § 12182(a). Gwinnett is a private entity within the meaning of 42 U.S.C. § 12181(6), and is considered a place of public accommodation because it affects commerce and is a place of education within the meaning of 42 U.S.C. § 12181(7). *See also* 28 C.F.R. § 36.104.

8. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. §12182(a).

9. Under title III of the ADA, discrimination includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a).

10. As a result of its investigation, the United States has determined that:

    A. In October 2010, the Complainant applied for admission as a student in the Medical Assistant program at Gwinnett College. As part of the enrollment process, the Complainant was asked to complete a health questionnaire that disclosed that she has HIV.

    B. Gwinnett College did not ask the Complainant any follow-up questions related to her HIV during the application process and she was enrolled in the Medical Assistant program.

C. The Complainant began taking her first quarter of classes in November 2010. During this first quarter, the Complainant was taking a Medical Law and Ethics course. In December 2010, the Complainant asked her Medical Law and Ethics professor whether she would be required to take any additional precautions during her upcoming phlebotomy course because of her HIV. The professor informed her that regardless of her HIV she would be required to use universal safety precautions in the same way that all health professionals are required.

D. In January 2011, the next quarter of classes started at Gwinnett College. On the first day of classes, the President of Gwinnett College instructed the Complainant she could not continue in the Medical Assistant program because of her HIV. According to the President of the College, the Complainant was a safety risk to other students in the class. He told her that if he had known about her HIV at the time she applied for the program, he would not have allowed her to enroll in the Medical Assistant program. He also told her that she would have to switch to the Medical Office Administrator or Massage Therapy program or leave Gwinnett College.

E. Given no other options, the Complainant reluctantly switched to the Medical Office Administrator program. The Complainant took two more classes the following quarter before she decided to leave Gwinnett College so that she could resume her Medical Assistant studies at another college. Before leaving Gwinnett College, she attempted to reopen a dialogue with the President of Gwinnett College to ask him to reconsider his decision asking her to withdraw from the Medical Assistant program. He did not make himself available.

F. The Complainant enrolled in another college and has since graduated with a certification as a Medical Assistant. None of the classes from Gwinnett College transferred to the other college, so the Complainant was required to take all of the same courses over again.

G. The Complainant completed two full quarters of classes at Gwinnett College, and she attended two classes at the start of a third quarter before leaving the school. She paid tuition at Gwinnett College with student loan money that she is now required to pay back.

11. The United States has determined that Gwinnett College discriminated against the Complainant by requiring her to withdraw from the Medical Assistant program based on the fact that she has HIV, thereby denying her the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Gwinnett College, on the basis of disability, in violation of 42 U.S.C. § 12182 and 28 C.F.R. §36.201.

ACTIONS TO BE TAKEN BY GWINNETT COLLEGE

12. Gwinnett College shall not deny persons with disabilities, including persons with HIV, the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations, on the basis of their disability, in violation of 42 U.S.C. §12182, and the relevant implementing regulation, 28 C.F.R. Part 36.

13. As of the effective date of this Agreement, Gwinnett College shall remove question 9 which states "Are you free of all blood-borne pathogens such as HIV/AIDS?" from its Health Questionnaire.

14. Within seven calendar days of the effective date of this Agreement, Gwinnett College shall draft a non-discrimination policy ("Policy") that states that (1) Gwinnett College does not discriminate against applicants or students on the basis of disability, including HIV; (2) applicants and students with disabilities have an equal opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations provided by the College; and (3) Gwinnett College shall make reasonable modifications to its policies, practices and procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. Once drafted, Gwinnett College shall provide a copy of the Policy to counsel for the United States for review and approval. Within 30 calendar days of the United States' approval, such Policy,

with any edits provided by the United States, will be implemented and prominently posted on the Gwinnett College's official website (where it will remain for the term of this Agreement), and will be distributed to all persons who are affiliated with the College.

15. Within 120 days of the effective date of this Agreement, and annually thereafter, Gwinnett College shall provide training on title III of the ADA, with a focus on HIV-related discrimination, to staff affiliated with the School (whether employees, independent contractors, volunteers, or otherwise) .

16. The content of the training required in the immediately preceding paragraph, together with the text of all training manuals or written materials used in the training required in the immediately preceding paragraph, shall be consistent with the provisions of this Agreement and approved in advance by counsel for the United States.

17. Gwinnett College will notify the United States when it has completed the actions described in paragraphs 14-15.

18. Gwinnett College agrees to pay $19,257.00 to the Complainant to compensate her for the harm she has endured (including but not limited to, emotional distress, pain and suffering, and other consequential injury) as a result of Gwinnett College's actions. Within fifteen (15) days of the effective date of this Agreement, Gwinnett College will send by certified mail or Federal Express, return receipt requested, a check in the amount of nineteen thousand two hundred and fifty seven ($19,257.00) dollars made out to the Complainant. The check shall be mailed to: Office of the United States Attorney, 75 Spring Street, S.W., Suite 600, Atlanta, GG 30303, Att: Aileen Bell Hughes.

19. Within thirty (30) days of the effective date of this Agreement, Gwinnett College agrees to pay three thousand seven hundred and forty three ($3,743.00) dollars to National Student Loan Data System on behalf of the Complainant to compensate her for the tuition money she paid to Gwinnett College. Gwinnett College will notify the United States via writing when payment has been made in the total amount of $3,743.00 dollars. The written notification must include a written statement from the National Student Loan Data System indicating that any loan money the Complainant received to attend Gwinnett College has been paid in full.

20. Within fourteen (14) days of payment as set forth in paragraphs 18 and 19 of this Agreement, the United States will deliver a release signed by the Complainant.

OTHER PROVISIONS

21. In consideration for this Agreement, the United States will not institute any civil action alleging discrimination under the ADA based on the allegations raised in this matter, except as provided in the immediately following paragraph.

22. The United States may review Gwinnett College's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Gwinnett College and the parties will attempt to resolve the concerns in good faith. The United States will give Gwinnett College thirty days from the date it notifies Gwinnett College of any breach of this Agreement to cure that breach before instituting an enforcement action. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty days of the date it provides notice to Gwinnett College, it may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

23. Failure by the United States to enforce this entire Agreement or any of its provisions shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.

24. A signatory to this document in a representative capacity for Gwinnett College represents that he or she is authorized to bind Gwinnett College to this Agreement.

25. This Agreement constitutes the entire agreement between the United States of America and Gwinnett College on the matters raised herein 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 any attachments, shall be enforceable.

26. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement.

Nothing in this Agreement changes Gwinnett College's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

27. The effective date of this Agreement is the date of the last signature below.

28. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

SALLY QUILLIAN YATES
United States Attorney

/s/ Michael Davis
DR. MICHAEL DAVIS
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April 25, 2014

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May 27, 2014