



**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
BAR-T YEAR ROUND PROGRAMS FOR KIDS
UNDER THE AMERICANS WITH DISABILITIES ACT**

DJ # 202-35-351

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America and Bar-T Year Round Programs for Kids (“Bar-T”) in Montgomery County, MD.
2. This matter is based upon a complaint filed with the United States Department of Justice alleging that Bar-T discriminated against a child because of his disability in violation of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36.
3. The Complainants are a child who has Autism Spectrum Disorder (“the Child”) and his parents. Autism Spectrum Disorder is a developmental disability that can cause significant social, communication, and behavioral challenges. Autism Spectrum Disorder substantially limits one or more major life activities or major bodily functions, including brain function. 28 C.F.R. § 36.105(d)(2)(iii); 42 U.S.C. §§ 12102(1), (2). Accordingly, the Child has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105. The Complainants are persons associated with a person with a disability within the meaning of 42 U.S.C. § 12182(b)(1)(E) and 28 C.F.R. § 36.205.
4. Specifically, the Complaint alleges that Bar-T terminated the Child from Bar-T’s summer and after school child care program on the basis of his disability-related behavior without considering or providing any reasonable modifications to the program that could have mitigated Bar-T’s concerns about the Child’s behavior. Bar-T expressly denies any wrongdoing and maintains that it has always complied with the ADA.
5. Bar-T is a private organization that provides summer and school year childcare programs in Montgomery County, MD for children in kindergarten through eighth grade. Bar-T operates at approximately 30 Montgomery County Public School locations during the school year. Bar-T’s headquarters are located at 18753 North Frederick Avenue, Suite

203, Gaithersburg, MD 20879. Bar-T is a private entity within the meaning of 42 U.S.C. § 12181(6) and is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7)(K); 28 C.F.R. § 36.104. Bar-T is subject to title III of the ADA and its implementing regulation because it owns, leases (or leases to), or operates a child care establishment. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.

6. Under title III of the ADA, no person who owns, leases (or leases to), or operates a place of public accommodation may discriminate against an individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
7. Discrimination includes a public accommodation's failure to make reasonable modifications in policies, practices, or procedures when necessary to afford its goods, services, facilities, privileges, advantages, or accommodations to an individual with a disability, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
8. It is also discriminatory to deny an individual the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the public accommodation. 42 U.S.C. § 12182(b)(1)(A); 28 C.F.R. § 36.202.
9. Title III further prohibits public accommodations from discriminating against 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). A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 28 C.F.R. § 36.205.
10. Ensuring that childcare 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, to use alternative means of dispute resolution, where appropriate, including settlement negotiations to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
11. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement, agreeing as follows:

ACTIONS TO BE TAKEN BY BAR-T

12. Bar-T will not discriminate against any individual on the basis of disability with regard to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Bar-T. Bar-T will also not discriminate against any individual because of the known disability of an individual with whom the individual is known to have a relationship or association.
13. Bar-T will make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford its childcare services and facilities to children with disabilities, including children whose disabilities impact behavior, unless the modifications would fundamentally alter the nature of its services or facilities.
14. Before suspending or terminating, on behavioral grounds, a child whose disability impacts behavior, Bar-T will consider, in consultation with the child's parent or guardian, whether reasonable modifications or auxiliary aids or services would mitigate the behavioral concerns. If so, Bar-T will implement such modifications or auxiliary aids.
15. Bar-T will adopt, maintain, and implement the non-discrimination statement attached hereto and incorporated by reference herein as Exhibit 1 to this Agreement. Within thirty (30) days of the effective date of this Agreement, Bar-T will prominently display a copy of this non-discrimination statement in all its facilities and administrative offices, if any, as well as a link to the statement on the homepage of any current or future website. Bar-T will also include this non-discrimination statement in Bar-T's employee and parent handbooks. Bar-T will notify counsel for the United States in writing when it has completed the actions described in this paragraph.
16. Within thirty (30) days of the effective date of this Agreement, Bar-T shall designate a person who shall have responsibility for ensuring that the policies and procedures set forth in Paragraph 17 of this Agreement are fully implemented and complied with, as well as reviewing all requests for reasonable modifications that are not granted and reviewing any decisions to terminate the enrollment of or exclude from enrollment any child with a disability. The designated person shall review all requests for reasonable modifications that are not granted and review any decisions to terminate the enrollment of or exclude from enrollment any child with a disability, to ensure such actions are not discriminatory.
17. Within sixty (60) days of the effective date of this Agreement, Bar-T shall submit to the United States for review and approval written policies and procedures regarding Bar-T's obligations under Title III of the ADA, to be adopted and implemented at each of Bar-T's operating locations. Bar-T's policies and procedures shall, at a minimum, include the following:

- a. The designation of one individual per operating location who is authorized to receive and review requests for modifications to policies, practices, and procedures with respect to childcare services. This individual's contact information shall be publicized in the parent handbook or another manner easily accessible for parents or guardians of children with disabilities, and disseminated with application materials provided to parents or guardians of prospective enrollees.
 - b. A process by which parents or guardians of children with disabilities can request reasonable modifications to Bar-T's policies, practices, and procedures with respect to childcare services. This information shall be publicized in the parent handbook or another manner easily accessible for parents or guardians of children with disabilities, and disseminated with application materials provided to parents or guardians of prospective enrollees.
 - c. Bar-T will promptly consider all requests for reasonable modification of policies, practices, or procedures with respect to childcare services.
 - d. Upon receiving a request for a modification that Bar-T does not promptly grant, Bar-T will initiate a discussion with the parent or guardian to explore what modification(s) may be necessary. Following the discussion, Bar-T may:
 - i. grant the request; or
 - ii. if more information is needed, make a narrowly tailored request for documentation relating to the child's disability and any necessary modification(s).
 - e. After an individualized assessment is completed, if a request for a modification is denied, Bar-T will document each and every reason for the denial of the request and shall submit that documentation to the parents or guardians who requested such modification and the designated individual referenced in Paragraph 16.
 - f. Bar-T will provide a response to a request for modification, in writing, no later than fifteen (15) business days from the date the request is received.
18. Within thirty (30) days from the date upon which Bar-T implements the policies and procedures set forth in Paragraph 17, Bar-T shall publicize the policies and procedures by distributing them to all of its operating locations and to all parents or guardians who have children currently enrolled.
19. Within sixty (60) days from the date upon which Bar-T implements the policies and procedures set forth in Paragraph 17, and on an annual basis thereafter, Bar-T shall

provide appropriate training to all individuals with responsibility for granting or denying enrollment and/or considering requests for reasonable modifications for children with disabilities. New employees with comparable responsibilities hired during the term of this Agreement shall be provided comparable training.

20. Bar-T shall retain the following records during the term of this Agreement:

- g. Copies of all policies and procedures implemented pursuant to Paragraph 17;
- h. Letters or other written material sent to the operating locations associated with Bar-T notifying them of the changes made to their policies, practices, and procedures;
- i. Records documenting the training provided to staff of Bar-T, including the dates of the training, names and positions of participants, and names of trainers;
- j. All documents that come into Bar-T's possession relating to a decision to deny enrollment to a child with a disability, or terminate a child with a disability from a Bar-T child care program; and
- k. All documents that come into Bar-T's possession relating to a decision to deny a reasonable modification for a child with a disability.

SPECIFIC RELIEF FOR COMPLAINANTS

21. In exchange for a release and waiver agreement executed by the Complainants, Bar-T agrees to compensatory damages in the amount of thirteen thousand five hundred dollars (\$13,500) to compensate the Complainants and the Child for the harm they have endured, including, but not limited to, economic losses, emotional distress, pain and suffering, and other consequential injury, pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2). Bar-T shall send to the Complainant a check payable to Barry McHugh, as parent and guardian of the Child, for the full amount within 30 days of receiving the signed release and waiver agreement.
22. Bar-T will notify counsel for the United States in writing on the day when any payment of monetary relief to the Complainant required by this Agreement has been made.

ENFORCEMENT

23. As consideration for the Agreement set forth above, the United States will not institute any civil action under the ADA based on the allegations raised in DJ # 202-35-351 except as provided in Paragraph 25 below.
24. The United States may review Bar-T's compliance with this Agreement or title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Bar-T and the parties will attempt to resolve the concerns in good faith. If the parties are unable to reach a satisfactory resolution of the issue(s) raised within 30 days of the date that the United States provides notice to Bar-T, the United States may institute a civil action in the appropriate United States District Court to enforce this Agreement or title III of the ADA against Bar-T.
25. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to do so with regard any provision of this Agreement.
26. 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, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Bar-T shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
27. This Agreement shall be binding on Bar-T, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Bar-T seeks to sell, transfer, or assign all or part of its interest during the term of this Agreement, as a condition of sale, transfer, or assignment, Bar-T shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
28. A signatory to this document in a representative capacity for Bar-T represents that he or she is authorized to bind Bar-T to this Agreement.
29. This Agreement constitutes the entire agreement between the United States and Bar-T on the matters raised herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, shall be enforceable. This Agreement can only be modified or amended by mutual written agreement of the parties.

30. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other claims for discrimination on the basis of disability. Nothing in this Agreement changes Bar-T's obligation to otherwise comply with the requirements of the ADA.

EFFECTIVE DATE/TERMINATION DATE

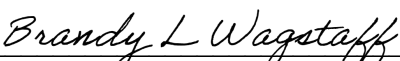
31. The effective date of this Agreement is the date of the last signature below.
32. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA:

JOHN GORE
Acting Assistant Attorney General
REBECCA BOND
Acting Deputy Assistant Attorney General
Civil Rights Division


ANNE RAISH, Acting Chief
KATHLEEN P. WOLFE, Special Litigation Counsel
ROBERTA KIRKENDALL, Special Legal Counsel
Disability Rights Section
Civil Rights Division



BRANDY L. WAGSTAFF, Trial Attorney
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950 Pennsylvania Avenue, N.W. – NYA
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(202) 307-2219

10/10/2017

Date




SARAH A. MARQUARDT
Assistant United States Attorney
District of Maryland

10/10/17

Date

FOR BAR-T YEAR ROUND PROGRAMS FOR KIDS:



JOE RICHARDSON
Chief Executive Officer
Bar-T Year Round Programs for Kids
18753 North Frederick Avenue, Suite 203
Gaithersburg, MD 20879

10/5/17

Date

EXHIBIT 1

NON-DISCRIMINATION STATEMENT PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

Bar-T will not discriminate against any individual on the basis of disability with regard to the full and equal enjoyment of the goods and services of Bar-T. Bar-T will also not discriminate against any individual because of the known disability of an individual with whom the individual is known to have a relationship or association.

Bar-T will make reasonable modifications to its policies, practices, or procedures when necessary to afford its goods and services to individuals with disabilities, including children with developmental disabilities, unless Bar-T can demonstrate that making the modifications would fundamentally alter the nature of its goods and services.

Bar-T shall not exclude a child on the basis that the child poses a direct threat to the health or safety of others unless that risk is significant and cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

Bar-T will take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden, *i.e.*, significant difficulty or expense.