

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
CONTRA COSTA COUNTY PUBLIC WORKS
EARLY CHILDHOOD CENTER D/B/A
CONTRA COSTA COUNTY KIDS AT WORK**

DJ NO. 202-11-380

I. BACKGROUND

1. This Settlement Agreement (the “Agreement”) is entered into by the United States of America and Contra Costa County Public Works Early Childhood Center d/b/a Contra Costa County Kids at Work (“KAW”) (collectively, the “Parties”).
2. KAW is an infant center and preschool designed to benefit the employees of Contra Costa County (“County”) and other public agencies. KAW provides preschool and infant care to children between the ages of eight weeks and five years of County employees and, if space is available, of non-County employees. KAW is privately owned and is incorporated in and has its principal place of business in California. KAW currently operates one facility in Martinez, California.
3. This matter is based upon a complaint filed with the U.S. Department of Justice alleging that KAW discriminated against an individual with a disability in violation of Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181–89, and its implementing regulations, 28 C.F.R. Part 36. Specifically, Complainant alleges KAW discriminated against Complainant and her two-year-old daughter, who was born prematurely and who has developmental delays and scimitar syndrome, by disenrolling Complainant’s daughter from KAW on or about her seventh day of attendance at KAW. KAW did not provide Complainant with a discount or refund of any of the fees or tuition Complainant paid for her daughter.
4. KAW denies the allegations.
5. The United States and KAW agree that it is in the Parties’ best interest, and the United States believes it is in the public interest, to fully and finally resolve this matter without litigation. The Parties have therefore voluntarily entered into this Agreement, agreeing as follows:

II. TITLE III COVERAGE

6. The Attorney General is responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12181–89, and its implementing regulations, 28 C.F.R. Part 36.
7. Complainant’s child has developmental delays and scimitar syndrome, which are physical or mental impairments that substantially limit one or more major life activities. Accordingly, she has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105. Complainant has a relationship with her child with a disability and therefore is also protected under Title III. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.

8. KAW is a private entity whose operations affect commerce within the meaning of 42 U.S.C. § 12181(6). The KAW facility is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7), because it is a day care center. KAW thus is a public accommodation subject to the requirements of Title III of the ADA, because it owns and operates a place of public accommodation. 42 U.S.C. § 12181; 28 C.F.R. § 36.104.
9. 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. Specifically, a public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a). A public accommodation shall make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the reasonable modifications is a fundamental alteration to the nature of such goods and services. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302. Title III also prohibits public accommodations from excluding or otherwise denying equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual because of the known disability of an individual with whom the individual is known to have a relationship or association. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
10. Ensuring that child care providers do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises an issue of general public importance. 42 U.S.C. § 12188(b).
11. The United States contends that KAW discriminated against Complainant and her daughter by denying her, on the basis of disability, the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. The United States further contends that KAW discriminated against Complainant and her daughter by failing to make reasonable modifications in its policies, practices, or procedures which were necessary to afford them an opportunity to participate in and benefit from KAW's goods, services, facilities, privileges, advantages, and accommodations and by instead disenrolling Complainant's daughter from its day care program. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
12. KAW denies the allegations and asserts that it enrolled Complainant's daughter knowing that she had medical issues on September 5, 2017 and tried to accommodate her. KAW met with Complainant on September 21, 2017 and informed her that KAW offered class care and was not staffed to provide the one-on-one care that KAW maintains that Complainant's daughter required. KAW informed Complainant that she either needed to

provide an aide for her daughter in the class or needed to disenroll her daughter to find a program that could provide more individualized attention. KAW asserts that Complainant disenrolled her daughter a week later. KAW admits that Complainant did not request one-on-one care or an aide for her daughter and that Complainant maintains that her daughter could have participated in KAW's program.

13. This Agreement is neither an admission of liability by KAW nor a concession by the United States that its claims are not well founded.

III. INJUNCTIVE RELIEF

14. Effective immediately, KAW: (a) shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered; (b) shall not discriminate against any individual on the basis of disability or on the basis of any individual's association or relationship with an individual with a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any of its current or future locations; and (c) shall make reasonable modifications to policies, practices, and procedures when such modifications are necessary to afford access to such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities unless KAW demonstrates that the requested modifications would fundamentally alter the nature of its goods, services, facilities, privileges, advantages, or accommodations.
15. KAW agrees that, in any group child care setting, most children will need individualized attention occasionally, that a teacher or staff member may be required at times to provide such individualized attention, and that KAW must make any reasonable modifications necessary to integrate children with disabilities that would not constitute a fundamental alteration to KAW's goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
16. Within thirty (30) days of the effective date of this settlement agreement, KAW shall designate and maintain one individual who shall have responsibility for monitoring compliance with this Agreement, including ensuring that KAW adopts and implements the policies and procedures set forth in Paragraph 17. KAW shall provide the designated individual with sufficient authority and resources to perform the tasks required by this Agreement, including review of all reasonable modification requests and any decisions to deny admission to, exclude from enrollment, or disenroll a child with a known disability. The designated individual shall maintain records regarding his or her review of all reasonable modification requests and all decisions to deny admission to, exclude from enrollment, or disenroll a child with a disability. The contact information for the individual designated shall be publicized in KAW's parent handbook and on KAW's website, <https://www.contracosta.ca.gov/3392/Kids-at-Work-Child-Care-Center>, and disseminated with application materials provided to parents or guardians of prospective enrollees.

17. Within sixty (60) days of the effective date of this Agreement, KAW shall submit to the United States, for review and approval, written policies and procedures regarding KAW's obligations under Title III of the ADA. Within thirty (30) days of the United States' approval, which approval will not be unreasonably withheld, KAW shall adopt and implement the revised and approved policies and procedures, by including all revised policies and procedures on KAW's website, <https://www.contracosta.ca.gov/3392/Kids-at-Work-Child-Care-Center>, and in employee and parent handbooks. KAW's policies and procedures shall, at a minimum, include the following:
- a. A nondiscrimination policy in substantially similar form to Appendix A stating that KAW does not discriminate in the provision of services to persons with disabilities or their parents or guardians, in all KAW programs.
 - b. A reasonable modifications policy that provides that:
 - i. KAW will make reasonable modifications for children with disabilities and their parents or guardians, unless KAW can show that such requested modifications are a fundamental alteration to KAW's program. KAW will make individualized determinations based on the specific facts of each request and will not apply a general prohibition against providing particular types of reasonable modifications.
 - ii. Upon receiving a request for a modification, KAW will initiate an interactive process with the parent(s) or guardian(s) to explore what reasonable modification(s) may be appropriate pursuant to the ADA.
 - iii. KAW will provide a response to a request for a reasonable modification in writing, within fourteen (14) days from the date the request is received. KAW may:
 1. grant the request;
 2. make a narrowly tailored request for medical documentation relating to the child's disability and the need for reasonable modifications(s);
 3. offer a different reasonable modification that addresses the parent or guardian's request for a modification; or
 4. deny the request, provided that if a request for modification is denied, KAW shall document each reason for the denial of the request and shall immediately notify the child's parent(s) or guardian(s), in writing, of the reason(s) for the denial.
 - c. Information for parents or guardians of children with disabilities, explaining how to request reasonable modifications to KAW's policies, practices, and procedures with respect to child care services.

18. Within sixty (60) days from the date upon which KAW adopts the policies and procedures set forth in Paragraph 17, KAW shall provide training on the nondiscrimination requirements of Title III of the ADA to all employees with responsibility for considering requests for or providing reasonable modifications to applicants and enrollees and/or terminating enrollment. KAW shall provide new employees with comparable responsibilities hired during the term of this Agreement with the training set forth in this Paragraph 18 within thirty (30) days of their start date.
19. During the term of this Agreement, KAW will notify the United States of any complaint, lawsuit, charge, or grievance alleging discrimination by KAW on the basis of disability. Such notification must be provided in writing within ten (10) days of when KAW has received notice of the allegation and must include, at a minimum, the nature of the allegation, the name of the individual bringing the allegation, and any documentation possessed by KAW relating to the allegation.
20. Any notices or information provided to the United States related to this Agreement and the activities described in Paragraphs 14–19 shall be sent by KAW via electronic mail to the United States (to the attention of shiwon.choe@usdoj.gov or other person specified by the United States) or via overnight mail to:

Shiwon Choe
United States Attorney's Office
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

IV. MONETARY RELIEF

21. Within sixty (60) days of the effective date of this Agreement or the date Complainant provides KAW with an IRS Form W-9 and signed copies of Appendix B, whichever is later, KAW will pay \$1,150 to Complainant to resolve all allegations of harm she and her daughter are alleged to have endured (including, but not limited to, emotional distress, pain and suffering, and other consequential injury) as a result of Complainant's daughter's disenrollment. KAW will issue an IRS Form 1099 to Complainant for the payment. KAW 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.

V. MISCELLANEOUS PROVISIONS

22. The effective date of this Agreement is the date of the last signature below.
23. The duration of this Agreement will be three (3) years from the effective date.
24. In consideration of this Agreement, the United States agrees to close its investigation (DJ No. 202-11-380) without further enforcement action, except as provided in Paragraphs 25–26 of this Agreement. The Parties agree and acknowledge that this consideration is adequate and sufficient.

25. The United States may review compliance with this Agreement at any time. KAW will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with reasonably requested information. If the United States believes that KAW has failed to comply adequately or in a timely manner with any requirement of this Agreement or that any requirement has been violated, the United States will notify KAW in writing, and the Parties will attempt to resolve the issue in good faith. If the Parties are unable to reach a satisfactory conclusion within sixty (60) calendar days of the date the United States notifies KAW, the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title III of the ADA.
26. Any time limits for performance imposed by this Agreement may be extended only by the mutual written consent of the Parties. The United States shall not unreasonably withhold consent to a request for an extension of time made in good faith. A failure to comply with deadlines agreed upon in this Agreement constitutes a violation of this Agreement, and the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title III of the ADA.
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 (or its incorporated appendices) who has made, or may make, claims against KAW for issues discussed herein. This Agreement is limited to resolving claims under Title III of the ADA related to the facts specifically set forth in Paragraphs 1–3. Nothing in this Agreement relates to other provisions of the ADA or affects KAW's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities. Nothing in this Agreement will preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement. Nothing in this Agreement shall be considered an admission of liability on behalf of KAW.
31. This Agreement, including Appendices A and B, constitutes the entire agreement between the United States and KAW 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 Appendices A and B, shall be enforceable.
32. This Agreement and any amendment hereto shall be public documents. A copy of this Agreement or any information contained herein may be made available to any person, and KAW shall provide a copy of this Agreement to any person upon request.

33. This Agreement shall be binding upon KAW, its agents, employees, successors, and assigns. If KAW acquires a new facility during the term of this Agreement, KAW shall immediately take steps to implement the requirements of this Agreement with respect to that facility.
34. This Agreement does not affect KAW's continuing responsibility to comply with all aspects of the ADA.

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

FOR THE UNITED STATES:

STEPHANIE M. HINDS
United States Attorney

DATED: 10/24/2022

By: /s/
SHIWON CHOE
Assistant United States Attorney
450 Golden Gate Avenue
Box 36055
San Francisco, CA 94102

**FOR CONTRA COSTA COUNTY PUBLIC
WORKS EARLY CHILDHOOD CENTER
D/B/A CONTRA COSTA COUNTY KIDS AT WORK:**

DATED: 10/24/2022

By: /s/
MICHELLE NAIL
Director
Contra Costa County Kids at Work
255 Glacier Drive
Martinez, CA 94553

APPROVED AS TO FORM:

DATED: 10/24/2022

By: /s/
RICHARD GILLESPIE
Shareholder
Littler Mendelson P.C.
Treat Towers, 1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597
Attorneys for Contra Costa County Kids at Work