

Conciliation Agreement
Between the
U.S. Department of Labor Office of Federal Contract Compliance Programs
And
North Central West Virginia Community Action Association, Inc.

I. Preliminary Statement

The Office of Federal Contract Compliance Programs (OFCCP) initiated a complaint investigation of North Central West Virginia Community Action Association, Inc. (NCWVCAA), located at 146 Terrace Manor, Fairmont, WV 26554, beginning on September 22, 2021. OFCCP found sufficient evidence to support that NCWVCAA failed to comply with Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503) and its implementing regulations at 41 C.F.R. 60-741. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for sufficient and valuable consideration described in this document, OFCCP and NCWVCAA enter into this Conciliation Agreement (Agreement) and its attachments, and the parties agree to all the terms therein.

The attachments to this Agreement are deemed incorporated into this Agreement.

II. General Terms and Conditions

1. In exchange for NCWVCAA's fulfillment of all its obligations in this Agreement, OFCCP will not institute administrative or judicial enforcement proceedings under Section 503, based on the violations alleged in the NORI. However, OFCCP retains the right to initiate legal proceedings to enforce this Agreement if NCWVCAA violates any provision of this Agreement, as set forth in Paragraph 11, below. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. OFCCP may review NCWVCAA's compliance with this Agreement. As part of this review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Upon reasonable notice to NCWVCAA, NCWVCAA will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all hard copy or electronic reports and documents it requests, including those specified in this Agreement.
3. Nothing in this Agreement relieves NCWVCAA of its obligation to fully comply with the requirements of Executive Order 11246, as amended (E.O. 11246); Section 503; and/or the Vietnam Era Veterans Readjustment Assistance Act, as amended, (VEVRAA), their implementing regulations, or other applicable laws requiring nondiscrimination or equal employment opportunity through affirmative action.
4. NCWVCAA and OFCCP agree that any release of claims required by this Agreement will only pertain to claims under E.O. 11246, Section 503, and/or VEVRAA.

5. NCWVCAA agrees that it will not retaliate against any potential or actual beneficiary of this Agreement or against any person who files a complaint, who has provided information or assistance, or who participates in any manner in any proceeding in this matter.
6. The parties understand the terms of this Agreement and enter into it voluntarily.
7. This Agreement, including its attachments, constitutes the entire Agreement and represents the complete and final understanding of the parties. This Agreement contains all of the terms binding the parties and it supersedes all prior written and oral negotiations and agreements. Any modifications or amendments to this Agreement must be agreed upon in writing and signed by all parties. If an administrative error is found, OFCCP will work in good faith with all parties to make the corrections.
8. This Agreement becomes effective on the day it is signed by the District Director (Effective Date).
9. If one or more provisions of this Agreement is deemed unlawful or unenforceable, the remaining provisions will remain in full force and effect.
10. This Agreement will expire sixty (60) days after NCWVCAA submits its final progress report required in Section VIII, below, unless OFCCP notifies NCWVCAA in writing before the expiration date that NCWVCAA has failed to fulfill all of its obligations under the Agreement. In this instance, the Agreement is automatically extended until the date that OFCCP determines that NCWVCAA has met all of its obligations under the Agreement.
11. If NCWVCAA violates this Agreement:
 - a. The procedures at 41 C.F.R. 60-741.63 (2014) will govern:
 - i. OFCCP will send NCWVCAA a written notice stating the alleged violations and summarizing any supporting evidence.
 - ii. NCWVCAA shall have fifteen (15) days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - iii. If NCWVCAA is unable to demonstrate that it has not violated the Agreement, or if OFCCP's alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - iv. In the event of a breach of this Agreement by NCWVCAA, OFCCP may elect to proceed to a hearing on the entire case and seek full make-whole relief, and not be limited to the terms agreed to in the Agreement.

- b. NCWVCAA may be subject to the sanctions set forth in 41 C.F.R. 60-741.66 (2014) and/or other appropriate relief for violating this Agreement.
12. NCWVCAA neither admits or denies any violation of the Executive Order, Section 503 or VEVRAA, nor has there been an adjudication on the merits regarding any such violation.
13. OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
14. The parties understand and agree that nothing in this Agreement is binding on other governmental departments or agencies other than the United States Department of Labor.
15. Each party shall bear its own fees and expenses with respect to this matter.
16. This Agreement is limited to the facts of this case. Neither this Agreement, nor any part of the negotiations that occurred in connection with this Agreement, shall constitute admissible evidence with respect to any OFCCP policy, practice or position in any lawsuit, legal proceeding, administrative proceeding, compliance evaluation or audit, except for legal or administrative proceedings concerning the enforcement or interpretation of this specific Agreement.
17. All references to “days” in this Agreement, and in the Timeline included as Attachment B, are calendar days. If any deadline for an obligation scheduled to be performed under this Agreement falls on a weekend or a federal holiday, that deadline will be extended to the next business day.

III. Discrimination Violation

1. **VIOLATION:** OFCCP found sufficient evidence to support that NCWVCAA failed to reasonably accommodate the complainant identified in Attachment A (Complainant). Specifically, the Complainant requested a disability accommodation that she not be transferred to a new position and location. NCWVCAA failed to make the accommodation or initiate an interactive process, and instead transferred the Complainant to a new position as a teacher, which was located further away and involved additional responsibilities. NCWVCAA’s action forced the Complainant to resign her position. This is in violation of 41 CFR 60-741.21(a)(6).

IV. Financial Remedy

1. **Settlement Amount.** On December 1, 2021, the Complainant was rehired by NCWVCAA and received \$4,268.92 in back pay, less deductions required by law. NCWVCAA will distribute an additional lump-sum payment of \$10,731.08 to the Complainant. The total settlement amount is \$15,000.00 to resolve the violation set forth above, as follows:

2. Allocation

- a. **Total Amount to be Allocated.** The lump-sum payment will be distributed to the Complainant as explained in this Section. The amount distributed will deduct for the Complainant's share of deductions required by law, such as federal (FICA/Federal Unemployment Tax Act (FUTA)), state or local insurance premiums or taxes. The remaining amount will be paid to the Complainant and reported to the IRS as stipulated in section d below.
- b. **Complainant's Eligibility to Receive Payments.** The settlement will be distributed to the Complainant (identified in Attachment A) if she timely responds to the Notice Process as explained below (hereinafter, Eligible Complainant).
- c. **Payments to Eligible Complainant.** NCWVCAA will pay the Eligible Complainant in the manner in which the Eligible Complainant is normally paid her regular salary (e.g., direct deposit, check), subject to all lawful deductions as set forth above.
- d. **Tax Payments, Forms and Reporting.** NCWVCAA will pay NCWVCAA's share of social security withholdings, and any other tax payments required by law from additional funds separate from the Settlement Amount. The Eligible Complainant will not be required to complete a W-4 or W-9 in order to receive a payment under this settlement.
- e. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- f. **Technical Assistance.** The parties will timely respond to any inquiries from the Complainant using information consistent with this Agreement and will document all inquiries and the result. OFCCP will provide contact information for the Complainant to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement.
- g. **Exchange of Information Regarding Complainant.** NCWVCAA and OFCCP will timely exchange information regarding the Complainant, including updated contact information and the results of any technical assistance provided.
- h. **Documentation of Payments.** By the deadline set forth in the Timeline, NCWVCAA will provide OFCCP with a copy of the cancelled check or electronic documentation of the payment to the Complainant, including the amount paid, the date payment was sent, the date payment was received, or the check cashed, and any uncashed or returned check.

- i. **NCWVCAA Expenses.** NCWVCAA will pay all expenses associated with carrying out its duties pursuant to this Section, from funds separate and apart from the amount designated in this Agreement for the Settlement.

3. Notice Process

- a. **OFCCP and NCWVCAA Obligations under the Notice Process.** The Notice Process set forth in this Agreement is intended to provide the Complainant a meaningful opportunity to understand her rights and obligations and act on them in a timely manner.
- b. **Notice Documents.** NCWVCAA will distribute the Notice Documents to the Complainant identified in Attachment A consistent with the sample Notice Documents contained in Attachment C. The Notice Documents may include a Notice, Release of Claims, and Income Verification Forms. The Notice Documents may also include other materials such as standard OFCCP or U.S. Department of Labor materials, instructions or a cover sheet, or other information that better enables the Complainant to understand her rights and obligations and act on them in a timely manner. The Notice Documents will make clear the information about the settlement is being provided by on behalf of the U.S. Department of Labor. As specified in the Timeline and as otherwise necessary to fulfill this Agreement, the parties will meet and confer on any reasonable modifications of the sample Notice Documents or additions to the material distributed by NCWVCAA, if proposed by either party.
- c. **Timeline.** Attachment B sets forth the agreed Timeline for Notice and for the parties' other obligations under this Agreement. The parties will meet and confer on any reasonable modifications to the Timeline proposed by either party.
- d. **Distribution of Mail Notice to Complainant.** NCWVCAA will provide initial notice by regular first-class mail. NCWVCAA will send copies of all the Notice Documents as defined above, including a postage-paid return envelope, by first class mail to the best available mailing address for the Complainant by the date set forth in the Timeline. If the envelope from the initial mail notice is returned with forwarding addresses, NCWVCAA will re-mail the Notice Documents within five (5) days of receipt of the forwarding address. A second mail notice will be sent to the Complainant with a valid address if she fails to respond to the first mail notice unless the parties agree otherwise.
- e. **Distribution of Notice by Other Means.** NCWVCAA will also provide initial notice by electronic mail. NCWVCAA will send copies of all of the Notice Documents, as defined above, by electronic mail to the best available e-mail address for the Complainant by the date set forth in the Timeline.
- f. **Notice Deadline.** The final deadline for the Complainant to respond to the notice is set forth in the Timeline. The parties will prominently display this deadline on all materials they distribute in paper or online form regarding this Agreement and

explain that failure to respond by this deadline will result in a forfeiture of any relief provided by this Agreement.

- g. **Technical Assistance.** The parties will timely respond to any inquiries from the Complainant using information consistent with this Agreement and the Notice Documents and will document all inquiries and the result. OFCCP will provide contact information for the Complainant to contact OFCCP regarding this Agreement. The parties will prominently display this contact information on all materials they distribute in paper or online form regarding this Agreement.
- h. **Exchange of Information Regarding Complainant.** NCWVCAA and OFCCP will timely exchange information regarding the Complainant, including updated contact information and the results of any technical assistance provided.

V. Modifications to Employment Practices and Other Non-Monetary Relief

1. Workplace Environment

NCWVCAA will:

- a. In no way retaliate, harass, or engage in any form of reprisal or other adverse action against any employee in retaliation to the term of provisions of this remedy.
- b. Immediately cease using the employment policies and practices that negatively affect applicants or employees that request reasonable accommodations consistent with applicable law.

2. Company Policy and Procedure

NCWVCAA will:

- a. Evaluate and, if necessary, update or develop written policies and procedures for processing requests of reasonable accommodation that follow the best practices in Appendix B to 41 CFR Part 60-741.
- b. Designate an official to be responsible for the implementation of the reasonable accommodation policies and procedures. The responsible official will have the authority, resources, support, and access to top management to ensure the effective implementation of the reasonable accommodation procedures. The name, title/office, and contact information (telephone number and email address) of the responsible official will be included in the reasonable accommodation procedures.
- c. Disseminate its written reasonable accommodation policies and procedures to all employees. Notice of the reasonable accommodation policies and procedures may be provided by their inclusion in an employee handbook that is disseminated to all

employees and/or by email or electronic posting on a company web page where work-related notices are ordinarily posted. Notice of the reasonable accommodation policies and procedures will be provided to employees who work off-site in the same manner that notice of other work-related matters is ordinarily provided to these employees.

- d. OFCCP advises that as long as NCWVCAA remains a federal contractor subject to Section 503, NCWVCAA will annually prepare and update an Affirmative Action Program (AAP) for its facility and retain all supporting documentation as required by Section 503 and its implementing regulations. Nothing in this paragraph alters or amends Part VI, Paragraph 3 below regarding the Close of Monitoring Period and Termination of the Agreement.

3. **Training**

NCWVCAA will:

- a. Within ninety (90) calendar days of the Effective Date of this Agreement, provide mandatory training on reasonable accommodation policy, including training on leave as a form of reasonable accommodation, to HR personnel, managers, and all personnel who handle reasonable accommodations.
- b. Provide informational training on its policies on equal employment opportunity rights and responsibilities, including the legal prohibitions against discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status or any other protected category to all incumbent NCWVCAA employees and to all new NCWVCAA employees within 30 days of their hire.

VI. OFCCP Monitoring Period

1. **Recordkeeping.** NCWVCAA agrees to retain all records relevant to the violation cited in Section III above and the reports submitted in compliance with Paragraph 2, below. These records include underlying data and information such as Human Resources Information System (HRIS) and payroll data, job applications and personnel records, and any other records or data used to generate the required reports. NCWVCAA will retain the records until this Agreement expires or for the time period consistent with regulatory requirements, whichever is later.
2. **Contractor Reports.**
 - a. **Schedule and Instructions.** NCWVCAA agrees to furnish OFCCP with the following report during the Monitoring Period according to the following schedule (e.g., reports on revised policies; pay adjustments; validity studies; etc.):

The progress report shall be due on September 19, 2022. The progress report will include:

1. A copy of the Notice to Complainant sent to the Complainant identified in Attachment A.
2. A copy of the Claim Form and Release of Claims under Section 503 returned by the Complainant identified in Attachment A.
3. Documentation of the monetary payment to the Complainant as specified in the Remedy to Violation 1 in Part III. The documentation must include a copy of the check and the date the check cleared the bank. If the monetary payment is made by direct deposit, the documentation must include a copy of the pay stub and the deposit record generated by the bank.
4. Documentation showing that NCWVCAA evaluated and, if necessary, updated or developed its reasonable accommodation policies and procedures.
5. A copy of the notices of NCWVCAA's reasonable accommodation policies and procedures disseminated to all employees, as required by Part V.
6. Documentation showing that NCWVCAA conducted the trainings required by Part V, including sign-in sheets containing the printed name, signature, and job title of all employees who attend the trainings.
7. Copies of all reasonable accommodation requests received and the outcomes of such requests during the reporting period. Where requests for accommodations were denied or an alternate accommodation was provided, NCWVCAA will provide specific details and documents explaining why the accommodation was not granted or how the alternate accommodation sufficed the request.

NCWVCAA will submit reports to District Director Tracie Brown at (b) (6), (b) (7)(C)@dol.gov. NCWVCAA and OFCCP have a common interest in the information being provided in the reports pursuant to this Agreement. To the extent any of the reports NCWVCAA provides in accordance with this Agreement are customarily kept private or closely held, and NCWVCAA believes they should remain confidential under Exemption 4 of the Freedom of Information Act (FOIA) in the event of a FOIA request, NCWVCAA will provide such reports to OFCCP marked as "Confidential". In the event of a FOIA request, OFCCP will treat any such documents received as confidential documents.

3. **Close of Monitoring Period and Termination of Agreement.** This Agreement shall remain in effect until the monitoring period is completed. The monitoring period will close once OFCCP accepts NCWVCAA's final progress report as set forth in Part II, Paragraph 10 above. If OFCCP fails to notify NCWVCAA in writing within sixty (60) days of the date of the final progress report that NCWVCAA has not fulfilled all of its obligations under the Agreement, OFCCP will be deemed to have accepted the final report and the Monitoring Period and this Agreement will terminate. If OFCCP notifies NCWVCAA within the allotted time that it has not fulfilled all of its obligations, this Agreement is automatically extended until the date that OFCCP determines NCWVCAA has met all of its obligations under the Agreement.

VII. Signatures

The person signing this Agreement on behalf of NCWVCAA personally warrants that he or she is fully authorized to do so, that NCWVCAA has entered into this Agreement voluntarily and with full knowledge of its effect, and that execution of this Agreement is fully binding on NCWVCAA.

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and North Central West Virginia Community Action Association, Inc., 146 Terrace Manor, Fairmont, WV 26554.

(b) (6), (b) (7)(C)

Patricia McFarland
Executive Director
North Central West Virginia Community Action Association, Inc.
Fairmont, West Virginia

DATE: 5/13/22

(b) (6), (b) (7)(C)

Tracie Brown
District Director
Pittsburgh District Office
Office of Federal Contract Compliance Programs

DATE: May 17th, 2022

Attachments:

- A. List of Affected Employee
- B. Timeline
- C. Notice Documents

ATTACHMENT A

COMPLAINANT

1. (b) (6), (b) (7)(C)

ATTACHMENT B

ACTIVITY	DATE
NCWVCAA mails/emails Notice Documents	May 30, 2022
Deadline for Complainant to Reply to Notice	June 30, 2022
NCWVCAA notifies OFCCP if Complainant fails to respond to first Notice	June 30, 2022
OFCCP provides NCWVCAA the Complainant's updated contact information	July 7, 2022
NCWVCAA mails/emails Notice Documents (Second Mailing)	July 21, 2022
Deadline for Complainant to respond Reply to Second Notice	August 5, 2022
NCWVCAA mails/electronically deposits lump-sum check/amount	August 19, 2022
Progress Report Due	September 19, 2022

NOTICE TO COMPLAINANT

Dear Ms. (b) (6), (b) (7)(C)

North Central West Virginia Community Action Association, Inc. (NCWVCAA) and the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) have entered into a Conciliation Agreement (Agreement) to remedy the violations of Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (Section 503) that OFCCP found during the investigation of your complaint against NCWVCAA. NCWVCAA has not admitted to any violation of Section 503 and there has not been any adjudicated finding that NCWVCAA violated any laws. OFCCP and NCWVCAA entered into the Agreement to resolve the matter without resorting to further legal proceedings.

Under the Agreement, you may be eligible to receive a payment of \$10,731.08 (less deductions required by law). Under the terms of the Agreement, it may take up to six months from the date of this letter before you receive your payment. To be eligible for a payment, you must complete, sign, and return the enclosed Release of Claims Form. This form should be mailed as soon as possible to the address or email address below. **In order for you to be eligible to participate in the settlement, your documents must be received by [insert date 30 days of the postmarked date on the envelope containing this notice].**

[Name]
[Position]
Company Name
[Address]
[Email Address]

You may use the enclosed postage-paid return envelope to return the completed and signed Release of Claims Form.

If you have any questions you may call [name] at NCWVCAA at [phone number], or OFCCP Compliance Officer (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C). Your call will be returned as soon as possible.

IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENT TO NCWVCAA BY [Insert date] YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT.

Sincerely,

[Name]

Enclosure
Release of Claims Form

**RELEASE OF CLAIMS UNDER SECTION 503 OF THE REHABILITATION ACT OF
1973, AS AMENDED**

**PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING
THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY
FROM THE SETTLEMENT**

This Release of Claims (Release) under Section 503 of the Rehabilitation Act of 1973 (Section 503) is a legal document. This document states that in return for North Central West Virginia Community Action Association, Inc. (NCWVCAA) providing you with money, you agree that you will not file any lawsuit against NCWVCAA for allegedly violating Section 503, as amended, in connection with discrimination on the basis of discussing, disclosing, or inquiring about pay. It also says that NCWVCAA does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of the payment of \$10,731.08 (less deductions required by law) by NCWVCAA to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge NCWVCAA, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Section 503, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate to my termination on the basis of my disclosing or discussing pay at any time prior to the date of my signature on this Release. By signing this agreement, I agree that I have been made whole for any claim that could have been brought under Section 503, as amended, relating to my termination with NCWVCAA through the Effective Date of this Release.

II.

I understand that NCWVCAA denies that it treated me unlawfully or unfairly in any way and that NCWVCAA entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve without further legal proceedings all issues related to OFCCP's complaint investigation of NCWVCAA initiated on September 22, 2021. I further agree that the payment of the aforesaid sum by NCWVCAA to me is not to be construed as an admission of any liability by NCWVCAA.

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to NCWVCAA such that it is received by [insert date], I will not be entitled to receive any payment (less deductions required by law).

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____ Date: _____

Printed Name: _____