

AGREEMENT TO ARBITRATE

Your only remedy for any accessibility claim arising out of the use of or access to this website is arbitration as described below.

Every claim under the Americans with Disabilities Act or any other federal, state or municipal law governing the accessibility of websites by those with disabilities that arises from or relates to the use of or access to this website shall be subject to mandatory arbitration as provided herein. By using or accessing this website You agree to waive any judicial remedy and any right to trial by jury, including the right to participate in a class action lawsuit. You also agree that the procedures described below are the exclusive remedy for claims covered by this Agreement. We, the Owners and Operators of this website, also agree to this waiver and the exclusive remedy provided herein.

As used in this Agreement:

“Owner” means LE Toys Dot Com, Inc. and all of its affiliates, including Learning Express, Inc.

“Operator” means LE Toys Dot Com, Inc.

“Website” means the website located at learningexpress.com, including all linked web pages operated or under the control of Owner and Operator.

“You” means any person who uses or accesses the Website.

“Claimant” means any person asserting a claim within the scope of this Agreement.

“Party” means any one of You, the Owner or the Operator.

“Parties” means any two or more of You, the Owner and the Operator.

You agree that as soon as You believe you have claim or potential claim You will notify all other Parties in writing, including a reasonably detailed description of the claim and conditions or events giving rise to it. The Parties agree that after receipt of such notice they will

endeavor to settle the dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures before resorting to arbitration. The Parties further agree that any unresolved controversy or claim arising out of or relating to the use of or access to this website shall be settled by arbitration administered by the AAA in accordance with its Commercial Arbitration Rules subject to the limitations and conditions below, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Owner and/or Operator agree to pay such fees as may be required for the mediation described above. Each Party agrees to pay their own fees for any arbitration herein.

Arbitration procedures

Claims shall be heard by a single arbitrator who shall be an expert in website design and accessibility qualified as such by the AAA.

Arbitration shall be by the presentation of documents to the arbitrator in such order and at such times as the arbitrator may determine. The arbitrator may convene one or more telephone conferences in the arbitrator’s sole discretion, but there shall be no in-person hearings or presentations.

Except for claims under federal law the arbitration shall be governed by the laws of the State of Massachusetts without regard to its choice of law rules provided, however, that no individual claimant shall be deemed to have waived their rights under any consumer protection or disability rights law of the state or city of their residence if such law forbids such waiver.

No discovery shall be permitted except as follows:

1. the Claimant shall submit to the other Parties, no less than 90 days before the case is submitted for decision:
 - A report or reports of their expert(s) complying with the requirements of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure,

- A written statement under penalty of perjury from the Claimant that includes the following information:
 - a. The full name and residence address of the Claimant.
 - b. The date and time of every effort by Claimant to access or use the Website. This list is limited to efforts by the Claimant and excludes efforts by any agent or attorney of the Claimant.
 - c. A detailed list of alleged barriers to access including the web page on which the barrier was encountered and the effect of the alleged barrier on the claimant's ability to use and enjoy the website.
 - d. A list including the case name, court, and docket number for every lawsuit or arbitration concerning the accessibility of websites to which Claimant is a party,
 - e. A list of parties against whom Claimant has made a demand concerning the accessibility of a website that is not included in the preceding list.
 - f. If the Claimant asserts they were seeking to obtain goods or services from the Website, a description of the goods and services sought.
- 2. No less than forty five (45) days before the case is submitted for decision Owner, Operator or other responding party shall submit to the claimant:

Operator or other responding party shall submit to the claimant:

- A report or reports of its expert(s) complying with the requirements of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure,
- A written statement under penalty of perjury from an appropriate officer or agent of the responding party that includes any rebuttal with respect to the Claimant's declaration not included in the responding party's expert report.

The arbitration will be based on the submission of the documents listed above and any brief or legal argument the parties submit subject to any limitations or requirements of the arbitrator.

With respect to any claim that the website is not accessible to an individual with a disability the arbitrator may find in favor of the claimant only if the arbitrator finds that the claimant was denied meaningful access to the website and the goods or services offered by it unless the arbitrator finds that a different standard is required by a particular law.

The arbitrator will have no authority to award damages of any kind not specifically provided for in the statute or statutes under which the claim is made. In no event shall the arbitrator have authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. Arbitrators will have the authority to allocate the costs of the arbitration process among the parties but will only have the authority to allocate attorneys' fees if a particular law permits them to do so. The arbitrator may award injunctive relief but such relief is limited to the correction or remediation of specific access barriers found by the arbitrator to have denied meaningful access to the website by the Claimant. The award of the arbitrator shall be accompanied by a reasoned opinion if requested by any Party, but the Party requesting such opinion shall pay any fees associated with that opinion notwithstanding any other division of fees and expenses awarded by the arbitrator. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, evidence provided, content, or results of any arbitration hereunder without the prior written consent of all Parties.

