

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

D.J. No. 204-71-84

I. INTRODUCTION

1. The parties to this Settlement Agreement (the “Agreement”) are the United States of America (“United States”) and the Metropolitan Government of Nashville and Davidson County, Tennessee (“Metro Nashville”).
2. The United States Department of Justice (the “Department” or the “United States Attorney’s Office for the Middle District of Tennessee”) is responsible for enforcing title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, and the regulation implementing title II, 28 C.F.R. pt. 35. The United States is authorized to, and did, investigate the complaint at issue here pursuant to the authority granted by Title II of the ADA. *See* 28 C.F.R. § 35.172. The Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA if voluntary compliance cannot be secured. This Agreement constitutes a Voluntary Compliance Agreement pursuant to 28 C.F.R. § 35.173(b).
3. Title II of the ADA provides that no qualified individual with a disability shall be denied the services and programs of a public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130.
4. Metro Nashville is a consolidated city-county government that is subject to the ADA. Two public boards operated under the auspices of Metro Nashville, the Metropolitan Nashville Arts Commission (the “Commission”) and the Public Art Committee (the “Committee”) of the Commission, are also subject to the ADA because they are instrumentalities of a local government. 42 U.S.C. § 12131(1)(A, B).

II. BACKGROUND

5. This matter was initiated by a complaint filed under title II of the ADA with the Department. Metro Nashville cooperated fully with the United States Attorney’s Office for the Middle District of Tennessee in this matter.
6. The complainant is a member of the Committee with multiple sclerosis (“MS”) who has some of the debilitating and unpredictable consequences associated with that disease, such as heat intolerance, muscle spasms associated with hypotonia, and fatigue. The complainant frequently must use a wheelchair. The complainant is an individual with a disability within the meaning of the ADA. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.108.

7. The complaint alleged that the Committee failed to provide reasonable accommodation to the complainant, who is unable to attend committee meetings in person because of the complications caused by complainant's MS. The complainant has difficulty attending and sitting through in-person meetings of the Committee in person due to the unpredictable and severe consequences of complainant's MS symptoms on any particular day. The complainant requested accommodations to attend, participate in, and vote in meetings of the Committee remotely by Zoom or other electronic means. The complainant initiated discussions about complainant's MS directly after being asked to join the Committee, and formally requested an accommodation or reasonable modification. Despite repeated requests from complainant and from other members of the Committee, Metro Nashville did not afford complainant an accommodation or modification. Because Metro Nashville did not respond to complainant's requests, the complainant attended multiple meetings of the Committee in person and experienced stress and discomfort as a result. The complainant also brought paid caregivers to those meetings to assist. Relevant decision-makers told the complainant that complainant could attend the meetings of the Committee by Zoom or other remote means, but placed restrictions on complainant's participation. For example, Metro Nashville told the complainant that complainant could not vote, make a motion, second a motion, or count towards the quorum requirement of the Committee if complainant chose to attend virtually. The concern articulated by different offices of Metro Nashville government (specifically, within the ADA & Safety Services group of the Department of General Services Department, and Metro Nashville's Legal Department), was that the Tennessee Open Meetings law, Tenn. Code Ann. § 8-44-101 *et seq.* does not provide for remote participation in the meetings of a committee of local government, and that a court could find that holding public meetings in public is a fundamental aspect of Tennessee's Open Records Law, and that a consequence of a violation of the Open Meetings Law is to void the committee's action.
8. Individuals with disabilities are protected by title II of the ADA. 42 U.S.C. § 12132; 28 C.F.R. § 35.130.
9. Title II of the ADA requires that no qualified individual shall, on the basis of disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity. 28 C.F.R. § 35.130(a). Further, title II requires that a public entity, in providing any aid, benefit, or service, may not: (1) directly afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (2) deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; and (3) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service. 28 C.F.R. § 35.130(b)(1)(ii, vi, vii). Title II further requires that a public entity make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability when those modifications would not fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i).
10. Metro Nashville agrees that the persuasive caselaw provided by the United States indicates that it is likely that the ADA is violated by refusing to provide reasonable modifications that would permit the complainant to fully participate (i.e., to vote, make motions, second

motions, and count towards a quorum) in meetings of the Committee by virtual / electronic attendance. The modifications sought did not fundamentally alter the nature of the program.

11. The parties wish to resolve this matter without litigation. This Agreement is consistent with the ADA's provisions encouraging voluntary resolution of cases under title II. 42 U.S.C. § 12212; 28 C.F.R. § 35.172(c); 28 C.F.R. § 35.176. The United States believes that voluntary resolution of this matter through this Agreement is in the public interest. In consideration of, and consistent with, the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or filing a civil suit under title II in this matter, except as provided in the Implementation section of this Agreement.

III. REMEDIAL ACTION

12. Metro Nashville's assessments of whether an individual has a qualifying disability shall be consistent with the ADA's directives. 28 C.F.R. § 35.101(b) (“[T]he definition of ‘disability’ in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA...The question of whether an individual meets the definition of ‘disability’ under this part should not demand extensive analysis.”).
13. Consistent with title II of the ADA, Metro Nashville will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the services it provides by excluding or providing unequal treatment to persons with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Metro shall make reasonable modifications where necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7)(i). Specifically, where an individual's disability prevents that person from attending meetings of a local government board, commission, or other body, in person, Metro Nashville will permit such individuals to fully participate virtually.
14. With immediate effect, Metro Nashville shall ensure that reasonable modifications are extended to qualified individuals disabled under the ADA, including the complainant, who request to virtually attend a meeting of a committee, board, commission, or other body on which they serve because of their disability. Their participation in such virtual meetings shall not be diminished in any way, and they shall be entitled to vote, count towards a quorum, make and second motions, and otherwise permitted to participate in the same manner in which they would have if they were attending the meeting in person.
15. Within 60 days of the effective date of this Agreement, Metro Nashville will update its policies and procedures to fully implement this Agreement, and the United States will have the right to comment on and reject the policies if they offer less protection than what is included in this Agreement. Metro Nashville shall develop a policy of reasonable modifications that includes discussion of virtual attendance at meetings consistent with this Agreement, and the United States shall have the right to comment on and reject the policies if they offer less protection than what is included in this Agreement. Consistent with 28 C.F.R. § 35.173(b), Metro Nashville provides assurance that discrimination will not occur in the future. This agreement may be enforced by the Attorney General and the Department of Justice if necessary.

16. Within 30 days of the effective date of Metro Nashville's receipt of the signed Release of ADA Claims, which is attached as Exhibit A, and IRS Form W-9 completed by the complainant, Metro Nashville will provide to the United States, via Assistant U.S. Attorney Mike Tackeff, a check in the amount of \$500.00, made payable to the complainant, as authorized by 42 U.S.C. § 12133. Complainant will receive a 1099 from Metro Nashville for the money received in 2023. Pursuant to the Freedom of Information Act, the complainant's Release shall not be made public.
17. In consideration for the Agreement, the United States will close its investigation of D.J. No. 204-71-84 and will refrain from filing a civil suit under title II in this matter, except as provided in the Implementation section of this Agreement.

IV. IMPLEMENTATION

18. This Settlement Agreement cannot be modified or amended except in writing, agreed to and signed by the Parties.
19. The United States may review compliance with this Agreement 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 Metro Nashville in writing and the parties will attempt to resolve the concerns in good faith. If the parties are unable to reach a satisfactory resolution of the issue(s) within thirty (30) days of the date the United States provides notice to Metro Nashville, the United States may institute a civil action in the United States District Court for the Middle District of Tennessee to enforce this Agreement or the requirements of title II.
20. It is a violation of this Agreement for Metro Nashville to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the United States for an extension of the relevant timeframe imposed by the Agreement.
21. Failure by the United States to enforce any provision or deadline in this Agreement shall not be construed as a waiver of the United States' right to enforce any deadline or provision of this Agreement. The Agreement, including Attachment A, constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, will be enforceable under its provisions.
22. This Agreement is limited to the facts set forth above and does not purport to remedy or resolve any other existing or potential violations of the ADA or any other local or Federal law.
23. This Agreement does not affect Metro Nashville's continuing responsibility to comply with all applicable aspects of title II of the ADA.
24. Metro Nashville shall not discriminate or retaliate against any person because of his or her participation in this matter.

- 25. A copy of this document or any information contained in it, with the exception of Attachment A, will be made available to any person by Metro Nashville or the United States on request.
- 26. This Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.
- 27. The effective date of this Agreement is the date of the last signature below. This Agreement will remain in effect for three (3) years from the effective date of this Agreement.
- 28. The provisions of this Agreement shall be deemed severable, and any invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of the other provisions herein. If any term of this Agreement is determined by any court of competent jurisdiction 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 United States and Metro Nashville 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.
- 29. The person signing this Agreement for Metro Nashville represents that he or she is authorized to bind Metro Nashville to this Agreement. This Agreement is binding on Metro Nashville, including all administrators, representatives, and employees.

All notifications under this Agreement shall be sent by certified U.S. Mail, return receipt requested, to the United States Attorney's Office, Middle District of Tennessee, 719 Church Street, Suite 3300, Nashville, Tennessee 37203, Attn: AUSA Mike Tackeff.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
MIKE TACKEFF
Assistant United States Attorney
Middle District of Tennessee

METRO NASHVILLE

DATED: 12/4/23

BY: Lora Fox
LORA BARKENBUS FOX
Associate Director of Law for the Metropolitan
Government