

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into on the last date written below by and between R. Alexander Acosta, Secretary of the United States Department of Labor (the "Secretary"), on behalf of the U.S. Department of Labor (the "Department") and on behalf of Ms. Eva Garcia ("Garcia"), and the University of Northern Iowa ("UNI"), on behalf of itself and the Board of Regents, State of Iowa ("the Board of Regents"), and the State of Iowa (the University of Northern Iowa, the Board of Regents, and the State of Iowa are collectively referred to herein as "the State"). All parties to this Agreement are collectively referred to herein as "the Parties."

RECITALS

WHEREAS, UNI was the subject of investigation No. 1831046 ("the Investigation"), undertaken by the Secretary through the Wage and Hour Division of the United States Department of Labor between June 1, 2016 and October 7, 2017;

WHEREAS, the Secretary's investigation involves alleged violations of the Family Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (the "FMLA") by UNI with respect to Garcia, its former employee;

WHEREAS, the Secretary alleges that UNI, through its actions or inactions, interfered with, restrained, or denied her exercise of rights guaranteed by the FMLA in violation of 29 U.S.C. § 2615(a), including but not limited to failing to grant her leave and failing to restore her employment without significant delay;

WHEREAS, the Parties have a mutual interest in amicably resolving any and all disputes between them;

WHEREAS, the Parties have negotiated this Agreement in good faith to fully settle all differences between them;

WHEREAS, the Parties acknowledge and agree that this Agreement does not constitute any admission of wrong-doing or any admission of violations of applicable law, rule, or policy by any Party; and

WHEREAS, the Parties agree that the terms and conditions contained herein are fair, reasonable, and equitable.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration and intending to be legally bound herein, the Parties agree as follows:

AGREEMENT

1. **Resolution of Investigation.** This Agreement resolves investigation No. 1831046 and constitutes a complete resolution of the dispute between the Secretary, on behalf of the Department and Garcia, and the State.

2. **Payment.** As consideration for the Secretary's agreement not to pursue litigation against the State for alleged violations of 29 U.S.C. § 2615(a) and to provide a release of all claims relating to this investigation as set forth in section 3, UNI agrees, promises, and covenants as follows:

- a. That, within thirty (30) days of the execution of this Agreement, it will amend Garcia's personnel file to reflect that she retired as of October 5, 2016.
- b. That, within ninety (90) days of the execution of this Agreement, it will provide additional FMLA training to all supervisory employees in UNI's Custodial Services, Residence Facilities Administration.
- c. That, within ninety (90) days of the execution of this Agreement, it will provide additional training regarding the FMLA and Americans with Disabilities Act ("ADA") and ADA Amendments Act of 2008

("ADAAA") to UNI Human Resources personnel who oversee or participate in evaluating employees' FMLA and/or ADA leave applications.

- d. That, within one hundred and twenty (120) days, it will provide documentation demonstrating its completion of (a), (b), and (c) to Marcy Boldman, District Director, U.S. Department of Labor, Wage and Hour Division, Federal Building, 210 Walnut Street, Room 643, Des Moines, IA 50309-2407.
- e. That UNI will pay back wages in the gross amount of \$59,688.60 to Garcia via direct deposit, less appropriate deductions for withholding applicable taxes and Garcia's share of the Social Security (F.I.C.A.) tax. The State will make this back wage payment as follows: (i) \$29,844.30, minus applicable withholdings, to Garcia on or by December 31, 2018, and (ii) \$29,844.30, minus applicable withholdings, to Garcia on or by January 31, 2019. UNI understands it remains responsible for the employer's share of F.I.C.A. due on back wages. Within fifteen (15) days after the final deposit is made, UNI shall certify to the Secretary that both payments have been made to Garcia. Such documentation can be sent by U.S. mail or electronically to the Secretary's counsel, identified below.

3. **Final Settlement.** The Parties understand and agree that this Agreement sets forth the entire agreement between the Parties, and there exists no other agreements, oral or written, or any promises between them relating to any matters covered by this Agreement. Further, this Agreement is not based on any promises, understandings, or agreements not included herein. This Agreement represents a complete settlement of all the Secretary's claims

arising out of Ms. Garcia's complaint to the Department of Labor. The Secretary acknowledges that this settlement constitutes the closure of the Investigation, and that the Secretary will bring no further charges, seek no further penalties, and bring no further administrative action relating to the allegations that were the subject of the Investigation against the State, including their respective agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliates (and agents, directors, officers, employees, representatives, and attorneys of such divisions, subsidiaries, and affiliates), their predecessors, successors, heirs, executors, administrators and assigns, and all persons acting by, through, under, or in concert with any of them, whether in their individual capacity or official capacity, involving any matter which occurred in the past up to the date of this Agreement that was or could have been the subject of investigation No. 1831046. Nothing in this Agreement shall be construed to preclude the Secretary from bringing suit to enforce this Agreement in the event that UNI fails to perform the promises and representations contained herein.

4. **No Admission of Liability.** This Agreement is not, and shall not in any way be construed as an admission that the State violated any federal, state, or local laws.

5. **Future Compliance.** UNI agrees that it is now in compliance with the FMLA and will continue to be in the future.

6. **Public Record.** The Parties acknowledge that this Agreement is a public record under Iowa Code Chapter 22.

7. **Required Approvals.** This Agreement is subject to Iowa Code § 22.13A and has been approved by the Executive Director of the Board of Regents, the president of UNI, and the Iowa Attorney General or his designee. This Agreement will be posted to the Board of Regents web page in compliance with Iowa Code § 22.13A(4)(b).

8. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Iowa.

9. **Severability.** Should a court of competent jurisdiction declare or determine any provision of this Agreement to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby. It is the Parties' intent that the part, term, or provision declared or determined to be illegal or invalid shall be deemed not to be a part of this Agreement.

10. **Counterparts.** This Agreement may be executed in several counterparts, and as executed shall constitute one Agreement, binding on all the signatories, notwithstanding that all the parties are not signatory to the original or to the same counterpart. Faxed or e-mailed signatures will be deemed originals.

11. **Headings.** The headings, titles, and subtitles used in this Agreement are inserted only for convenience of reference and shall not control or affect the meaning or construction of any of the provisions hereof.

12. **Costs.** Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to, attorney's fees, costs, and other expenses which may be available under the Equal Access to Justice Act (5 U.S.C. § 504), as amended.

13. **Amendments.** None of the terms or conditions contained herein shall be altered, amended, waived, or abandoned, except by prior written agreement of the Parties.

14. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter of this Agreement.

Dated this 18th day of December, 2018.

UNIVERSITY OF NORTHERN IOWA

By: Mark H. Nook

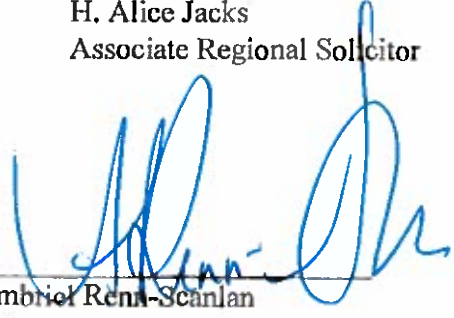
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Governing Iowa's public
universities and special schools

University of Iowa
Iowa State University
University of Northern Iowa
Iowa School for the Deaf
Iowa Braille and Sight Saving School
Lakeside Laboratory Regents Resource Center
Western Iowa Regents Resource Center



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Routing/Review Approval of Personnel Settlement Agreement

*Please sign/date where indicated below noting the approval or denial of the attached proposed Personnel Settlement Agreement. **After signing, please return to the attention of BOR – General Counsel. ** If "denied," please return to BOR – General Counsel.*

In the matter of: Eva Garcia

Institutional Staff: Kyle Fogt
Associate Counsel, University of Northern Iowa

Office of the Attorney General

Reviewed by (Print Name): Jeff Thompson

Reviewer's Signature: [Signature]

Date: 12/27/18

Reviewed: ☒ Redacted: ☐

Institution: University of Northern Iowa

Institutional Head's Printed Name: Mark A. Nook

Institutional Head's Signature: [Signature]

Date: 12-28-18

Approve: ☒ Deny: ☐

Board of Regents

Executive Director's Printed Name: Mark J. Braun

Executive Director's Signature: [Signature]

Date: 1/8/19

Approve: ☒ Deny: ☐