

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

Students for Life at Ball State University,
Julia Weis, Renee Harding, and Nora Hopf,

Plaintiffs,

v.

Rick Hall, E. Renae Conley, Thomas C. Bracken,
Matt Momper, R. Wayne Estopinal, Brian
Gallagher, Jean Ann Harcourt, Mike McDaniel,
and Marlene Jacocks, each individually and each in
his or her official capacity as members of the Board
of Trustees of Ball State University; Geoffrey S.
Mearns, President of Ball State University, in his
official and individual capacities; Kay Bales, Vice
President for Student Affairs and Enrollment
Services and Dean of Students, in her individual
and official capacities; Jaquelyn Buckrop, Melissa
Ginotti, Rob Marvin, Brittanie Middleton, and Ro-
Anne Royer Engle, each individually and each in
his or her official capacity as members of the
Student Activity Fee Committee at Ball State
University;

Defendants.

Case No. 1:18-cv-01799-SEB-TAB

SETTLEMENT AGREEMENT

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This Settlement Agreement (the "Agreement") is made and entered into by and between Students for Life at Ball State University, Julia Weis, Renee Harding, and Nora Hopf, ("Plaintiffs") and Rick Hall, E. Renae Conley, Thomas C. Bracken, Matt Momper, R. Wayne Estopinal, Brian Gallagher, Jean Ann Harcourt, Mike McDaniel, and Marlene Jacocks, each individually and each in his or her official capacity as members of the Board of Trustees of Ball State University; Geoffrey S. Mearns, President of Ball State University, in his official and individual capacities; Kay Bales, Vice President for Student Affairs and Enrollment Services and Dean of Students, in her individual and official capacities; Jaquelyn Buckrop, Melissa Ginotti, Rob Marvin, Brittanie Middleton, and Ro-Anne Royer Engle, each individually and each in his or her official capacity as members of the Student Activity Fee Committee at Ball State University ("Defendants") to resolve the above-captioned lawsuit.

AGREEMENT

Plaintiffs and Defendants agree as follows:

1. *Settlement.* In consideration for Plaintiffs' release of claims as described herein and for their

dismissal of this action, Defendants agree to the following:

- a. No later than September 7, 2018, Defendants will revise the current Student Activity Fees Guidelines by eliminating the current policy and replacing it with the policy described in Exhibit 1 to this agreement.
- b. No later than September 28, 2018, Defendants will pay a sum of \$300 to Plaintiff, Students for Life at Ball State University as satisfaction in full of any damages claims by Plaintiffs and \$12,000 to Alliance Defending Freedom in satisfaction Plaintiffs' attorneys' fees and costs in this matter. **These payments will be made in one check payable to "Alliance Defending Freedom IOLTA."**
2. *Dismissal.* The parties agree that pursuant to this Agreement, Plaintiffs will voluntarily dismiss the complaint with prejudice within two (2) business days of receipt of the fully executed agreement.
3. *Release, Discharge, and Covenant Not to Sue.* For and in consideration of the Settlement, the covenants and agreements set forth herein, including completion of the actions listed in paragraph one (1), and other good and valuable consideration, the sufficiency of which are hereby acknowledged, Plaintiffs agree to release, waive, acquit, and forever discharge 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.
4. *No Admissions.* By entering into this Agreement, Defendants are not admitting liability or recognizing the validity of any of Plaintiffs' claims. Likewise, by entering into this Agreement, Plaintiffs are neither recognizing the validity of any defense Defendants may have asserted nor providing any assurance or certification that all aspects of Defendants' revised policies fully comply with the United States Constitution. Rather, Plaintiffs and Defendants are entering into this Agreement solely to avoid the expense and inconvenience of further dispute and litigation.
5. *Advice of Counsel.* Plaintiffs represent that they have been fully advised by counsel with respect to the terms of this Agreement and execute it with full knowledge of the terms and conditions hereof.
6. *Governing Law.* This Agreement shall be deemed to have been made under the laws of the State of Indiana and shall be construed and enforced in accordance with and governed by the laws of the State of Indiana.
7. *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.
8. *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.
9. *Time of Performance:* If Defendants have not completed performance of all obligations under this agreement by October 1, 2018, Defendants shall be considered in breach of contract and

Plaintiffs may seek injunctive relief to remedy their initial claims, in addition to any damages incurred by the breach of contract.

10. *Authority to Bind the University.* Bernard Hannon, Vice President for Business Affairs acknowledges that he has actual authority to enter into this Agreement on behalf of Ball State University, including all Defendants, and that any approvals and formalities required to authorize this Agreement have been completed prior to signature. By his signature, Bernard Hannon binds Ball State University, all its Departments, and all employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives thereof.
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.

FOR PLAINTIFFS:

Julia Weis

8/31/18

Julia Weis

Date

On Behalf of herself and Students for Life at
Ball State University

Renee Harding

Date

Nora Hopf

Date

FOR PLAINTIFFS:

Date
Julia Weis
On Behalf of herself and Students for Life at
Ball State University

Date
Renee Harding
Renee Harding

Date
8/31/2018

Date
Nora Hopf

FOR PLAINTIFFS:

Julia Weis
On Behalf of herself and Students for Life at
Ball State University

Date

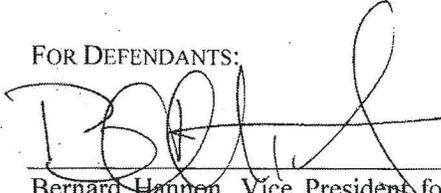
Renee Harding

Date

Nora Hopf
Nora Hopf

9/4/18
Date

FOR DEFENDANTS:



Bernard Hannon, Vice President for Business Affairs, on behalf of Ball State University, the Ball State University Board of Trustees, and all Defendants

8/30/10

Exhibit 1

Final BSU 8/29/18

Student Organization Fund Allocation Policy

A. Purpose

Ball State University Student Activity Fees are utilized to provide financial support for co-curricular engagement opportunities for all students. Portions of the Student Organization Fund (SOF) are made available to recognized student organizations in accordance with this Policy to support student activities and foster student development through financial support for lectures, concerts, cultural programs, recreational programs, educational programs, philanthropic programs, entertainment, and other opportunities.

The SOF may be used for activities, programs, resources, services, and events that enhance the cultural, recreational, social, and/or intellectual life of the university. The SOF will be awarded in a viewpoint-neutral manner through the SOF allocation process. Viewpoint-neutral funding means that funding decisions are not based on a group's point of view or message and funding will not be denied because the recipient of the funds advocates a particular opinion. Viewpoint-neutral criteria for evaluating funding proposals may consider only factors that are not tied to viewpoints. All groups must complete all of the required funding request forms.

B. Eligibility for Requests

Any recognized student organization that wants to plan activities, programs, resource, services, and events using the SOF may submit a request for funding. To be eligible for funding, the organization and the program must meet the following eligibility criteria:

1. Any program or activity funded in whole or in part by SOF must be open to any interested student.
2. All persons must have equal access to the program/activity without regard to race, religion, color, sex (including pregnancy), sexual orientation, gender identity or gender expression, disability, genetic information, ethnicity, national origin or ancestry, age, or protected veteran status.
3. The student organization requesting funding must be and remain a recognized student organization by the Office of Student Life and must be in good standing with the Office of Student Rights and Community Standards.
4. Funds may not be used for grants, awards, donations, financial aid, legal services, or payment of individual or organization membership dues.
5. Funds may be used to support a recognized student organization's fundraising efforts for scholarships or philanthropy; provided, however, that funds are used for programs or activities which are held for the purpose of raising funds only (for example, SOF funds could be used to help fund a recognized student organization's fundraising event). The student organization must be able to demonstrate that funds were not used to fund scholarships or philanthropies directly. Funds and resources may not be used for a program or activity at which any alcohol or tobacco product is served or which involve the distribution of alcohol or tobacco products.

6. Funds may be used in support of travel for leadership development opportunities which are relevant to the mission of the requesting student organization. All travel by a student or student organization must be in compliance with the Ball State University Travel Policy. Funding may not be used for individual conference travel for a student pursuing individual professional development, or travel by a student organization advisor (unless required as a University job duty/responsibility).
7. Funds may not be used for the purchase of athletic equipment or competition related costs for club sports.
8. Funds may not be used to purchase food for organization general body meetings. Student organizations may purchase food that is consistent with the organizational purpose including producing events, conducting recognition programs, travel or other special events.
9. Funds may not be used to purchase personal electronic devices (including personal computers).
10. Funds may not be used in direct support of a political candidate or specific legislation.
11. Funds must be used in accordance with all University policies and business practices including, but not limited to, policies and procedures related to facilities use, risk management, contracts, purchasing, and procurement.

Compliance with the above criteria are required for a student organization to receive SOF funds, but it does not guarantee that the student organization will receive all or any portion of the requested SOF funds. Requests for SOF funds are reviewed and adjudicated in accordance with the "Priorities for Funding" and "Funding Criteria and Evaluation" below.

C. Evaluation of Funding Request and Allocation of SOF

While considering allocations, the Student Organization Fund Allocation Committee shall prioritize allocations and funding to organizations, events, and programs that closely align with the following principles:

1. Programs, events, and/or activities held on the University campus.
2. Free or low-cost events.
3. Activities that promote an educational purpose, which is defined as the facilitation of the exchange of information related to the group's mission that promotes student learning, development or skill acquisition.
4. Programs or activities that provide substance-free entertainment for students (such as musical concerts, comedians, live plays and shows, carnivals, and dances).
5. Programs that involve collaborations with other student groups.
6. Programs or activities that involve direct community service to Muncie, East Central Indiana, and the contiguous states.
7. The student organization's track record in terms of compliance with University policies and fiscal responsibility and/or the reasonableness of the student organization's plans to assure compliance.
8. The student organization's effort to secure additional funding to support their initiatives from other sources, including co-sponsorship and collaborative efforts.

9. Reasonableness of the requested amount based on objective indicators of the number of students likely to be served (for example, based on similar programs/activities in the recent past or surveys).
10. Programs or activities that do not duplicate an event already held in the current semester (whether provided by the student organization, another student organization, or University departments or programs) or proper justification provided to explain the need for a duplicative event.
11. Programs or activities that demonstrate advanced planning to promote and manage the event.
12. Clear plans by the student organization for evaluating the quality of the program/activity.
13. Availability of alternative and/or additional sources of funding from other groups, departments, or organizations.
14. Evidence of sound fiscal responsibility for the event and a realistic marketing plan.
15. Demand for SOF funding by recognized student organizations in a given academic year/semester, and, for emergency requests, availability of SOF funds.

D. Allocation Process

1. To request funding through the Student Organization Fund allocation process, the student organization must submit the following items to the Committee:
 - (a) A completed Student Activities Budget Request Form, which may be obtained from the Office of Student Life,
 - (b) A statement of the student organization's expenditures (actual and pending) for the previous academic year (if any), which shall include evidence of the student organization's progress toward its goals,
 - (c) A statement of the student organization's plans and goals for the upcoming academic year; and
 - (d) An itemized list of the student organization's anticipated programs and budget for the upcoming academic year.
2. When requested by the committee, the student organization shall give a brief, oral presentation to the Student Organization Fund Allocation Committee regarding the fund request. The presentation shall be limited to two (2) members of the student organization. Other members, the Advisor of the student organization, or others may observe.
3. Organizations that fail to appear at their scheduled time will cause their applications to be automatically rejected unless good cause is shown as to why there was a failure to appear. These organizations are eligible to reapply for funding by submitting a new application during the next SOF allocation request period.

E. Timeline for Fund Allocations

1. Academic Year 2018-2019 ONLY (Funding Period 2018-2019 Academic Year)

(a) Fall Semester Student Organization Fund Requests (up to 70% of the total SOF will be allocated to student organizations through the fund requests during this funding period):

- i. September 28 – Budget Request Form and Supporting Documents Deadline.
- ii. October 19 – Notification of Student Organization Funding Board Decision.
- iii. October 26 – Funding Board Decision Appeals Deadline.

(b) Spring Semester Student Organization Fund Request (up to 20% will be allocated to student organizations through the fund requests during this funding period):

- i. January 14 – Budget Request Form and Supporting Documents Deadline.
- ii. February 4 – Notification of Student Organization Funding Board Decision.
- iii. February 11 – Funding Board Decision Appeals Deadline.

(c) Unanticipated and Emergency Fund Requests (up to 10% of the total SOF will be allocated to student organizations through the fund requests during this funding period):

- i. The Student Organization Fund Allocation Board will meet monthly to review unanticipated or emergency fund requests that have been submitted.
- ii. Student Organization Fund Allocation Requests submitted less than 15 business days prior to a student activity will not be reviewed.

2. Academic Year 2019-2020 and Beyond Annual Funding Periods

(a) Academic Year Student Organization Fund Allocation Requests (60% of the total annual SOF will be allocated to student organization through the fund requests during this funding period):

- i. 3rd Monday of March – Budget Request Form and Supporting Documents Deadline for fund requests for upcoming academic year student organizations activities.
- ii. 3rd Monday of April – Notification of Student Organization Fund Allocation Committee decision.
- iv. 4th Monday of April - Funding Board Decision Appeals Deadline.

- (b) Fall Semester Student Organization Fund Requests (up to 15% of the annual total SOF will be allocated to student organizations through the fund requests during this funding period):
 - i. 1st Monday of October – Budget Request Form and Supporting Documents Deadline for fund requests for spring semester student organizations activities.
 - ii. 4th Monday of October – Notification of Student Organization Fund Allocation Committee Decision.
 - iii. 1st Monday of November - Funding Board Decision Appeals Deadline

- (c) Spring Semester Student Organization Fund Requests (up to 15% of the annual total SOF will be allocated to student organizations through the fund requests during this funding period):
 - i. 2nd Monday of January – Budget Request Form and Supporting Documents Deadline for fund requests for spring semester student organizations activities.
 - ii. 2nd Monday of February – Notification of Student Organization Fund Allocation Committee Decision.
 - iii. 3rd Monday of February - Funding Board Decision Appeals Deadline

- (d) Unanticipated and Emergency Fund Requests (up to 10% of the annual total student activity fee will be allocated to student organizations through fund requests):
 - i. The Student Organization Fund Allocation Committee will meet monthly to review unanticipated or emergency fund requests that have been submitted.
 - ii. Student Organization Fund Requests submitted less than 15 business days prior to a student activity will not be reviewed.

- 3. The Student Organization Fund Allocation Committee shall be responsible for allocating the SOF collected by Ball State University in accordance with this Policy among the various student organizations recognized by the University.

- 4. The Student Organization Fund Allocation Committee will audio record and maintain written minutes of allocation decision meetings.

F. Membership of the Student Fund Allocation Committee

- 1. The Student Organization Fund Allocation Committee shall be composed of the following members:
 - (a) The President of the Student Government Association,
 - (b) The Treasurer of the Student Government Association,
 - (c) One student appointed by the Student Government Association; and,

- (d) One representative each from Student Affairs and Enrollment Services Budget Office (non-voting member), Business Affairs, Student Affairs and Enrollment Services, and Academic Affairs. The committee will be chaired by the Associate Vice President for Student Affairs and Enrollment Services.
2. To serve all members must solemnly swear or affirm that they are willing and able to abide by this Policy and to allocate SOF funding in a viewpoint-neutral fashion as required by law.

G. Appeals

1. Student Organizations denied funding shall be provided, upon request, with a written statement of the reasons for denial.
2. Decisions regarding the allocation of SOF, where it is alleged that the decisions were discriminatory or based on a student organization's speech or expressive activities, may be appealed to the Vice President for Student Affairs and Enrollment Services or designee.
3. Appeals must be submitted in writing to Vice President for Student Affairs and Enrollment Services or designee within 5 business days after delivery of the denial decision.
4. Appeals must state the grounds for the appeal and will be decided within 5 business days after the appeal is submitted.
5. The decision of the Vice President for Student Affairs and Enrollment Services or designee shall be in writing and is final.