
Agenda Item 3A

May 3, 2016

SUBJECT:

Proposed Settlement in Sanders v. Blinn College et al, Civil Action No. 1:15-cv-00426-LY, in the United States District Court for the Western District of Texas

RECOMMENDATION:

The administration recommends approval of the proposed settlement agreement to conclude this litigation.

RATIONALE:

As discussed in closed session on April 19, 2016, the predominant issue in the case is the College's policies pertaining to student expressive activities on campus. Those policies have been updated. Settlement of the remaining claims will eliminate the financial and administrative burdens associated with continued litigation.

BUDGETARY CONSIDERATIONS:

The proposed settlement will be funded largely by the College's insurance carrier.

RESOURCE PERSONNEL:

Lisa A. Brown, Thompson & Horton, Litigation Counsel
Dennis Crowson, Senior Vice President Student Services

ATTACHMENTS:

Attachment A: Proposed Settlement Agreement

Respectfully Submitted By:



Mel Waxler
Executive Vice President/General Counsel



Mary Hensley, Ed.D.
District President/CEO

STATE OF TEXAS §
 §
COUNTY OF WASHINGTON §

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Nicole Sanders and Blinn College, Mary Hensley, Dennis Crowson, Sheri Rich, and Erikah Brown. As used in this Agreement, “Blinn College” includes any and all of Blinn College’s past, present, and future trustees, administrators, employees, agents, insurers, reinsurers, claims adjusters, and attorneys. “Blinn College Group” and/or “Released Parties,” as used in this Agreement, includes Blinn College, Mary Hensley, Dennis Crowson, Sheri Rich, and Erika Brown. “Sanders,” as used in this Agreement, includes Nicole Sanders, herself, heirs, assigns, executors, administrators, agents, attorneys, representatives, and all other persons or entities claiming through Nicole Sanders.

CONTRACTUAL RECITALS:

Nicole Sanders filed a lawsuit styled Civil Action No. 1:15-cv-426-LY, *Nicole Sanders v. Mary Hensley, Dennis Crowson, Sheri Rich, and Erikah Brown*, in the United States District Court for the Western District of Texas – Austin Division (the “Lawsuit”);

The Blinn College Group disputes Sanders’s claims and allegations in the Lawsuit;

Sanders and the Blinn College Group wish to resolve all matters in dispute between them in a mutually satisfactory manner and to terminate all past and present controversies between them;

The parties have agreed to settle all claims asserted by Sanders, including, but not limited to, any and all claims that were or could have been asserted in the Lawsuit, without admission by either party of the merits of the claims, demands, charges, and/or contentions of the other party; and

Sanders covenants and warrants that she has not assigned, transferred, or subrogated any portion of any claim which she has asserted or could have asserted in the Lawsuit;

For and in consideration of the promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, Sanders and the Blinn College Group now compromise and settle all claims of Sanders as provided in this Agreement. The foregoing recitals are a substantive part of this Agreement.

I. BLINN’S CONSIDERATION TO SANDERS

(A) In exchange for Sanders’ promises and obligations under this Agreement, Blinn College agrees to pay Sanders the gross sum of \$50,000.00 (Fifty Thousand Dollars and No Cents) (the “Payment”). Sanders acknowledges and agrees that Blinn College and the Released Parties have no obligation to provide the Payment set forth in this paragraph except pursuant to

this Agreement. The Payment shall be distributed in the form of a check made payable to “Davis, Wright, Tremaine LLP” and shall be paid in accordance with Section VII. The Payment shall be reported to the Internal Revenue Service on Form 1099.

(B) Blinn College agrees that its Board of Trustees will amend Board Policies FLA (Local) and FLAA (Local) as reflected in Exhibits 1 and 2 [hereinafter “Policies”]. Additionally, Blinn College agrees that it will amend the Administrative Procedure for Expressive Activities on Campus as reflected in Exhibit 3 [hereinafter “Procedure”]. These amendments will be implemented within 30 days of the Effective Date of this Agreement. However, nothing in this Agreement restricts the authority of the Board of Trustees and President of Blinn College to amend the Policies or the Procedure, or documents referencing the Policies or Procedure, in accordance with future rulings of a state or federal court or governmental agency with jurisdiction over the College or as otherwise permitted or required by law.

(C) As additional consideration for Sanders’ promises, Blinn College agrees to the following:

(1) Blinn College agrees that, within 30 days of board approval of this Agreement, it will post links to the amendments to Policies FLA and FLAA and the Administrative Procedure for Expressive Activities on Campus on its student services webpage (currently found at www.blinn.edu/student_services/rights_responsibilities.html). Blinn College also will update its student activity announcement form (currently titled “Activity Announcement Form” and found at www.blinn.edu/SLA/forms/Activity-Announcement-Form.pdf) to state that students are not required to report student gatherings and events for which advance permission or notice is not required.

(2) Blinn College will, within 10 days of board approval of this Agreement, publish an announcement regarding the amendments to Policies FLA and FLAA on its News page at www.blinn.edu/news.

(3) Blinn College will exercise reasonable diligence to remove copies of the superseded Policies and Procedure that may exist on its website. Nothing in this Agreement, however, prohibits Blinn College from maintaining or preserving copies of the prior Policies and Procedure for historical, archival, or other lawful purposes or from complying with state records retention laws or open meetings laws.

(4) Prior to the first day of classes for the fall semester of 2016, Blinn College will use reasonable diligence to update any published student handbook or catalog that references the superseded Policies FLA and FLAA and/or the Procedure.

(5) Blinn College agrees to provide training regarding the Policies and Procedure within four months of dismissal of the Lawsuit to the student services personnel and campus police or security personnel who are responsible for administering the Policies and Procedure. After completion of the training, Blinn College shall certify to Sanders’ counsel that the training has taken place.

(6) Should Sanders discover a breach of Section I(C) after the Effective Date of this Agreement, she shall provide written notice that identifies the alleged deficiency to the president of Blinn College at 902 College Ave., Brenham, TX 77833, and allow Blinn College 30 business days in which to cure any alleged deficiency. Notice shall be sent via certified mail, return receipt requested. Additionally, in the event of a claim, controversy, or dispute over implementation of the matters addressed in Section I(C) of this Agreement, the parties shall attempt to settle the dispute by mediation for at least 60 days before pursuing other remedies. The parties will cooperate with one another in selecting a mediator and in scheduling a mediation. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. The request for mediation shall be made within a reasonable time after the deficiency or dispute in question has arisen, and in no event shall it be made after six months from when the aggrieved party knew or should have known of the deficiency or dispute. If the matter is not resolved through mediation, the parties may pursue their legal remedies. Finally, in the event of a dispute over a material breach of Section I(C), the prevailing party, as determined by a court of competent jurisdiction, shall recover reasonable attorneys' fees and taxable court costs from the other party.

II. SANDERS' CONSIDERATION TO THE BLINN COLLEGE GROUP

For and in consideration of the Blinn College Group's promises in this Agreement, Sanders hereby releases and forever discharges any and all claims and causes of action against the Blinn College Group that are waivable by law, both past and present, known and unknown, foreseen and unforeseen, arising out of or relating to the Lawsuit and/or occurring on or before the Effective Date of this Agreement. Sanders' compromise, waiver, and release includes, but is not limited to, the following:

(A) All claims accruing prior to the Effective Date (a) arising under any state, federal, or local Constitution, statute, ordinance, regulation, or rule, including, but not limited to, the United States Constitution, 42 U.S.C. § 1983, and the Texas Constitution; (b) arising from or relating to any administrative proceeding, charge, complaint, or petition before any other governmental agency; (c) for discrimination, retaliation, or harassment; (d) for equitable, declaratory, or injunctive relief; (e) arising or flowing from Sanders' participation in the Lawsuit. and (f) for any common law cause of action, whether sounding in tort or contract, including, without limitation, defamation and intentional infliction of emotional distress

(B) This release includes all claims for past or future damages for physical or mental injury, pain and suffering, damage to reputation, liquidated damages, punitive damages, compensatory damages, out-of-pocket expenses, attorney's fees, interest, and any other injury, loss, damage or expense or any other legal or equitable remedy of any kind whatsoever.

Dismissal of Lawsuit With Prejudice: Sanders acknowledges that the Payment in Section I of this Agreement is being provided by Blinn College and the Released Parties in exchange for Sanders' acceptance and signing of this Agreement and for Sanders' agreement to file the Stipulation of Dismissal with Prejudice attached as Appendix 4 in accordance with Section VII of this Agreement. Sanders agrees to dismiss with prejudice all claims asserted in the Lawsuit or that could have been asserted in the Lawsuit.

III. NO PENDING LITIGATION

Sanders promises not to sue or file any claim in any state or federal forum that relates to the claims released in Section II of this Agreement. Sanders further agrees that, in any action prosecuted by any other person or entity that arises out of the released claims, she cannot recover and will not accept compensation or damages.

Sanders further represents and confirms that, as of the date of her execution (signing) of this Agreement, other than the Lawsuit, she has not filed or otherwise initiated any lawsuit, complaint, charge, appeal, or other proceeding against Blinn College and/or the Released Parties in any local, state, or federal court or with any other governmental agency based upon events occurring prior to the date of this Agreement. To the extent permitted by law, Sanders expressly waives any right to damages awarded by any governmental agency or court relating to any claims that are released by this Agreement.

IV. NO ADMISSION OF LIABILITY

Sanders and the Blinn College Group agree and acknowledge that nothing contained in this Agreement constitutes an admission of wrongdoing by any party. Sanders understands and acknowledges that the Blinn College Group expressly denies wrongdoing or liability.

V. INDEMNIFICATION AND TREATMENT FOR PURPOSES OF TAXATION

Sanders agrees to DEFEND, INDEMNIFY, and HOLD HARMLESS the Blinn College Group against any and all losses, costs, damages, liabilities, and expenses, including the costs of investigation and defense of legal actions and attorneys' fees, arising out of, resulting from, or in any way related to any future assertions by Sanders, or any person or entity claiming by or through Sanders, of any claim encompassed within the release provision of Section II of this Agreement, upon a judicial determination that the claim was in fact encompassed within the Section II.

Sanders agrees and understands that the Blinn College Group has made no representations or guarantees regarding the proper tax treatment of the Payment set forth in Section I. Sanders assumes full and sole responsibility to any federal, state, or local taxing authority for any tax consequences, including interest, penalties, damages, or expenses, regarding income or other taxes arising out of the Payment. Sanders agrees and understands that the treatment of payments under this Agreement by governmental taxing authorities has no bearing on the validity of this Agreement.

VI. COOPERATION OF THE PARTIES

Sanders and the Blinn College Group agree to cooperate fully, to execute any documents necessary to effectuate this Agreement, and to take all additional actions that reasonably may be necessary or appropriate to give force and effect to the terms and intent of this Agreement and which are not inconsistent with its terms. Each party shall bear his, her, or its own attorneys' fees, costs, and expenses arising from the negotiation, preparation, and implementation of this Settlement Agreement.

VII. EFFECTIVE DATE OF AGREEMENT AND TIME FOR PAYMENT

This Agreement shall be effective after it is signed by all parties (“Effective Date”). Blinn College shall mail the Payment described in Section I to Robert Corn-Revere at Davis Wright Tremaine, LLP within three business days after the latter of the following events: (i) Sanders’ signing and returning this Agreement to Blinn’s legal counsel, Lisa A. Brown, and (ii) approval by the Blinn Board of Trustees of this Agreement. Sanders shall file the Stipulation of Dismissal with three business days of the posting of the updated Policies and Procedures as required by Section I.C.1.

VIII. MISCELLANEOUS

(A) Texas law shall govern the validity and interpretation of this Agreement insofar as federal law does not control. Venue shall be in Washington County, Texas.

(B) The parties agree that this Agreement is intended to settle and release any and all of Sanders’ claims for attorneys’ fees and/or costs and, in fact, settles and releases all such claims in the Lawsuit.

(C) This Agreement contains the entire understanding between Sanders, Blinn College, and the Released Parties. This Agreement supersedes any prior written or oral agreements. This Agreement shall not be modified, amended, or terminated unless such modification, amendment, or termination is executed in writing by Sanders and the President of Blinn College. No representations, warranties, recitals, covenants, or statements of intention have been made by, or on behalf of, any party hereto which is not embodied in this Settlement Agreement, and no party hereto shall be bound by, or liable for, any alleged representation, warranty, recital, covenant, or statement of intention not so set forth.

(D) All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Settlement Agreement shall be binding upon, inure to the benefit of, and be enforceable by Sanders and Blinn College and the Released Parties.

(E) If any single paragraph or clause of this Agreement should be found unenforceable, invalid, or illegal, it shall be severed and the remaining paragraphs and clauses shall be enforced in accordance with the intent of this Agreement.

(F) Nothing in this Agreement prohibits either party from complying with any state or federal law.

(G) A copy of this Agreement and Release may be executed in duplicate originals. Any required signatures or acknowledgements communicated by facsimile transmission or PDF (portable document format) are as effective as the originals thereof.

(H) Sanders hereby represents and certifies that she has entered into this Agreement knowingly and voluntarily. Sanders certifies that she (i) has carefully read all of this Agreement and understands its provisions; (ii) has been advised to consult with an attorney of her choice before signing this Agreement and in fact has had an opportunity to consult with legal counsel; (iii) has not been influenced to sign this Agreement by any statement or representation by any member of the Blinn College Group or their attorneys that is not contained in this written

Agreement; and (iv) has been given a reasonable amount of time to review this Agreement and to decide whether to sign it.

ACCEPTED and AGREED TO on the date stated below:

By: _____
Name: Nicole Sanders Date _____

By: _____
Name: Dr. Mary Hensley Date _____
Title: President, Blinn College

By: _____
Name: David Sommer Date _____
Title: President, Board of Trustees
Blinn College

By: _____
Name: Dr. Dennis Crowson Date _____

By: _____
Name: Erikah Brown Date _____

By: _____
Name: Sheri Rich Date _____