

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made this 10th day of November, 2020, by and between Chemeketa Students for Life, Marcos Sanchez, and Emma Howell (collectively “Plaintiffs”), and Ken Hector, Ron Pittman, Ed Dodson, Neva Hutchinson, Jackie Franke, Diane Watson, and Betsy Earls, Jessica Howard, Jim Eustrom, Manuel Guerra, Mike Evans, and Joel Gisbert (collectively “Defendants”). All persons above will also be referred to as “the Parties.”

A. The Parties dispute the legality of Chemeketa Community College’s regulations of expressive activity on its campus. Specifically, Plaintiffs have filed a lawsuit, *Chemeketa Students for Life, et al. v. Hector, et al.*, in the United States District Court of the District of Oregon, Eugene Division, No. 6:20-cv-00742-MC (the “Litigation”), primarily challenging the constitutionality of Chemeketa Community College’s speech zones and prior permission requirements for expressive activity in the outdoor areas of campus. Plaintiffs assert that the College’s regulations violate their First Amendment and Fourteenth Amendment rights under the United States Constitution, while Defendants contend that the regulations do not violate those rights.

B. The Parties’ decision to enter into this Agreement represents a compromise of disputed claims in the Litigation and creates the framework for the parties to move forward without the disruption and cost of litigation. Defendants deny all liability to the claims asserted by Plaintiffs.

C. The Parties to this Agreement wish to resolve all claims Plaintiffs have or could allege against Defendants related to these events.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions contained in this Agreement, the Parties agree as follows:

1. Upon execution of this Agreement by both parties, Defendants agree as follows:

a. Revise Chemeketa’s Speech Policies and Forms. Within fourteen (14) days of executing this Agreement, Defendants will revise Chemeketa Community College’s (1) Free Speech Guidelines, (2) Release Form for speech activity, and (3) Free Speech Table Reservation Form by adopting the versions of these policies and forms that are attached as Exhibits 1–3 to this Agreement. The Release Form for speech activity will also be renamed “Release Form for Indoor Speech Activity or Speech Activity Exceeding 400 Persons,” consistent with Exhibit 2.

b. Pay \$25,000 to Plaintiffs’ Legal Counsel. Within fourteen (14) days of executing this Agreement, Defendants will make payment by check to “Alliance Defending Freedom (IOLTA)” in the amount of \$ 25,000.00.

2. Dismissal of the Litigation. Once Defendants update Chemeketa Community College's speech regulations and Alliance Defending Freedom receives \$ 25,000 in accordance with Paragraph 1 of this Agreement, Plaintiffs will, within seven (7) days, file a Notice of Settlement with the District of Oregon Clerk of Court and promptly work toward dismissing the current Litigation with prejudice and without costs, pursuant to District of Oregon Local Rule 41-1.

3. Release. In consideration of Defendants' actions specified in Paragraph 1 of this Agreement, Plaintiffs also hereby fully release, acquit, and forever discharge Defendants, their agents, assigns, and employees, and Chemeketa Board of Education members and their officers of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that Plaintiffs may now have, have ever had, or hereafter may have (i) relating directly or indirectly to the allegations in Paragraph A of this Agreement, and (ii) which arise from actions taken by Defendants prior to the date of this Agreement. This release and waiver covers all claims and demands for relief, damages, costs, expenses, and causes of action of any kind or character (whether known or unknown or foreseeable or unforeseeable) under federal and state law, as of the date of this Agreement.

4. Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes all previous oral and written agreements; there are no other agreements, representations, or understandings not set forth herein. Plaintiffs acknowledge that neither Defendants, nor any of their agents, representatives, employees, or attorneys, have made any representations to them concerning the terms or effects of this Agreement other than those contained in it. Further, this Agreement can be modified only by a written agreement signed by the Parties.

5. Savings Clause and Waiver. If any portion of this Agreement is found to be invalid or unenforceable for any reason, any court or other tribunal adjudicating the rights and duties of the parties under this Agreement shall alter, modify and/or strike portions of the Agreement so that it shall be enforceable to the fullest extent permitted by law. In the event that any provision of this Agreement (or any portion thereof) is found invalid or unenforceable, the remainder of that provision and the remainder of this Agreement shall be valid, binding, and enforceable. The waiver of a breach of any term or provision of this Agreement shall not operate or be construed to be a waiver of any other or subsequent breach of this Agreement.

6. Non-admission. This Agreement in no way shall be construed as an admission by Defendants that they acted wrongfully toward or failed to act lawfully with regard to Plaintiffs. Likewise, by entering into this Agreement, Plaintiffs neither recognize the validity of any defense Defendants may have asserted nor provide any assurance or certification that all aspects of Defendants' expressive

activity regulations fully comply with the United States Constitution or other applicable law.

7. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon. Any proceedings related to or arising out of this Agreement shall only be commenced, prosecuted, or continued in a court of competent jurisdiction situated in Marion County, Oregon.

8. Voluntary Execution. Plaintiffs acknowledge that they have read this Agreement, understands its terms, and have entered into it voluntarily. Plaintiffs acknowledge that they have been given a reasonable period of time within which to consider this Agreement and its waiver and release of claims. Plaintiffs further acknowledge that they have consulted with their attorney before signing this and entering into this Agreement.

9. Counterparts/Signatures. The Parties agree that this Agreement may be executed in counterparts, all of which shall constitute one agreement. The parties further agree that copies of signatures shall be sufficient to bind the parties to this Agreement.

Plaintiffs:

Chemeketa Students for Life

By: Marcos Sanchez AND
Its Co-President
Date: 10/23/2020

By: Emma Howell
Its Co-President
Date: 10/22/20

Individual Plaintiffs

Date: 10/22/20

Emma Howell
Emma Howell

Date: 10/23/2020

Marcos Sanchez
Marcos Sanchez

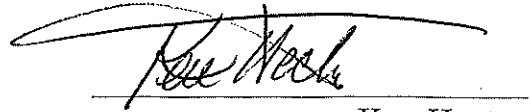
Plaintiffs' Legal Counsel

Date: 10/27/2020

Michael Ross
Michael Ross
ALLIANCE DEFENDING FREEDOM

Defendants:

Date: 11/3/20



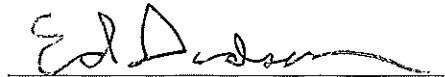
Ken Hector
Member
Chemeketa Board of Education

Date: 11/3/20



Ron Pittman
Member
Chemeketa Board of Education

Date: 11/3/20



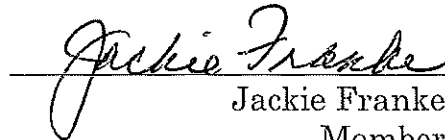
Ed Dodson
Member
Chemeketa Board of Education

Date: 11/3/2020



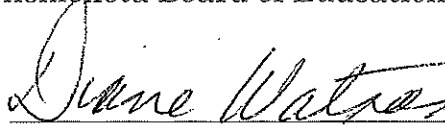
Neva Hutchinson
Member
Chemeketa Board of Education

Date: 11/4/2020



Jackie Franke
Member
Chemeketa Board of Education

Date: 11/3/2020



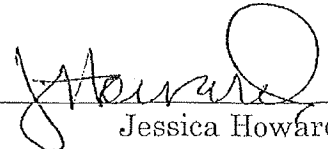
Diane Watson
Member
Chemeketa Board of Education

Date: 11/3/2020



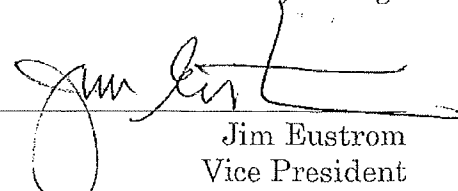
Betsy Earls
Member
Chemeketa Board of Education

Date: 9/28/20




Jessica Howard
President
Chemeketa Community College

Date: 10/29/2020




Jim Eustrom
Vice President
Chemeketa Community College

Date: 10/28/2020



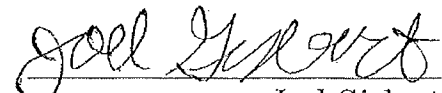
Manuel Guerra
Executive Dean
Chemeketa Community College

Date: 10/28/2020



Mike Evans
Dean of Student Retention & College Life
Chemeketa Community College

Date: 10/28/2020



Joel Gisbert
Civic Engagement Coordinator
Chemeketa Community College

Defendants' Legal Counsel

Date: 11/10/20



Karen Vickers
MERSEREAU SHANNON LLP

Date: 11/8/2020



Beth Plass
MERSEREAU SHANNON LLP

Exhibit 1

Free Speech Guidelines

PURPOSE & AUTHORITY

Chemeketa Community College recognizes and supports the rights of free expression and speech. It is the purpose of these Guidelines to inform members of the College community and the public of the time, place and manner in which they may engage in constitutionally protected speech and expression at Chemeketa. These individuals or groups include, but are not limited to, those that represent religious organizations, groups desiring petition signatures, political candidates and their representatives, and groups representing political issues. It is the intent of these Guidelines to ensure the primary educational purpose of the College is maintained, while promoting debate and the sharing of information and ideas, while ensuring the safety and security of every individual.

FREE SPEECH DISCLAIMER

All information and ideas expressed by the individual or organization using the Chemeketa Community College campus are that of the individual or organization and do not represent the views of Chemeketa Community College.

DEFINITIONS

"College" means Chemeketa Community College.

"College Community" means all students and employees of the College including student and employee sponsored organizations.

"Person" means any member of the public or the College community.

"Public" means any individual or group not included in the definition of "College Community."

"Speech Activity" means leafleting and distributing flyers, picketing, speech-making, demonstrations, petition circulation, and similar activities.

"User" means an applicant applying for use of a College facility for a free speech activity or someone using College facilities for a free speech activity.

"Weapons" means, including but not limited to, firearms, exploding devices, mace, knives and flaming torches.

LOCATIONS

Salem Campus:

- The indoor Free Speech area is a designated space at the base of the stairs in the lobby of Building 2, and shall be large enough to accommodate one six-foot table and two chairs. Users shall contain their presentation and materials to this area only. Additional space may be allowed as space permits.

Yamhill Valley Campus:

- The indoor Free Speech area is a designated space in the lobby of Building 1, and shall be large enough to accommodate one six-foot table and two chairs. Users shall contain their presentation and materials to this area only. Additional space may be allowed as space permits.

Outreach Centers:

- Each College Outreach Center shall designate Free Speech areas appropriate for its facility.

TERMS AND CONDITIONS

General Rules

1. Users shall contain their presentation and materials to the outdoor campus facilities and areas or the designated indoor Free Speech areas.
2. User's conduct shall not impede individuals or pedestrian traffic flow or disrupt the regular or authorized activities in classrooms, offices and other college facilities.
3. Users shall not force passersby to take materials.
4. Users shall not touch, or strike, or impede the progress of passersby, except for incidental or accidental contact, or contact initiated by a passerby.
5. Users shall not conduct themselves in a manner which a reasonable person would believe will lead to imminent danger or harm to other individuals present or property damage.
6. Users shall not use weapons of any kind or threaten the use of weapons towards other individuals present.
7. Users shall not use or promote the use of open flames, unless specific permission has been granted to use small hand held candles.
8. User's speech activities shall be conducted at a volume which does not disrupt the orderly conduct of college business, other campus activities, or classes taking place at that time.
9. No means of amplification that creates a noise or diversion that disturbs the orderly conduct of college business, other campus activities, or classes taking place at that time shall be used.
10. Users shall not solicit donations of money, through direct requests for funds, sales of tickets, or otherwise, except where he or she is using the designated area(s) on behalf of and collecting funds for an organization

that is registered with the Secretary of State as a nonprofit corporation or is an approved Associated Students organization or club.

11. Normal hours of presentation for the indoor Free Speech areas shall be from 8:30 AM to 4 PM on days the College is open for business. Outdoor Free Speech Activity is not permitted on campus when the College is closed. The Salem campus is closed and buildings are locked from 10 pm to 6 am, except Friday and Saturday evenings when campus buildings are secured as soon as scheduled events have concluded. Except events listed on the Special Use Report, college Buildings are closed Sunday, holidays and other days identified by the College as some type of a closure day. College facilities at McMinnville (Yamhill), Woodburn, Eola Viticulture, Dallas CCBI, Brooks and Santiam are closed except for the regular business hours and special events scheduled through the appropriate administrator at those locations.
12. With regard to indoor Free Speech areas, users shall be guaranteed only two dates within any given academic term. Any additional dates are subject to availability and may be scheduled if the indoor Free Speech area has not already been reserved.
13. Indoor Free Speech areas can be reserved up to six weeks in advance. This six week scheduling period ensures that no single user can reserve so many dates that they exclude other users from the opportunity to use the indoor free speech area.
14. **Indoor Free Speech areas:** Approaching individuals of the public or the college community is not permitted.
15. **Outdoor Free Speech:** In the event of a counter advocate group wishing to be heard in the same outdoor area, the two groups shall remain a minimum of 50 feet away from each other. The first group of people present in the outdoor free speech area shall choose the area for their speech and the second group of people shall stay a minimum of 50 feet, at all times, away from the first group of people.
16. **If users violate federal, state or local laws, including College policies, procedures or guidelines the College reserves the right to take action, up to and including, stopping the event and closing the College.**

Facilities and Materials

1. Users shall be allowed to distribute petitions, circulars, leaflets or flyers, newspapers, and other printed matter. Such distribution inside of buildings shall take place only within the designated area(s). Materials must be distributed by the user, not left on tables around campus(es). Flyers shall not be left on automobile windshields that are parked in College owned and/or controlled parking lots due to the resulting litter problem when owners either remove the flyers from their windshields or they blow off in the wind.
2. Users shall not use chalk or any chalk like product, or paint on college property, including but not limited to, sidewalks, roadways, buildings, or stairs. Chalking/painting college property shall be viewed as graffiti under Oregon law (ORS 164.381-383) and thus prohibited. Individuals caught chalking/painting college property shall be held responsible for the cost of the removal and clean-up of the graffiti. Law enforcement may be called to enforce the law and students are subject to student discipline.
3. Banners and/or table signs are welcomed, but shall only be displayed on the table provided by the College and removed at the end of each day's free speech activity.
4. Chemeketa shall display a sign containing the following: "Chemeketa Community College neither sponsors nor endorses the content or opinions expressed."

5. Users shall not hang, tape, stand, or place signs or other objects that may obstruct vision, signage, or walkways, or that may damage College premises without the College's written permission.
6. Hand held signs or free standing signs are permitted. Any and all signs must be removed at the end of each day's free speech activity. Nothing shall be attached to a College building or pounded into the ground on College property. All signs shall be removed from College property at the end of each day's free speech activity.
7. Material distributed outdoors or in the designated area(s) that is discarded or dropped outdoors or in or around the designated area(s) other than in an appropriate receptacle must be retrieved and removed or properly discarded by those persons distributing the material prior to their departure at the end of each day's free speech activity.
8. Failure to comply with the terms and conditions outlined in these Guidelines may cause the event to be canceled or jeopardize user's future access to College property for free speech activity.

Reservation Process

For generally accessible outdoor campus facilities and areas, students, student organizations, their sponsored guests, and community members may freely engage in spontaneous speech activities provided that such activities are in compliance with all other provisions of this policy. Exempted from this provision are academic and athletic spaces including athletic fields/courts and outdoor classrooms and labs as well as areas leased to third parties. To engage in speech activity that will take place indoors or will exceed 400 people, students, student organizations, their sponsored guests, and community members must also sign a separate release form.

Salem Campus:

- Indoor
 - Individuals and groups who wish to use the college's indoor Free Speech area shall work with the Office of Student Retention and College Life to schedule date and time.

Yamhill Valley Campus:

- Indoor
 - Individuals and groups who wish to use the college's indoor Free Speech area shall work with the front desk staff in Building 1 to schedule usage of the free speech area.

Outreach Centers:

- Persons desiring to use the Free Speech areas on any of Chemeketa's outreach centers shall contact the appropriate outreach center's Director/Dean's office.

Financial/Legal Considerations

- The user understands that the use of the College facility is at their sole risk and agrees that Chemeketa Community College shall not be liable for any injuries or damages, claims demands, lawsuits, or causes of action (including attorney fees and other expenses thereto) whatsoever to the user, for property damage, bodily injury, and/or death whether or not caused by negligence, arising out of or connected with the user's free speech activity or use of any indoor Free Speech areas.

Exhibit 2

Release Form for Indoor Speech Activity or Speech Activity Exceeding 400 Persons

I have read, understand, and accept Chemeketa Community College's Free Speech Guidelines. I understand that an individual's free speech right is balanced with the safety of individuals present on College property as well as the security of College property. Any violation of these Guidelines may result in the cancelation of the activity, the involvement of College Public Safety and/or law enforcement. Upon a reasonable showing by the College that these Guidelines have been violated, individuals may be requested to leave College property and/or the College may seek other legal remedies for the violation(s). I agree to release, indemnify, and hold the College harmless from any and all losses, costs, claims, and damages that could result from my use of the indoor Free Speech areas or outdoor areas of campus for a gathering of over four hundred people.

With my signature, I acknowledge that I am authorized by my organization to sign on their behalf or I am signing individually intending to be bound to this document. I agree to Community College's Free Speech Agreement Terms and Conditions.

Signature: _____ **Date:** _____

Print Name: _____

Title: _____

Organization: _____ Phone Number: _____

The local Fire Marshal requires two weeks notice and a safety plan on gatherings of 400 people or more. Please indicate anticipated size of activity: _____

Depending on the size and the complexity of the proposed activity, Chemeketa reserves the right to request one or both of the items listed below, be completed and supplied to the college prior to the event being approved.

- 1) The user needs to provide a certificate of insurance coverage naming Chemeketa Community College and its Board of Directors as a named insured, in the amount of _____.
- 2) Chemeketa's Public Safety Director has been asked to create a "Safety Plan" for this Free Speech event. The reasonable estimated cost of the Safety Plan is _____.

Exhibit 3

Free Speech Table Reservation Form

If you would like to schedule use of our indoor Free Speech Table please complete, sign, and return this form to the Office of Student Retention & College Life one (1) week prior to the preferred date(s) to allow for processing. Failure to complete, sign, and submit this agreement may result in a request **NOT** being processed.

Reservation requests will be processed and granted on a first-come, first-served basis. These requests may be denied for the following reasons only:

- a. The requested venue is an indoor facility that the college has designated as not available for speech activity under this policy;
- b. The requested venue is an indoor facility and the request conflicts with restrictions enacted pursuant to this policy;
- c. The venue is already reserved for another event;
- d. The speech activity will attract a crowd larger than the venue can safely contain;
- e. The speech activity is a clear and present threat to public safety, according to the college's police or security department;
- f. The speech activity will occur during college examination periods; or
- g. The speech activity is unlawful.

At which campus or outreach center would you like to reserve a table or area?

Organization

Contact Person

Telephone

E-mail address

Street Address

City

State

Zip Code

Date(s)

Start time

End time

Free Speech Disclaimer

All information and content of the Free Speech Area is for informational and education purposes only. All information expressed by the individual or organization using the Chemeketa Community College Free Speech Area is particular to the individual/organization, and is not in any way expressing a belief of Chemeketa Community College in whole or part.

Affirmative Action/Equal Opportunity Statement

Chemeketa Community College Prohibits unlawful discrimination based on race, color, religion, national origin, sex, marital status, disability, protected veteran status, age, gender, gender identity, sexual orientation, pregnancy, whistleblowing, victim of domestic violence, genetic information, or any other status protected by federal, state, or local law in any area, activity or operation of the college. The college also prohibits retaliation against an individual for engaging in activity protected under this policy, and interfering with rights or privileges granted under federal, state, or local laws.

Under college policies, equal opportunity for employment, admission, and participation in the college's programs, services, and activities will be extended to all persons, and the college will promote equal opportunity and treatment through application of its policies and other college efforts designated for that purpose.

Persons having questions or concerns about Title IX, which includes gender-based discrimination, sexual harassment, sexual violence, interpersonal violence, and stalking, contact the Title IX coordinator at 503.399.4723, 4000 Lancaster Dr. NE, Salem, Oregon 97305, or <http://go.chemeketa.edu/titleix>. Individuals may also contact the U.S. Department of Education, Office for Civil Rights (OCR), 810 3rd Avenue #750, Seattle, WA 98104, 206.607.1600.

Equal Employment Opportunity or Affirmative Action should contact the Affirmative Action Officer at 503.399.2537, 4000 Lancaster Dr. NE, Salem, Oregon 97305

To request this publication in an alternative format please call 503.399.5192