

Memorandum of Understanding

This Memorandum of Understanding ("Memorandum") is made and entered into on this ^{29th} day of April 2020, by, between, and among the Commonwealth of Massachusetts ("Commonwealth"), through its Attorney General Maura Healey (the "AGO"), and the Museum of Fine Arts ("MFA" or "Museum") (collectively, the "Parties") concerning allegations of discrimination made by students and teachers of the Helen Y. Davis Leadership Academy (the "DLA" and the "DLA Visitors") relating to their visit to the MFA on May 16, 2019 (the "Field Trip").

A. Statement of Shared Values and Goals.

1. The MFA and AGO have shared values and goals informing this Memorandum:
 - a. The Parties value the importance of diversity, inclusion, and fostering a welcoming place of belonging at the MFA.
 - b. The Parties recognize the MFA's importance as a local cultural and educational institution. The Parties recognize that, since its founding in 1870, the MFA's mission has been, and continues to be, to preserve and exhibit works of art; make, maintain, and exhibit collections of such works; and provide instruction and education in the fine arts.
 - c. The Parties recognize the MFA's commitment, as articulated in its 2020 Strategic Plan adopted in 2017, to build and work with diverse communities in and around Boston and across the Commonwealth.
 - d. The Parties share the goal of making the MFA a leader in diversity and inclusion.
 - e. The Parties share the goal of ensuring that the MFA's policies and procedures make the MFA a more welcoming place, especially for diverse communities like the DLA community.
 - f. The Parties share the goal of renewing and maintaining public trust and confidence in the MFA as an institution that is welcoming and inclusive of visitors and school groups from diverse backgrounds and communities.
2. The Parties recognize that the AGO has thoroughly investigated the DLA Visitors' allegations concerning the Field Trip, and further recognize that the DLA Visitors left the Field Trip feeling disrespected, harassed, and targeted because of the color of their skin. This experience conflicts with the Parties' shared values. Through this Memorandum, which is intended to be a global resolution of the DLA Visitors' allegations concerning the Field Trip, the Parties agree to address the DLA Visitors' experience from the Field Trip in a forward-looking, constructive, and positive manner that is consistent with the MFA's mission and the Parties' shared values and goals. The Parties agree that the terms of this Memorandum are intended to benefit all of the DLA Visitors.

3. The AGO recognizes that the MFA has undertaken a good-faith and concerted effort to create a welcoming environment of diversity and inclusion that promotes a sense of belonging. These actions include hiring as permanent staff a Chief of Learning and Community Engagement and creating the position of Senior Director of Belonging and Inclusion, which it is actively seeking to fill; providing training on inclusion and unconscious bias to staff and volunteers; creating paid internships for students and individuals of color; creating exhibits and programming aimed at greater and more candid engagement with diverse communities; and repeatedly engaging with diverse communities through roundtable events. The AGO recognizes that the MFA took some of these actions prior to the Field Trip, in accordance with the Museum's 2020 Strategic Plan, and has taken additional steps toward achieving these objectives before the parties entered into this Memorandum.

B. Statement of Commitments and Collaboration

4. The Parties commit to work collaboratively with one another in furtherance of their shared values and goals.
5. The MFA commits to the following:
 - a. Retaining an external consultant or consultants (collectively the "Consultant") to assist with the implementation of the commitments contained in this Memorandum. The MFA will continue to retain the Consultant until the MFA has fully implemented the commitments contained in this Memorandum, not to exceed a period of three (3) years. The MFA may select any Consultant with appropriate experience in developing or implementing organizations' policies or programs designed to enhance diversity, inclusion, belonging, and welcoming. The MFA will provide the AGO with the opportunity to review and comment on the selection of the Consultant. The Consultant will serve in an advisory capacity only and will not be authorized to make binding decisions for or on behalf of the MFA, disclose confidential trade secret or proprietary Museum information, speak on the MFA's behalf, or to override the MFA's decisions with regard to implementation of any of the activities the MFA agrees to undertake pursuant to this Memorandum. The Consultant will be authorized to study the culture and climate at the MFA with respect to matters of diversity, inclusion, belonging, and welcoming. The Consultant will be authorized to make recommendations consistent with the Parties' shared values and goals; to consult in the development and implementation of the MFA's plan of action with respect to its process of reconciliation with the DLA, as discussed further below in Subparagraph 5.c; to consult in the development and implementation of the MFA's plan of action to enhance community engagement, as discussed further below in Subparagraph 5.d; to consult in the development and implementation of policies and procedures, as discussed further below in Subparagraph 5.e; and to consult in the development and implementation of additional training programs, as discussed further below in Subparagraph 5.f. The MFA will work and collaborate in good faith with the Consultant and will provide the Consultant with appropriate and reasonable access to the information and personnel reasonably necessary for the Consultant to advise the MFA on these matters.

- b. The Consultant and the MFA will jointly provide biannual reports during the Term of this Memorandum for the public on the progress of the MFA's diversity and inclusion efforts. No biannual report will be made publicly available until the MFA and the Consultant mutually agree on its content. The biannual reports will be provided to the AGO and made available on the MFA's website.
- c. Engaging and working with the DLA and the DLA Visitors collaboratively, in a process of reconciliation, to achieve the following objectives: (1) creating a relationship of trust and confidence between the MFA and the DLA; (2) inviting the DLA to collaborate with the MFA in its ongoing efforts to ensure a welcoming experience for all members of the community; and (3) identifying a process through which the DLA community may engage with the MFA going forward in a manner consistent with the Parties' shared values and goals. The MFA invites the AGO, and the AGO agrees, to act as a convener and facilitator to help guide the process of reconciliation. The process of reconciliation will proceed as follows:
 - i. As promptly as possible, but no later than one month from the Effective Date, the AGO will convene a meeting between representatives of the the MFA and the DLA and, at the discretion of each party or the AGO, other party representatives, in order to develop a process for future engagement that will culminate in a documented, mutually agreed upon plan of action (the "DLA Action Plan"). The process for future engagement may include (1) subsequent meetings and discussions between the MFA and the DLA Visitors, as necessary; and (2) separate sessions or focus groups that include DLA students, parents, administrators, and other participants as appropriate. The process for future engagement will conclude when the MFA and the DLA have reached an agreement on a plan of action and within a time period of no more than ninety (90) days from the date of the initial meeting.
 - ii. Upon conclusion of the process for future engagement, the MFA and the DLA will document and finalize the mutually agreed upon DLA Action Plan within six (6) months from the Effective Date, and will provide that plan to the AGO for its review and comment. At its sole discretion, the MFA will develop and finalize a budget, drawn from the Implementation Fund as defined in paragraph 6, to implement the DLA Action Plan, which upon finalization, consistent with its collaborative process of reconciliation with the DLA and the DLA Visitors, it will disclose to the DLA, the DLA Visitors, and the AGO. The MFA affirms and agrees that the funding levels in the proposed budget will be sufficient to fully and completely fund all items identified in the DLA Action Plan and will reflect a serious commitment on the part of the MFA to engage with the DLA and the DLA Visitors consistent with the Parties' shared goals and objectives.
 - iii. The MFA will implement the DLA Action Plan over a two year period, which period will commence on the date that the MFA and the DLA present the finalized documented DLA Action Plan to the AGO.

- iv. The DLA Action Plan will identify the agreements reached by and between the MFA and the DLA and describe a shared plan for moving forward together in a manner consistent with the Parties' shared goals and values. The DLA Action Plan will also identify the specific action items that the MFA has agreed to undertake and a reasonable timeframe in which those steps will be taken.
- d. Continuing to create and improve processes for building and deepening connections with communities of color, including through the MFA's programming and exhibits, and to do so in such a way that the MFA can serve as a model of leadership for other cultural institutions. The MFA invites the AGO to identify additional community representatives with whom the MFA may engage as part of this process. The MFA invites the AGO, and the AGO agrees, to review, attend, observe, and contribute its views as it believes appropriate. The process of community engagement will proceed as follows:
- i. The MFA will continue to engage with community partners to consider ways it might enhance its ongoing engagement with communities of color, using its existing structures where appropriate. The goal of this engagement is to develop a plan of action to enhance community engagement (the "Community Engagement Action Plan").
 - ii. The Community Engagement Action Plan may include new programming identified as a result of the MFA's engagement with community partners and representatives identified in paragraph 5.c.i or an enhancement of an existing program such as the following:
 - 1) engagement and partnerships with local schools and school districts that primarily serve students of color;
 - 2) partnerships with and support of local artists of color;
 - 3) the MFA's teen leadership program, Teen Arts Council, and the Community Arts Initiative which introduces youth to the art-making process involving community youth organizations throughout and around Boston, including: Boys & Girls Clubs of Boston (Blue Hill, Charlestown, Chelsea, Roxbury and South Boston); Boys & Girls Clubs of Dorchester; West End House Boys & Girls Club of Allston-Brighton; United South End Settlement House; Boston Chinatown Neighborhood Center and Vine Street Community Center; and
 - 4) the MFA's paid fellowship or internship opportunities for local high school students of color, such as STEAM Team, and for college level students, the work-study Ambassador Program.
 - iii. The MFA will document and finalize the Community Engagement Action Plan within nine (9) months from the Effective Date. The MFA will endeavor, in good faith and if possible, to finalize the DLA Action Plan prior to finalizing the Community Engagement Action Plan. The MFA will further allocate funds from the Implementation Fund in a good faith effort to sufficiently implement both Plans

without compromising the funding necessary for either. The MFA will provide the Community Engagement Action Plan to the AGO for its review and comment.

- iv. The MFA will implement the Community Engagement Action Plan over a two year period, which period will commence on the date that the MFA presents its finalized documented Community Action Plan to the AGO.
 - v. After the AGO reviews and comments on the Community Engagement Action Plan, the MFA will make the plan available to the public by publishing it on its website.
- e. Continuing to develop and implement the following policies and procedures as follows:
- i. An anti-discrimination and harassment policy that applies to the treatment of members of the public by MFA staff and volunteers.
 - ii. An anti-discrimination and harassment policy that applies to the treatment of members of the public by other visitors.
 - iii. A complaints policy that applies to claims of discrimination and harassment made by members of the public.
 - iv. A policy and procedures for conducting internal investigations into complaints of discrimination or harassment made by members of the public.

With a view to setting a standard for all cultural institutions throughout Massachusetts, at the MFA's invitation, the AGO has agreed to review, comment, and approve of each of these policies and procedures.

- f. Continuing to develop and implement the following efforts with regard to training as follows:
- i. Developing a plan or refining its existing plan (or, where appropriate, maintaining its existing plan) to provide unconscious bias training for all MFA employees of all levels and for volunteers. This plan will include unconscious bias training in new staff and volunteer onboarding, additional unconscious bias training, and regular "refresher" training, to the extent not already provided for in the MFA's existing plan.
 - ii. Developing and implementing a plan for training front-line staff, security guards, and volunteers on the final complaints policy and procedure, as discussed in paragraph 5.d, above.
 - iii. Developing and implementing, or where appropriate maintaining and refining, a plan for training all front-line staff, security guards, and volunteers who may

encounter or work with youth who visit the MFA on recognizing and understanding age-appropriate behaviors, and on addressing or interacting with children in a developmentally appropriate and positive way.

- iv. Requiring all employees with responsibility for conducting or supervising internal investigations into any complaint involving allegations of discrimination or harassment by a member of the public to attend an external training program on internal investigations.

At the MFA's invitation, the AGO has agreed to review and comment on the MFA's training plans.

6. The MFA commits to creating a fund (the "Implementation Fund") in the amount of \$500,000 (the "Funds") dedicated to implementing the DLA Action Plan and the Community Engagement Action Plan. The MFA may fund the Implementation Fund all at once or incrementally over time, provided that the Funds have been dispersed or otherwise committed within three (3) years of the effective date of this Memorandum. If, at any point prior to the expiration of the three (3) year time period, the MFA completes all of the activities identified in the DLA Action Plan and the Community Engagement Action Plan without using all of the Funds, the MFA may submit a request to the AGO to revert any unused funds to the MFA to use at its discretion. The AGO will not unreasonably withhold approval of a request to revert unused funds to the MFA, provided that the MFA submit written documentation to the AGO demonstrating that it achieved the activities identified in the DLA Action Plan and the Community Engagement Action Plan.
7. Except where otherwise stated, the specific actions the MFA chooses to undertake in executing and fulfilling the commitments described in Paragraph 5 will be left to the MFA's sole discretion, subject to the AGO's reasonable objections. Should the AGO object to any specific action that the MFA proposes to take with regard the commitments described in paragraph 5, the Parties agree to negotiate in good faith to resolve any disagreements.
8. The Parties recognize that the expertise of community leaders such as the NAACP Boston Branch will be important to the implementation of this Memorandum, and they commit to engaging with such leaders in fulfilling its terms.
9. The Parties will, as appropriate, identify and share with other cultural and educational institutions in the Commonwealth the learnings from the implementation of the MFA's plans to foster diversity, inclusion and a sense of belonging.
10. The Parties recognize the MFA's status as a public charity regulated in the ordinary course through the AGO's Non-Profit Organizations/Public Charities Division. In the event its financial circumstances endanger the MFA's ability to fulfill its mission and fulfill the terms of this Memorandum, particularly in light of ongoing public health and economic

circumstances and their impact on the MFA, the MFA will consult with the AGO and, if appropriate, the parties may agree to modify the terms of this Memorandum.

C. DLA Visitors

11. The Parties thank and acknowledge the DLA Visitors for the critical role they have played in raising the important issues addressed by the Memorandum and for assisting in the Parties' investigation of the May 16, 2019 field trip. The Parties invite and encourage the DLA Visitors and their parents, administrators and representatives to participate in a process of reconciliation and to so affirm their willingness by executing an affirmation in the form appearing as Exhibit A to this Memorandum.

D. The MFA's Statement of Compliance.

12. The MFA states and affirms that, at all times relevant to this Memorandum, it has acted in compliance with all applicable laws, including but not limited to all federal, state, or local anti-discrimination laws, relating to the Field Trip and any prior complaint.

E. Release by the Commonwealth

13. Except for the obligations of the MFA that are expressly set forth in this Memorandum, the Commonwealth releases the MFA, its agents, directors, owners, employees, volunteers, affiliates, the successors or assigns of any of the foregoing, and all persons in active concert or participation with MFA, from any and all civil liability to the Commonwealth arising out of or relating to the AGO's investigation into the Field Trip described above. This provision, however, does not limit the Commonwealth's authority to commence proceedings against MFA, including pursuant to G.L. c. 93A, to seek enforcement of the terms of this Memorandum. Nothing in this Memorandum shall prohibit the MFA from defending itself in future litigation. This Memorandum shall be a full, complete, and final disposition and settlement of all claims between the Parties.

F. Miscellaneous

14. This Memorandum constitutes the entire agreement between the AGO and the MFA and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this Memorandum. This Memorandum may be modified or supplemented only by a written document signed by all parties.
15. No part of this Memorandum shall be construed or admitted into evidence in any proceeding as an admission of liability by the MFA, and the MFA expressly denies any such liability.
16. Any time period within which a party must perform, or begin to perform, or complete an obligation of this Memorandum may be extended upon the written request of a party or parties for good cause.

17. The MFA shall preserve and maintain any documents relating to its compliance with this Memorandum and agrees to produce them to the AGO upon request during the term of this Memorandum.
18. The term of this Memorandum shall be two (2) years from the commencement date of the DLA Engagement Action Plan or Community Engagement Action Plan, whichever is later.
19. This Memorandum shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
20. Notices to be sent pursuant to this Memorandum shall be sent as follows:

To the AGO:

Amanda Hainsworth
Assistant Attorney General, Civil Rights Division
Abigail Taylor
Chief, Civil Rights Division
Office of Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108
amanda.hainsworth@mass.gov
abigail.taylor@mass.gov

To the MFA:

Dean Richlin
Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02110
drichlin@foleyhoag.com

21. This Memorandum will take effect 120 days after the date on which it is signed by both parties or the date on which the Massachusetts COVID-19 State of Emergency ends, whichever is later (the "Effective Date"). The Effective Date may be extended by the parties as is reasonably necessary through agreement in writing (including via email).

Signed:



<p>MUSEUM OF FINE ARTS Annand Graham Gund Director</p> <p></p> <hr/> <p>Matthew Teitelbaum</p> <p>Dated: <u>April 28, 2020</u></p>	<p>COMMONWEALTH OF MASSACHUSETTS MAURA HEALEY ATTORNEY GENERAL</p> <p></p> <hr/> <p>Amanda Hainsworth Assistant Attorney General</p> <p>Dated: <u>April 29, 2020</u></p>
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EXHIBIT A
Affirmation of Engagement and Covenant not to Sue

The DLA Visitors affirm and agree as follows:

1. The DLA Visitors affirm that they will engage with the MFA in good faith, consistent with the Memorandum of Understanding between the MFA and AGO and the MFA's commitments as stated in that Memorandum, to participate in a process of reconciliation with the MFA concerning the May 16, 2019 Field Trip.
2. The DLA Visitors agree not proceed with or institute a civil action or proceeding based on M.G.L. c. 272, §§ 92A and 98, M.G.L. c. 93A, 42 U.S.C. § 2000a, or any other statute or regulation, or common law, against the MFA, or any of the MFA's officers, directors, agents, or employees, for the MFA's actions prior to the Effective Date relating to the May 16, 2019 Field Trip.

Signed:

Dated: _____

If the signatory is a minor:

Name of Parent or Guardian

Signature of Parent or Guardian

Name of Minor