

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
SOUTHERN DIVISION**

ROBERT DUNN,

Plaintiff,

v.

STEVEN LEATH, President of Iowa State University, in his official and individual capacities; **MARTINO HARMON**, Senior Vice President for Student Affairs at Iowa State University, in his official and individual capacities; **KEITH E. ROBINDER**, Interim Dean of Students, in his official and individual capacities; **REGINALD STEWART**, Senior Vice President for Diversity and Inclusion at Iowa State University, in his official and individual capacities; **MARGO FOREMAN**, Director of the Office of Equal Opportunity and Title IX Coordinator at Iowa State University, in her official and individual capacities; **SARA KELLOGG**, Assistant Dean and Director of the Office of Student Conduct, in her official and individual capacities; and **MEMBERS OF THE STUDENT CONDUCT HEARING BOARD**, in their official capacities,

Defendants.

Case No. 4:16-cv-00553-JAJ-CFB

SETTLEMENT AGREEMENT & RELEASE

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement & Release (the “Agreement”) is made and entered into by and between Robert Dunn (“Plaintiff”) and Iowa State University to resolve the above-captioned lawsuit.

RECITALS

- A. On October 17, 2016, Plaintiff filed a Verified Complaint in the United States District Court for the Southern District of Iowa in a case styled *Dunn v. Leath, et al.*, Case No. 4:16-cv-00553-JAJ-CFB (S.D. Iowa) (hereinafter, the “Litigation”), seeking injunctive and declaratory relief and nominal damages for the violation of his rights under the First and Fourteenth Amendments to the United States Constitution challenging the constitutionality of language

contained in Iowa State University's *Discrimination and Harassment Policy*, Section 4.2.8 of the *Student Code of Disciplinary Regulations*, and the *Sexual Misconduct, Sexual Assault, and Sexual Harassment Involving Students Policy* (the "challenged policies").

- B. Defendants denied Plaintiff's allegations in substance and because the policies at issue were then under review and were subsequently revised in December 2016.
- C. The Parties to this agreement desire to enter into this Settlement Agreement to avoid the expense of further litigation and to resolve any and all claims by Plaintiff against the Defendants known or unknown, whether filed or unfiled, arising out of the facts and circumstances outlined in Plaintiff's verified complaint in this action.

AGREEMENT

Now, therefore, Plaintiff and Iowa State University agree as follows:

- 1. *Settlement*. In consideration for Plaintiff's release of claims as described herein and for his dismissal of this action, Iowa State University has agreed to the following:
 - a. In addition to those edits made to the *Discrimination and Harassment Policy* in December 2016, Iowa State University has further amended that policy as follows:
 - i. Before the last sentence in section 3.4, Iowa State University will add:

Findings about any one or more of these factors, however, will not result in a determination that a student has engaged in "harassment" where the definitions in Section 1 are not otherwise met.
 - ii. Section 1.1 will be amended to substitute the following language in subpart (3):

. . . such conduct creates a hostile, intimidating or demeaning environment that is sufficiently severe, pervasive, and objectively offensive that it substantially interferes with an individual's academic or professional performance or creates an intimidating, hostile, or demeaning employment or academic environment.
 - b. Iowa State University will not deny to Plaintiff or any other student graduation or any other rights, privileges, or benefits to which he or they are otherwise entitled because of any refusal to complete the required training or to certify understanding and compliance with the versions of the *Discrimination and Harassment Policy*, *Student Code of Disciplinary Regulations*, or *Sexual Misconduct, Sexual Assault and Harassment Involving Students Policy* in effect prior to the revisions made subject to this agreement and in effect as of the effective date of this agreement.


However, nothing in this agreement shall prevent Iowa State University from requiring students to receive training concerning, or prevent Iowa State University from enforcing

compliance with, the *Discrimination and Harassment Policy, Student Code of Disciplinary Regulations, or Sexual Misconduct, Sexual Assault and Harassment Involving Students Policy* as amended pursuant to this agreement and in effect as of the effective date of this agreement. Moreover, nothing in the agreement shall prevent Iowa State University from further editing of the policies referenced in this agreement, provided however that any such edits must comply with federal and state law, including the United States and Iowa Constitutions. Plaintiff does not waive his right to challenge any such revised policies.

- c. Iowa State University will pay a sum of \$12,000 to Alliance Defending Freedom for Plaintiff's attorneys' fees and costs in this matter.
2. *Release, Discharge, and Covenant Not to Sue.* For and in consideration of the Settlement, the covenants and agreements set forth herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, Plaintiff hereby releases, waives, acquits, and forever discharges Defendants from any and all claims and causes of action raised or that could have been raised in this action relating to the facts included in the Complaint.
3. *Dismissal.* The parties agree that pursuant to this Agreement, a joint stipulation of dismissal will be filed by Plaintiff within ten (10) days after execution of this Agreement or upon receipt of the payment referenced in paragraph 1 by Alliance Defending Freedom, whichever date is later.
4. *Ownership of Claims.* Plaintiff represents and warrants that he has the sole right and exclusive authority to execute this Agreement and that he has not assigned, subrogated, or otherwise transferred any interest in any of the claims raised or that could have been raised in this action relating to the facts included in the Complaint.
5. *Authority to Bind the University.* President Leath acknowledges that he has actual authority to enter into this Agreement on behalf of Iowa State University and that any approvals and formalities required to authorize this Agreement have been completed prior to signature. By his signature, President Leath binds Iowa State University, all its Departments, and all employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives thereof.
6. *No Admissions.* By entering into this Agreement, Iowa State University is not admitting liability or recognizing the validity of any of Plaintiffs' claims. Likewise, by entering into this Agreement, Plaintiff is neither recognizing the validity of any defense Defendants asserted nor providing any assurance or certification that all aspects of Defendants' revised policies fully comply with the United States Constitution. Rather, Plaintiff and Iowa State University are entering into this Agreement solely to avoid the expense and inconvenience of further dispute and the litigation.
7. *Advice of Counsel.* Plaintiff represents that he has been fully advised by counsel with respect to the terms of this Agreement and executes it with full knowledge of the terms and conditions hereof.
8. *Governing Law.* This Agreement shall be deemed to have been made under the laws of the State of Iowa and shall be construed and enforced in accordance with and governed by the laws

of the State of Iowa.

9. *Severability.* The unenforceability or invalidity of any provision or provisions of this Agreement shall not render unenforceable or invalid any other provision or provisions hereof.
10. *Execution in Counterparts and/or Transmitted by Electronic Means.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The execution of this Agreement by signature transmitted by facsimile or other electronic means shall be as fully enforceable as an original signature.
11. *Entire Agreement.* All agreements, covenants, representations, and warranties, express or implied, oral and written, of the Parties to this Agreement concerning the subject matter of this Agreement are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any Party to any other Party concerning this Agreement, and no Party has any entered into this Agreement in reliance upon an agreement, covenant, representation, or warranty, express or implied, oral or written, that is not expressly stated in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties concerning the subject matter of this Agreement are merged herein. This is an integrated Agreement. This Agreement can only be amended in writing signed by all of the Parties.


Robert Dunn

03/15/2017
Date

AGREED TO AS TO FORM AND CONTENT


M. Casey Mattox*

3/15/17
Date

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Attorneys for Plaintiff

FOR IOWA STATE UNIVERSITY:




Steven Leath
President
Iowa State University

Date

March 21, 2017

AGREED TO AS TO FORM AND CONTENT



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3/24/17

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