

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
SMARTER KIDS CHILD CARE
UNDER THE AMERICANS WITH DISABILITIES ACT

DJ #202-19-375

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Smarter Kids Child Care (“Smarter Kids”) in Smyrna, Georgia.
2. The United States Department of Justice, of which the United States Attorney’s Office for the Northern District of Georgia is a component, is the federal agency responsible for administering and enforcing Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12188 *et seq.* 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, 506.7.
3. Smarter Kids is a private organization that provides child day care services for toddlers, and school age children. As the operator of a child care center, Smarter Kids is a place of public accommodation, and its operations affect commerce. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.
4. This Settlement Agreement (“Agreement”) resolves a matter that was initiated by a complaint filed with the Department of Justice alleging that Smarter Kids discriminated against an individual because of his disability, in violation of Title III of the ADA, 42 U.S.C. §§ 12181 *et seq.* and its implementing regulation, 28 C.F.R. Part 36 by denying the child an opportunity to participate in child day care on the basis of his autism.
5. Smarter Kids denies the allegations and claims and contends that it has at all times acted in good faith and in compliance with applicable law but believes it is in its best interests to amicably resolve the investigation without the necessity of litigation and without an admission of liability, and the United States believes that it is in the public interest to resolve this dispute amicably and without litigation. This Agreement constitutes a good faith settlement of disputed claims and shall not be deemed, in any manner, an admission, finding or indication for any purposes whatsoever, that Smarter Kids or any of its officers, employees, and/or other agents violated state or federal law or violated Complainant’s rights or the rights of any other person at any time. In consideration of the terms set out in this document, the Parties agree to enter voluntarily into this Agreement, as set forth below.

TITLE III COVERAGE

6. 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. The Complainant's son was diagnosed with autism in August of 2023. Autism is a physical or mental impairment that substantially limits one or more major life activities. Accordingly, he has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105.
8. Smarter Kids provides day care services to approximately 60 children. Smarter Kids is located at 2764 Cumberland Blvd SE, Smyrna, GA 30080.
9. Smarter Kids is a private entity within the meaning of 42 U.S.C. § 12181(6) and its facility is a place of public accommodation, specifically a day care center, within the meaning of 42 U.S.C. § 12181(7) and 28 C.F.R. § 36.104. Accordingly, Smarter Kids is a public accommodation subject to title III of the ADA because it owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104.
10. No public accommodation subject to title III of the ADA may discriminate against an individual on the basis of a 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. Nor can a public accommodation 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. 42 U.S.C. § 12182(b)(1)(E). Further, public accommodations cannot impose impermissible eligibility criteria that screen out or tend to screen out individuals with disabilities unless the criteria are shown to be necessary for the provision of the public accommodation's goods and services. 42 U.S.C. § 12182(b)(2)(A)(i).
11. Ensuring that public accommodations, including day care centers, do not discriminate against persons with disabilities, including persons with autism, is an issue of general public importance. The United States Department of Justice 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.

INVESTIGATION

12. Following its investigation, the United States determined that:
 - a. The Complainant's son was diagnosed with autism in August of 2023. The Complainant disclosed her son's condition to Smarter Kids. Complainant's son

was two years old at the time Complainant sought admission at the day care program.

- b. Smarter Kids notified the Complainant that due to its inability and lack of expertise in providing services to individuals with disabilities, it could not enroll Complainant's son in Smarter Kids' day care program.
13. As a result of its investigation, the United States determined that Smarter Kids violated the ADA by:
- a. Denying the Complainant's child, on the basis of his disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Smarter Kids in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201. Smarter Kids also discriminated against the Complainant and the Complainant's son by failing to make reasonable modifications in its policies, practices, and procedures when necessary to afford them an equal opportunity to participate in and benefit from its services, programs, and activities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
 - b. Denying the Complainant, on the basis of her association with someone with a disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Smarter Kids. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
 - c. Imposing impermissible eligibility criteria on individuals with disabilities by representing that children with autism could not be enrolled at Smarter Kid's child day care facility without demonstrating that such criteria are necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered at Smarter Kids. *See* 28 C.F.R. § 36.301(a).
 - d. As set forth above Smarter Kids disagrees with the determination(s) of the United States; denies it has violated applicable law; enters into this settlement voluntarily; and notes that said settlement shall not be deemed an admission, finding or indication that Smarter Kids or its officers, employees and/or agents violated Complainant's rights or the rights of any other person at any time.

REMEDIAL ACTIONS TO BE TAKEN BY SMARTER KIDS

- 14. Smarter Kids agrees not to discriminate against any child on the basis of his or her disability; that is, Smarter Kids agrees to provide children with disabilities an equal opportunity to participate in the same day care programs, services, or activities that Smarter Kids provides to children without disabilities.
- 15. Smarter Kids agrees that it shall not impose eligibility criteria that screens out or tends to screen out individuals with disabilities unless Smarter Kids can demonstrate that such criteria can be shown to be necessary for the provisions of the goods, services, facilities,

privileges, advantages, or accommodations being offered at the 2764 Cumberland Boulevard SE, Smyrna, GA 30080 day care facility. *See* 28 C.F.R. § 36.301(a).

16. Smarter Kids agrees to 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 it 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.
17. Smarter Kids agrees that within sixty (60) days of the effective date of this Agreement, Smarter Kids will submit to the United States, for review and approval, draft written policies, practices, and procedures regarding Smarter Kids' obligations under title III of the ADA, each of which is to be adopted and implemented at Smarter Kids within thirty (30) days following the United States' approval. The policies and procedures shall include:
 - a. A Non-Discrimination Policy adopted pursuant to Paragraphs 14-15 of this Settlement Agreement. The Non-Discrimination Policy will: be posted conspicuously in the main/reception area of Smarter Kids' day care center; be posted on the homepage of the Smarter Kids website, currently located at <https://smarterkidschildcare.net/>; and will be printed on all brochures and promotional materials during the term of this Agreement; and
 - b. Policies and procedures to ensure that Smarter Kids documents each decision to deny an individual, on the basis of disability, the full and equal enjoyment of services, facilities, or privileges offered by Smarter Kids.
18. Within thirty (30) days of the United States' approval of the above-Non-Discrimination Policy, Smarter Kids shall distribute to each Smarter Kids employee, or any third-party personnel engaged to provide services directly to children within the Smarter Kids facility:
 - a. The Non-Discrimination Policy adopted pursuant to Paragraph 17(a);
 - b. A copy of the internal procedures, and directive to comply with the documentation obligation established in Paragraph 17(b);
 - c. A written directive, which may be included in the Non-Discrimination Policy, instructing recipients that it is against the policy of Smarter Kids to discriminate against children with disabilities, including autism; and
19. Within thirty (30) days from the date upon which Smarter Kids adopts the policies and procedures set forth in Paragraph 18, Smarter Kids shall provide training on the non-discrimination 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. Smarter Kids shall provide new employees with

comparable responsibilities hired during the term of this Agreement with the training set forth in this Paragraph as well as the materials set forth in Paragraph 18 within thirty (30) days of their start date.

20. Within one year of the effective date, Smarter Kids shall again distribute the Non-Discrimination Policy and internal procedures referenced in Paragraph 18 to then-current employees.
21. Smarter Kids will maintain records reflecting the dates upon which materials or training was provided in accordance with Paragraph 17-18, as well as a log of all recipients of those materials and training, including the person's name, position, and date of the receipt of training or materials. Copies of such records shall be provided to the United States within twenty-one (21) days of any written request for them.
22. Any changes to the Non-Discrimination Policy or internal procedures during the Term of this Agreement, and all training materials related to these policies and procedures, shall be consistent with the provisions of this Agreement. Any changes to the Non-Discrimination Policy or internal procedures referenced in Paragraph 17 must be submitted to the United States for approval in advance of implementation.
23. Within fourteen (14) days of Smarter Kids becoming aware of a complaint relating to discrimination under Title III of the ADA, whether oral or in writing, Smarter Kids shall send an email to counsel for the United States at rahul.garabadu@usdoj.gov with a copy of any such complaint or, if an oral complaint was made, a description of the complaint and Smarter Kids' response.
24. Within ninety (90) days of the effective date of this Agreement, and on an annual basis thereafter for the term of the Agreement, Smarter Kids shall provide a written report to the United States documenting Smarter Kids' compliance with the Agreement. The reports should address the following issues:
 - a. Relevant information concerning any decision to deny enrollment to a child that has a disability provided that Smarter Kids has notice of the disability. "Relevant information," as used in this provision shall mean: the child's initials, the child's date of birth, the circumstances of the denial, Smarter Kids' reason for the denial, and any internal communications regarding the denial. "Decision to deny enrollment" as used in this provision shall mean an explicit denial of a child after an application has been submitted to Smarter Kids as well as circumstances where Smarter Kids employees inform inquiring applicants that they will not be granted admission, either orally or in writing.
 - b. Relevant information (as defined above) concerning all requests for modification regarding any child with a disability. Specifically, Smarter Kids will report on whether it: (i) granted the request; (ii) requested medical documentation relating to the child's disability and any necessary modifications; and/or (iii) denied the request, in which case Smarter Kids will document each and every reason for the

denial and shall submit documentation about the decisions denying such requests to the United States.

- c. The United States may request additional information related to the foregoing disclosures. Smarter Kids agrees to cooperate in good faith with reasonable requests from the United States for additional relevant information about the child and the modification, which includes, but is not necessarily limited to, the child's parent or guardian's name(s) and contact information.
25. Smarter Kids shall send the written reports set forth in Paragraph 24 via electronic mail to the United States to the attention of rahul.garabadu@usdoj.gov.
26. Smarter Kids will promptly notify the United States (by contacting the individual designated in Paragraph 25) if any individual files a lawsuit or complaint in court or with an administrative agency alleging that Smarter Kids discriminated against a child on the basis of disability.
27. For any children identified to the United States in connection with Paragraphs 23 or 24, Smarter Kids 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, Smarter Kids will retain its records concerning these topics for not less than the term of the Agreement.

MONETARY RELIEF

28. Smarter Kids will deliver checks in the total amount of seven thousand dollars (\$7,000), payable to Complainant (whose name will be provided separately by the USAO to Smarter Kids), pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the discrimination and the harm the Complainant and her son have endured (including emotional distress, and pain and suffering) as a result of Smarter Kids' denial of her son in its program on the basis of disability. The initial payment shall be made for Three Thousand Dollars (\$3,000) with subsequent payments to be made in One Thousand Dollar (\$1000.00) increments every thirty (30) days. Smarter Kids shall deliver the checks or money orders, via Federal Express, to counsel for the United States with the first check being due and payable within thirty (30) business days of the effective date of this Agreement, whereupon the United States will promptly arrange delivery of the check or money order to the Complainant.
29. Within thirty (30) days of the effective date, Smarter Kids shall make a payment in the amount of one thousand dollars (\$1,000) to the United States, pursuant to 42 U.S.C. § 12188(b)(2)(C). Smarter Kids shall deliver the check or money order, via overnight mail, to counsel for the United States.

IMPLEMENTATION AND ENFORCEMENT

30. In consideration for the Agreement set forth above, the United States will not institute any civil action alleging discrimination under the ADA based on the allegations raised in this case, except as provided in Paragraph 31 below.
31. Pursuant to 42 U.S.C. § 12188(b)(1)(A)(i), the United States may review Smarter Kids' 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 Smarter Kids, 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 days of the date that the United States provides notice to Smarter Kids, 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 Smarter Kids.
32. Failure by the United States to enforce any of the provisions of this Agreement shall not be construed as a waiver of its right to do so with regard to other provisions of this Agreement.
33. 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 Smarter Kids 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. This Agreement shall be binding on Smarter Kids, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that Smarter Kids 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, Smarter Kids shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
35. A signatory to this document in a representative capacity for Smarter Kids represents that he or she is authorized to bind Smarter Kids to this Agreement.
36. This Agreement constitutes the entire agreement between the United States and Smarter Kids 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.
37. 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, including autism. Nothing in this Agreement changes Smarter Kids' obligation to otherwise comply with the requirements of the ADA.

38. Smarter Kids shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

39. The effective date of this Agreement is the date of the last signature below.

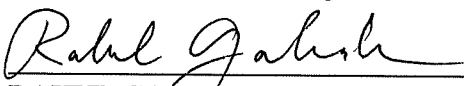
40. The duration of this Agreement will be two years from the effective date.

FOR THE UNITED STATES OF AMERICA:

Ryan K. Buchanan

United States Attorney

Northern District of Georgia



RAHUL GARABADU

Assistant United States Attorney

Northern District of Georgia

75 Ted Turner Drive, SW, Suite 600

Atlanta, Georgia 30303

404-581-6000(ph)

404-581-6182(fax)

Rahul.Garabadu@usdoj.gov

Date: 11/13/2024

FOR SMARTER KIDS CHILD CARE:


Carolyn Jones (Nov 5, 2024 16:17 EST)

Carolyn Jones, Owner

Smarter Kids Child Care Learning Center

2674 Cumberland Boulevard

Smyrna, GA 30080

smarterkids@bellsouth.net

Date: Nov 05, 2024


Brent L. Wilson (Nov 5, 2024 15:29 EST)

Brent L. Wilson

Elarbee Thompson, Sapp & Wilson

229 Peachtree Street, NE

Atlanta, GA 30303

404-659-6700 (ph)

404-222-9718 (fax)

bwilson@elarbeethompson.com

Date: Nov 05, 2024