

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES  
OF AMERICA AND LEARNING CARE GROUP, INC.,  
UNDER TITLE III OF THE ADA**

**Background**

1. The Parties to this Settlement Agreement are the United States of America and Learning Care Group, Inc. (LCG).
2. LCG provides early education and day care services to children between the ages of six weeks and twelve years. LCG operates under seven brands including: Childtime Learning Centers, Tutor Time Child Care/Learning Centers, The Children's Courtyard, Montessori Unlimited, La Petite Academy, Everbrook Academy, and Creative Kids. In total, LCG operates approximately 900 child care centers across the country.
3. This matter was initiated by complaints from parents of children with Type I diabetes (also known as insulin dependent diabetes) alleging that LCG refused to assist their children with certain aspects of their diabetes care, 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. Based on those complaints, the United States initiated a compliance review of LCG's treatment of children with diabetes.
4. The United States and LCG have reached an agreement that is in the parties' best interests, and that the United States believes is in the public interest, to

resolve this matter on mutually agreeable terms. The parties have therefore voluntarily entered into this Settlement Agreement, as set forth below.

5. This Agreement applies to LCG, all of its child care centers operating under each of its individual brands, and any brands it subsequently acquires and operates.

### **Title III of the ADA**

6. The United States, through the Attorney General, is responsible for enforcing title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing title III, 28 C.F.R. Part 36.
7. 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 involves a pattern or practice of discrimination or that raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.
8. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or

accommodations of any place of public accommodation. 42 U.S.C.

§ 12182(a); 28 C.F.R. § 36.201.

9. LCG is a private entity that owns, leases (or leases to), or operates places of public accommodation, including a nursery or other place of education and/or a day care center, and as such, LCG is a public accommodation within the meaning of title III of the ADA, 42 U.S.C. § 12181(7)(J & K); 28 C.F.R. § 36.104.
10. Children with Type 1 diabetes have a physical impairment that substantially limits one or more major life activities, including the operations of the endocrine system, which is a major bodily function. Accordingly, such children have a disability within the meaning of 42 U.S.C. § 12102; 28 C.F.R. § 36.105(a)(1)(i).

### **Investigation**

11. During the course of the investigation, the United States determined that LCG: (i) refused to provide assistance with insulin administration (by pen or syringe) to children with Type I diabetes based on a corporate-wide policy requiring such refusal and (ii) discontinued its prior assistance with insulin administration by pen or syringe.

### **Actions to Be Taken by LCG**

12. LCG shall comply with the requirements of title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
13. LCG shall not discriminate against an individual on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12182(a); 28 C.F.R. §§ 36.201, 36.205.
14. LCG shall evaluate each request for reasonable modification on an individualized basis, based on objective evidence and current medical standards, and in a manner consistent with the terms of this Agreement.
15. LCG agrees that where a parent and a child's physician or other qualified health care professional deem it appropriate (based on the child's current health status) for a child to be assisted in diabetes care by a layperson, that training child care staff members to assist with routine diabetes care tasks, including the administration of insulin by pen, syringe, or pump, is generally a reasonable modification under the ADA unless the individual circumstances cause a fundamental alteration to the individual center'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. LCG's Compliance/Inclusion Specialist. LCG maintains a central office position which it calls a "Compliance Specialist" or "Inclusion Specialist" (hereinafter "Inclusion Specialist"). That individual is tasked with, among other things, reviewing and assisting LCG child care centers with responding to requests for reasonable modifications. LCG's Inclusion Specialist shall receive adequate training and resources to ensure that LCG adopts and implements all of the policies, procedures, and actions necessary to implement this Agreement. Contact information for LCG's Inclusion Specialist shall be publicized on LCG's website and in any handbooks or application materials provided to parents of current or prospective enrollees.
17. Within thirty (30) days of the Effective Date of this Agreement, LCG's Inclusion Specialist will contact all parents or guardians<sup>1</sup> of children currently enrolled at LCG centers who have previously requested reasonable modifications for Type 1 diabetes, and whom LCG staff is not assisting with insulin administration, and will initiate an interactive process to discuss reasonable modifications necessary to support an uninterrupted day of child care. LCG shall maintain records regarding this process, as well as any denied reasonable modification requests.

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<sup>1</sup> All subsequent references to parents shall be understood to include parents or guardians.

18. Policies and Procedures: Within forty-five (45) days of the effective date of this Agreement, LCG shall submit to the United States, for review and approval, written policies and procedures regarding LCG's obligations under title III of the ADA, to be adopted and implemented at all LCG child care centers. LCG shall adopt and implement the revised policies and procedures within fifteen (15) days of the United States' approval. LCG policies shall, at a minimum, include the following:

a. A Disability Nondiscrimination Policy that states: (i) LCG does not discriminate in the provision of services to children with disabilities, including children with diabetes, and (ii) LCG child care centers will make reasonable modifications for children with disabilities, including, but not limited to children with Type I diabetes, upon request from the child's parent, unless such a request amounts to a fundamental alteration of the program.

b. Information for parents of children with disabilities, explaining how to request modifications to LCG's policies, practices, and procedures with respect to child care services. This information shall be publicized on LCG's website and its parent and employee handbooks, and disseminated with application materials provided to parents of prospective enrollees.

c. A sample Diabetes Medical Management Plan (DMMP) that is consistent with the National Diabetes Education Program's Sample Diabetes Medical Management Plan: <https://www.niddk.nih.gov/health-information/communication-programs/ndep/health-professionals/helping-student-diabetes-succeed-guide-school-personnel/tools-for-effective-diabetes-management>. A link to the sample DMMP shall be included on LCG's website and disseminated with application materials provided to parents of prospective enrollees with diabetes.

19. On receiving a request for a reasonable modification for a child with a disability, LCG shall conduct an individualized assessment of the child's needs resulting from his/her disability. This assessment shall include, where appropriate, initiating a discussion with the parent(s) to explore what modification(s) may be available. Following the discussion, LCG may:
- a. Grant the request;
  - b. Make a narrowly tailored request in writing for more information relating to the child's necessary modifications(s); or
  - c. Deny the request, in whole or in part, where, consistent with this Agreement and the ADA, LCG can demonstrate that making the requested modification will result in a fundamental alteration.

LCG shall respond in writing to any individual making a request for reasonable modification within ten (10) days from the date the request is received. If a request for reasonable modification is denied per paragraph 19(c), LCG shall notify the child's parent(s) in writing, of the specific reason(s) for the denial and advise the individual making the request that, if circumstances change, they may make a new request. Copies of such denials, and related documents, must be maintained by LCG and provided to the United States in LCG's annual report required by Paragraph 24 of this Agreement.

20. Publication/Dissemination of Disability Nondiscrimination Policy. Within sixty (60) days of LCG's implementation of its Disability Nondiscrimination Policy, LCG shall ensure that it is posted and easily accessible from a new tab on the LCG web site and the web site of each of its child care brands.
21. Training for Managers. Within sixty (60) days after the Effective Date of this Agreement, LCG shall develop a live or virtual classroom training program ("ADA Managers Training") that shall be provided to its managers (including all regional managers, and managers at each LCG child care center location), and annually thereafter. The ADA Managers Training shall be initiated within ninety (90) days of the Effective Date of this Agreement

and completed no later than one hundred and eighty (180) days after the Effective Date.

- a. The ADA Manager Training shall address:
  - i. The requirements of title III of the ADA;
  - ii. The existence and general content of this Agreement;
  - iii. LCG's nondiscrimination obligations under the ADA, including the obligations outlined in this Agreement;
  - iv. Diabetes and topics related to aspects of caring for a child with insulin dependent diabetes including information on how to administer insulin.
  
- b. The ADA Manager Training shall be conducted by an individual or individuals with substantive knowledge of the ADA, and of diabetes. The ADA Training shall be conducted live, via webinar, or via other interactive technology, and include a question and answer session prior to the conclusion of the Training.
  
- c. For persons who must receive ADA Manager Training pursuant to this Agreement, but who did not receive training on a designated training date required under this Agreement (for instance, because they were on leave from LCG or because they began their affiliation with LCG subsequent to the training date), LCG shall provide the ADA Manager

Training to such persons within ninety (90) days after the individual's return or commencement of service to LCG;

d. LCG shall send, via electronic mail, to the United States the proposed curriculum for the training, as well as the trainer(s)' name(s), qualifications (including resume(s)), and contact information, no later than thirty (30) calendar days after the entry of this Agreement. LCG shall adopt any changes to the curriculum provided by the United States.

e. LCG shall maintain attendance logs reflecting the names and titles of attendees of the ADA Manager Training.

22. Training for Teachers and Child Care Workers. Within one year of the Effective Date of this Agreement, and annually thereafter, LCG shall provide training for its teachers and other child care staff about LCG's obligations under title III of the ADA, including but not limited to the obligation to provide reasonable modifications for children with disabilities. This training shall also provide an overview of LCG's obligations under this Agreement, and with respect to providing assistance to children with Type I diabetes.

23. Child-Specific Training. In addition to the training required by paragraphs 21 and 22 of this Agreement, LCG shall ensure that, as necessary to individual circumstances, each of its child care centers, working with the

parent(s), provides Child & Disability -Specific Training to appropriate employees where necessary to afford a child with a disability the full and equal enjoyment of the child care center. For example, where a parent requests assistance with a child's diabetes management, individualized training should be arranged by LCG, in consultation with the parent, and conducted by a qualified health professional (such as the child's health care provider, or a local diabetes educator), on the tasks necessary to safely care for that child while at the LCG center, including the implementation of the child's Diabetes Medical Management Plan (DMMP). This training would typically include, among other things, training on blood sugar testing; administration of insulin through pen, syringe, or pump; administration of the emergency drug Glucagon; and a refresher on practicing universal precautions.

24. Annual Reporting. For the term of this Agreement, LCG shall submit a Report to the United States documenting its compliance with this Agreement every year on the anniversary of the Effective Date, except for the Final Report which shall be sixty days prior to that anniversary.
  - a. The Report shall include, for the relevant time period:
    - i. All dates of LCG's ADA training conducted pursuant to this Agreement;

ii. A certification by Counsel that all required individuals have received training; and

iii. All documents reflecting the basis for each decision, if any, to deny a request for assistance with diabetes care for an applicant or enrolled child at LCG, including all supporting documents.

b. All Reports required pursuant to this Agreement shall be delivered to the undersigned counsel via electronic mail.

25. LCG agrees to pay ten thousand dollars (\$10,000.00) in compensatory damages to each of the eight (8) aggrieved individuals/families previously identified by the United States in its investigation. Within ten (10) business days of LCG's receipt of an executed release from each, (release attached hereto as Attachment A), LCG shall forward a check to the United States in the appropriate sum, and made payable to each such individual in his or her full legal name, as identified to LCG by the United States.

26. Nothing in this agreement shall require LCG to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the

provision of auxiliary aids or services. 42 U.S.C §12182(b)(3), 28 C.F.R. §36.208. In determining whether an individual poses a direct threat to the health or safety of others, LCG must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 28 C.F.R. §36.208. (b)

### **Implementation and Enforcement**

27. Enforcement. As consideration for the Agreement set forth above, the United States will not institute any civil action under the ADA based on the allegations in this matter, except as provided in paragraph 28 below.
28. Compliance Review and Enforcement. The United States may review LCG'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 LCG 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 thirty (30) days of the date that the United States provides notice to LCG, the United States may

institute a civil action against LCG in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

29. Effective Date. The Effective Date of this Agreement is the date of the last signature below.
30. Term. The duration of this Agreement will be three (3) years from the Effective Date.
31. Entire Agreement. This Agreement, including Attachment A, constitutes the entire agreement between the United States and LCG 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 attachments, shall be enforceable.
32. Non-Waiver. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce any provision of the Agreement.
33. Severability. 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 LCG 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.

34. Binding Nature of Settlement Agreement. This Agreement shall be binding upon LCG, all of its child care brands, its agents, employees, successors, and assigns.
35. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.
36. Other Violations. This Agreement is not intended to remedy any other potential violations of the ADA or any other law.
37. Continuing Responsibility. This Agreement does not affect LCG's continuing responsibility to comply with all aspects of the ADA.

**FOR THE UNITED STATES OF AMERICA:**

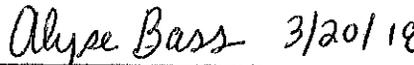
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