

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOBEL LEARNING COMMUNITIES
d/b/a CHESTERBROOK ACADEMY,

Defendant.

HON. NOEL L. HILLMAN

Civil Action No. 17-366 (NLH) (JS)

SETTLEMENT AGREEMENT

I. BACKGROUND

1. This Agreement is entered into by the United States of America and Nobel Learning Communities, Inc., n/k/a Spring Education, Inc. d/b/a Chesterbrook Academy ("SEI").¹
2. The United States is authorized to investigate alleged violations of Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181-89, and to bring a civil action in federal court in any case that raises an issue of general public importance. 42 U.S.C. § 12188(b).
3. Title III of the ADA prohibits a public accommodation from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods and services. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
4. SEI is a Delaware corporation headquartered in Pennsylvania, which operates a network of private schools in 18 states and the District of Columbia. SEI is a public accommodation subject to the requirements of Title III of the ADA because it owns and operates a place of public accommodation. 28 C.F.R. § 36.104.
5. M.M., a minor, and her parents lodged a complaint with the United States Department of Justice alleging that SEI's Chesterbrook Academy in Moorestown, New Jersey, discriminated against M.M. and her parents when it disenrolled M.M. in March of 2015 on the basis of disability. Specifically,

¹ Nobel Learning Communities, Inc. is now known as Spring Education, Inc., which, for purposes of this Agreement, is the successor to Nobel Learning Communities, Inc.

M.M.'s parents alleged that SEI disenrolled M.M. based on M.M.'s failure to meet a certain deadline by which M.M. would have to be toilet-trained.

6. On January 18, 2017, the United States filed a Complaint in the United States District Court for the District of New Jersey alleging that SEI violated Title III of the ADA, and its implementing regulation, 28 C.F.R. Part 36. In its Complaint, the United States alleged that SEI: 1) failed to make reasonable modifications to its policies, practices, or procedures for M.M.; 2) disenrolled M.M. due to M.M.'s disability; and 3) excluded or otherwise denied equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to M.M.'s parents because of the known disability of M.M.
7. On November 2, 2017, SEI answered the Complaint, denied the United States' allegations that it violated the ADA, and asserted affirmative defenses. The United States and SEI agree that it is in the Parties' best interests, and the United States believes it is in the public interest, to fully and finally resolve this matter on mutually agreeable terms and without resorting to continued litigation. The Parties agree that by entering into this Agreement, SEI does not admit any allegation made by the United States; nor does SEI admit liability, wrongdoing, or violation of the ADA or any other statute, regulation, or provision of the United States Constitution, or any state constitution or law. The Parties have therefore voluntarily entered into this Agreement, agreeing as follows:

II. NON-MONETARY RELIEF

8. Within thirty (30) days of the Effective Date (as defined by Para. 20, below) of this Agreement, SEI will add a statement to its current Non-Discrimination Policy that states: "At all SEI facilities where diaper changing or toileting assistance is provided, SEI will provide toileting assistance, including diaper changing, for a child with a disability² where such assistance is necessary because of disability, unless SEI can demonstrate that making such a modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations SEI provides. A fundamental alteration analysis requires an individualized inquiry that could include, for example, the nature of SEI's services, the child's needs, configuration of a "facility" (as that term is defined in 28 C.F.R. § 36.104), and applicable laws or licensing requirements that are essential to SEI's services."
9. SEI will continue to engage an ADA Compliance Officer and will continue to indicate in its Non-Discrimination Policy that the ADA Compliance Officer is the decision-maker on requests for modifications. The ADA Compliance

² For the purposes of this Agreement, "disability" means an individual with a disability as defined by the ADA. 42 U.S.C. § 12102(1).

Officer shall ensure that SEI adopts and implements the policies, practices, and procedures set forth herein. SEI will provide the ADA Compliance Officer with sufficient authority and resources to perform the tasks required by this Agreement, including review of all toileting reasonable modification requests and all decisions to exclude from enrollment or dis-enroll a child from an SEI facility where the child has a toileting delay that is related to a disability. The ADA Compliance Officer will maintain records regarding his or her review of all toileting reasonable modification requests and all decisions to exclude from enrollment or dis-enroll a child with a disability for not less than the term of the Agreement.

10. Within sixty (60) days of the Effective Date of this Agreement, SEI shall submit to the United States for review, revised reasonable modification policies and procedures relating to toileting modifications, pursuant to Title III of the ADA. SEI will consider in good faith any comments offered by the United States. SEI's policies and procedures shall include the following:
 - a. The policy set forth in Paragraph 8.
 - b. Subject to Paragraph 8, when a child's disability limits his or her ability to be toilet trained within a certain time frame, SEI will not disenroll that child on that basis, nor will SEI require that the child become toilet trained according to a timeline that is inconsistent with the child's developmental ability or needs.
 - c. Upon receiving a request for a modification relating to toileting, SEI will initiate a discussion with the parent(s) or guardian(s) to determine whether the child has a disability for which he or she needs modification(s) and to explore what modification(s) may be appropriate pursuant to the ADA. SEI will make individualized determinations based on the facts of each request.
 - d. SEI may only deny a request for a toileting reasonable modification if it can demonstrate that making the requested modification would fundamentally alter the nature of SEI's services, as explained in Paragraph 8. SEI will not apply a general prohibition against providing particular types of reasonable modifications relating to toileting.
 - e. An explanation of how parent(s) or guardian(s) are to request reasonable modifications relating to toileting for children with disabilities at its facilities.
 - f. A response to a request for a reasonable modification relating to toileting will be provided by SEI in writing. In the ordinary course, SEI will endeavor to decide the reasonable modification request within

ten (10) days from the date that it receives the necessary information sufficient to evaluate the request. If a request for a toileting reasonable modification is denied, SEI shall notify the child's parent(s) or guardian(s), in writing, of the reason(s) for the denial.

g. The contact information for SEI's ADA Compliance Officer.

11. Within thirty (30) days of receipt of any comments from the United States regarding the policy set forth in Paragraph 10, SEI shall publicize such policy as an attachment to SEI's Non-Discrimination Policy, which SEI will continue to publish on the websites for each of its individual schools,³ and shall disseminate such policy to parents and guardians of currently enrolled children at SEI facilities where diaper changing or toileting assistance is provided. Beginning on that same date, SEI shall (i) disseminate such policy to parents and guardians who indicate that they would like a reasonable modification for their child relating to toileting in connection with their completion of the Pre-Enrollment Modification Inquiry Form included in their application packet; and (ii) provide such policy upon request by a parent or guardian.

12. At its October 2019 annual live training session for Regional Directors, Principals, and Assistant Principals, SEI's General Counsel will provide training on the policy changes described in Paragraph 8. SEI shall create training materials regarding such policy changes and provide those materials to the United States before they are provided at the annual training session. The United States shall have a reasonable opportunity to review the training materials prior to the training being provided, and SEI shall consider in good faith comments provided by the United States. In addition:

- a. New Regional Directors, Principals, and Assistant Principals hired during the term of this Agreement shall be provided comparable training at the next occurring quarterly training.
- b. For the duration of this Agreement, SEI will provide annual refresher training on the toileting policy to all Regional Directors, Principals, and Assistant Principals.
- c. SEI will create and maintain an attendance log that documents the name of each individual who attends the trainings required in this

³ By way of example, the individual school website for Chesterbrook Moorestown is: <https://www.chesterbrookacademy.com/preschools/nj/moorestown/>. The Non-Discrimination Policy is currently located in the "About Us" section of that webpage. SEI will include a link to that policy in the "About Us" section for each of the SEI schools subject to this policy.

Paragraph, his or her title, and the date he or she attended the training.

13. SEI will report to the United States, within ten (10) business days, any decision to disenroll a student based, in whole or in part, on toileting delays if that student has a disability and the toileting delay is related to the disability. This reporting requirement shall include students who are withdrawn by a parent or guardian after being told of a potential deadline or given a deadline to be toilet-trained, provided that the withdrawal occurs before the deadline. This information should be sent by e-mail to the address specified in Paragraph 15.
14. In addition to the reporting obligation set forth in the preceding Paragraph, SEI will provide the United States, on an annual basis,⁴ written reports on the following issues:
 - a. Relevant information concerning the decision to place a child between the ages of 0 and 6 years old on a toileting timeline, provided that the child has a disability. "Relevant information," as used in this provision, shall mean: the child's initials; the child's date of birth; the SEI school where the child is or was enrolled; the length of the timeline applied to that child; and the result of the application of the timeline (e.g., the child met the original timeline; the timeline was extended; the child failed to meet the timeline).
 - b. Relevant information (as defined above) concerning all requests for modification that relate in any way to toileting issues, provided that the child at issue has a disability. Specifically, SEI will report on whether it: (i) granted the request; (ii) requested medical documentation relating to the child's disability and any necessary modifications; or (iii) denied the request, in which case SEI will document each and every reason for the denial and shall submit documentation about the decisions denying such requests to the United States consistent with its annual reporting requirements.
 - c. The United States may request additional information related to the foregoing disclosures. SEI agrees to cooperate in good faith with reasonable requests from the United States for additional relevant information about the child and the modification and/or toileting issue,

⁴ The first such report, covering the period from the Effective Date of this Agreement through April 30, 2020, shall be made no later than June 1, 2020. The second such report, covering the period from May 1, 2020 through April 30, 2021, shall be made no later than May 31, 2021.

which includes, but is not necessarily limited to, the child's parent or guardian's name(s) and contact information.

15. SEI shall send the written reports set forth in Paragraphs 13 and 14 via electronic mail to the United States (to the attention of david.simunovich@usdoj.gov and charlotte.lanvers@usdoj.gov or other person who may be specified by the United States).
16. SEI will promptly notify the United States (by contacting the individuals designated in Paragraph 15) if any individual files a lawsuit or complaint in court or with an administrative agency alleging that SEI discriminated against a child between the ages of 0 and 6 years old on the basis of disability based in whole or in part on the child's toileting status.
17. For children identified to the United States in connection with Paragraphs 13-14, SEI will retain its records relating to such children in the same manner as it maintains records for any other of its current or former children. At a minimum, however, SEI will retain its records concerning these topics for not less than the term of the Agreement.

III. MONETARY PAYMENTS

18. Within the later of fifteen (15) days of the Effective Date of this Agreement or fifteen (15) days of the date SEI receives a release signed by M.M.'s parents on behalf of themselves and M.M., the form of which is attached as Appendix A, SEI will pay \$18,000 to M.M. SEI shall provide written notification to counsel for the United States, including a copy of the check, when it has completed the actions described in this Paragraph.
19. Within thirty (30) days of the Effective Date, SEI shall make payment in the amount of \$30,000 to the United States, pursuant to 42 U.S.C. § 12188(b)(2)(C). SEI shall deliver the check or money order, via overnight mail, to counsel for the United States at 970 Broad Street, 8th Fl., Attn: David Simunovich, Newark, New Jersey, 07102.

IV. MISCELLANEOUS PROVISIONS

20. The Effective Date of this Agreement is the date of the last signature below. However, with respect to the training obligations imposed by paragraph 12 of this Agreement, the effective date shall be October 21, 2019.
21. The duration of this Agreement will be two (2) years from the Effective Date.
22. In consideration of this Agreement, the United States agrees to close its investigation and compliance review (DJ No. 202-48-288) without further

enforcement action, except as set forth in this Agreement. The Parties agree and acknowledge that this consideration is adequate and sufficient.

23. The United States may review compliance with this Agreement at any time. SEI will cooperate fully with the United States' reasonable efforts to monitor compliance with this Agreement, including with respect to providing the United States with documents required to be prepared or maintained as a result of or pursuant to this Agreement. If the United States believes that SEI has failed to comply with any requirement of this Agreement, the United States will notify SEI in writing and the Parties will attempt to resolve the issue in good faith. The United States shall not initiate a civil action to enforce this Agreement unless and until the Parties are unable to reach a satisfactory conclusion within thirty (30) calendar days of the date the United States notifies SEI.
24. Any time limits for performance imposed by this Agreement may be extended by the mutual written consent of the Parties. With regard to any of the deadlines specified in this Agreement, SEI shall notify the United States at least ten (10) business days before any deadline of an anticipated inability to meet the deadline and the reason(s) why, and shall request an extension of time to a specific date.⁵ The United States shall not unreasonably withhold consent to a request for an extension of time made in good faith.
25. Except with respect to the obligations and rights created by the Agreement, the United States does hereby absolutely, fully, and forever release and discharge SEI and its respective shareholders, members, managers, legal successors and assigns, heirs, administrators, subsidiaries, affiliates, attorneys, agents, servants, employees, officers, directors, and partners, of and from any and all claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, actions, and causes of action asserted in the Complaint filed in this action.
26. Within ten (10) days of execution of this Agreement, the United States will file a stipulation of dismissal with prejudice of D.N.J. Civil Action No. 17-366 (NLH/JS), signed by all parties, pursuant to Federal Rule of Civil Procedure 41(a)(1), with each party bearing its own costs.

⁵ In the event that circumstances prevent SEI from providing 10-day notice pursuant to this Paragraph, SEI shall provide as much notice as is reasonably possible and shall explain to the United States the basis for not providing 10 days' notice.

27. Failure by the United States to enforce any provision of this Agreement will not be construed as a waiver of its right to enforce any provisions of the Agreement.
28. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.
29. The individuals signing this Agreement represent that they are authorized to do so on behalf of the respective entity for which they have signed.
30. This Agreement will have no impact upon the rights or claims of any individual not identified in this Agreement who has made, or may make, claims against SEI for issues discussed herein. This Agreement is not intended to remedy any potential violations of the ADA or any other law, other than those specifically addressed by this Agreement. Nothing in this Agreement will preclude the United States from filing a separate action under the ADA or any other law for any alleged violation not covered by this Agreement.
31. This Agreement, including Appendix A, constitutes the entire agreement between the United States and SEI on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its Appendix, shall be enforceable.
32. This Agreement and any amendment hereto shall be public documents.
33. This Agreement shall be binding upon the United States and on SEI, its agents, employees, successors, and assigns.
34. If SEI acquires a new facility during the term of this Agreement, SEI shall implement the requirements of this Agreement with respect to that facility within a reasonable period of time (not to exceed 3 months).
35. Nothing in this Agreement shall be construed to relieve SEI of its compliance obligations with respect to any provision of Title III of the ADA or its implementing regulation.

By their signatures below, the Parties respectfully consent to the execution of all aspects of this Agreement.

FOR THE UNITED STATES

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Nov. 13, 2019
Date

FOR SEI


MARGARET HAGAR

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