



**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
WINNEWALD DAY CAMP,
LEBANON, NEW JERSEY**

DJ # 202-48-279

BACKGROUND AND PARTIES

1. The parties to this Settlement Agreement are the United States of America and Winnewald Day Camp in Lebanon, New Jersey ("Winnewald").
2. The United States is authorized to investigate alleged violations of Title III of the Americans with Disabilities Act ("ADA"), and to bring a civil action in federal court if the United States is unable to secure voluntary compliance. 42 U.S.C. § 12188(a)(2) and 12188(b).
3. The United States initiated its investigation of Winnewald after receiving a complaint against Winnewald that alleged violations of Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing Title III, 28 C.F.R. Part 36. Winnewald is a place of public accommodation covered by Title III of the ADA.
4. Title III of the ADA prohibits public accommodations, including summer camps, 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). Ensuring that summer camps do not discriminate against persons with diabetes is an issue of general public importance.
5. Under Title III of the ADA, a covered entity must make reasonable modifications to their policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
6. Complainant alleged that Winnewald discriminated on the basis of disability against Complainant's son, who has diabetes, by refusing to reasonably modify its policies, practices, or procedures so that he could participate in Winnewald's summer camp

during 2014. 28 C.F.R. § 35.130(b)(7). It was also alleged that Winnewald subjected the Complainant, who is known to have a relationship or association with a person with a disability, to discrimination by denying Complainant equal access to programs that were offered to parents of children without disabilities. 28 C.F.R. § 35.130(g).

7. 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. The promises, obligations, or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the United States and Winnewald.

ACTIONS TO BE TAKEN BY WINNEWALD

8. Winnewald agrees not to discriminate against any child on the basis of the disability of diabetes; that is, Winnewald agrees to provide children with diabetes an equal opportunity to attend Winnewald Day Camp and to participate in all programs, services, or activities Winnewald provides to nondisabled children.
9. Winnewald agrees that it will adopt, maintain, and enforce the policy attached hereto, and by reference incorporated herein as Exhibit 1 to this Agreement. Within twenty (20) days of the effective date of this Agreement, Winnewald will (a) post a copy of the policy in a conspicuous area of Winnewald where its employees and members of the public can readily read the policy and (b) include on its website a statement of this policy.
10. Within thirty (30) days of the effective date of this Agreement, Winnewald shall provide mandatory training on the ADA and its prohibition on discrimination on the basis of disability for all employees who work with or in the summer camp. In subsequent years, on or before the start of any summer camp, Winnewald will provide mandatory training on the ADA and its prohibition on discrimination on the basis of disability for all employees who work with or in the summer camp. During the term of this Agreement, the trainer and curriculum for such training shall be subject to approval by the United States, which approval shall not be unreasonably withheld.
11. Within ninety (90) days of the effective date of this Agreement, Winnewald shall provide a report to the United States documenting its compliance with the Agreement.

CIVIL PENALTY

12. Winnewald shall issue a check or money order in the amount of \$5000, payable to the "United States Treasury," as a civil penalty, pursuant to 42 U.S.C. § 12188(b)(2)(C) and 28 C.F.R. § 36.504(a)(3). Winnewald shall deliver the check or money order, via

Federal Express, to counsel for the United States within ten (10) business days of the effective date of this Agreement.

ENFORCEMENT

13. 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 DJ # 202-48-279, except as provided in paragraph 14.
14. The United States may review compliance with this Agreement at any time. If the United States believes that Winnewald has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the United States for a modification of the relevant terms, the United States will so notify Winnewald in writing and the Parties will attempt to resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Winnewald, it may institute a civil action in federal district court to enforce the terms of this Agreement or the requirements of Title III of the ADA.
15. Failure by the United States to enforce this Agreement with respect to any deadline or other provision herein will not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
16. 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 Winnewald 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.
17. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Exhibit and Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect Winnewald's continuing responsibility to comply with all aspects of the ADA.
18. Winnewald shall not discriminate or retaliate against any person because of his or her participation in this matter.


19. A signatory to this document in a representative capacity for Winnewald represents that he or she is authorized to bind Winnewald to this Agreement.
20. This Agreement shall be binding on Winnewald, its agents and employees.
21. This Agreement will remain in effect for three (3) years following the effective date of this agreement. Notwithstanding the term of this Agreement, Winnewald acknowledges it will comply with Title III.
22. The effective date of this Agreement is the date of the last signature below.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA:

Dated: 6/5/15

PAUL J. FISHMAN
UNITED STATES ATTORNEY, DISTRICT OF NEW JERSEY
970 Broad Street
Newark, NJ 07102

By: 
Michael E. Campion
Assistant United States Attorney
Civil Rights Coordinator

Approved: 
Caroline A. Sadlowski
Chief, Civil Division

FOR WINNEWALD DAY CAMP:

Dated: 6/5/15

SHANAHAN & VOIGT LLC
ATTORNEYS AT LAW
Attorneys for Winnewald Day Camp
200 Route 31 North, Suite 207
Flemington, NJ 08822


By: 
Anthony M. Anastasio, Esq.

EXHIBIT 1

POLICY ON PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

Winnewald Day Camp ("Winnewald") is committed to making its programs and activities available on a nondiscriminatory basis as required under Title III of the Americans with Disabilities Act (ADA). Winnewald will not discriminate against any individual on the basis of disability, including a child with diabetes, with regard to the full and equal enjoyment of its programs, services and activities ("Summer Camp"). Winnewald will make reasonable modifications for children with diabetes, both applicants and those already enrolled, on a case by case basis, to permit them to participate in its Summer Camp, unless Winnewald can demonstrate that making the modifications would fundamentally alter the nature of its Summer Camp.

Winnewald recognizes that children with insulin-dependent diabetes who participate in Summer Camp may require assistance with diabetes management. The management regime of every child with diabetes may be different and therefore one policy cannot dictate the particular protocol for all individuals.

Individualized Assessment and Reasonable Modification

Winnewald will provide this Policy; the procedure to request reasonable modification; a Diabetes Management Plan Form (Attachment A); and a Physical Examination Form (Attachment B), on its website. When informed that a child with diabetes has applied to a particular session of the Summer Camp, Winnewald will provide the parent/guardian of such child notice of this Policy. Winnewald will provide a written copy of the Policy, including the attachments, upon request.

Absent extenuating circumstances, within 8 weeks prior to the first day of each camp session, Winnewald will individually assess the needs of each child with diabetes on a case-by-case basis and work with families to provide reasonable modifications in accordance with this Policy and applicable laws. To this end, Winnewald will assess the level of assistance or supervision that is reasonable and provide assistance that is appropriate and consistent with the Diabetes Management Plan (Attachment A). Winnewald may request additional information or guidance from the child's healthcare provider or parent/guardians as necessary.

If an agreement cannot be reached for Winnewald to provide reasonable modifications, Winnewald will notify the parent/guardian of its final determination. The determination will document which modifications Winnewald will provide and which modifications it will not provide, demonstrating that the modification not provided would fundamentally alter the nature of its service, program, or activity.

Reasonable modifications shall include, but are not limited to supervising, monitoring and assisting children with diabetes while using blood glucose monitoring tests, insulin pumps, syringes, and other diabetes-related medical equipment; and permitting such children to eat and

drink as required to address their diabetic management, while participating in any program, service or activity sponsored by Winnewald.

Notwithstanding the foregoing, in all cases Winnewald will allow the parent/guardian or authorized agent to enter the Summer Camp's premises to monitor the child's blood glucose levels and take appropriate action in response to those levels. Winnewald staff will also allow the child to monitor his or her own blood glucose levels and take appropriate action, when the parent/guardian has authorized Winnewald to do so.

If the child self-identifies, or staff recognizes symptoms of hyperglycemia or hypoglycemia, the Summer Camp staff will assist the child to check blood sugar and treat the symptoms, and take steps reasonably consistent with the Diabetes Management Plan.

Training

If a child with diabetes applies for any session or program, Winnewald will arrange for a qualified healthcare professional to provide training that enables the Summer Camp to provide all care required to comply with applicable law to any staff who may be responsible for or may be working directly with a camper with diabetes. The training will include an overview of diabetes, general information on how to recognize signs and symptoms of hypoglycemia and hyperglycemia, how to get help quickly, and diabetic care practices related to glucose monitoring and regulating glucagon and insulin administration, including by insulin pump.

In addition, at the request of the parent or guardian of a child with diabetes, Winnewald will arrange for training of appropriate staff regarding the particular needs of the child as identified in the child's Diabetes Management Plan. This child-specific training may be given by the parent or guardian, or by a qualified person agreed upon by the parents.

Parent's/Guardian's Responsibilities:

Within 30 business days prior to the beginning of any session or program, the parent/guardian of a child with diabetes will provide the Summer Camp with the following:

- (1) a completed Diabetes Management Form, legible and in easy to understand terms, detailing any and all care necessary for the child's management, which is signed by the child's health care provider and signed by the child's parent/guardian to permit the Summer Camp to undertake steps indicated on the Diabetes Management Form (Appendix A),
- (2) a completed Physical Exam Form and any other health-related documents deemed relevant by the child's medical provider (Appendix B), and
- (3) a signed general release, if applicable.

For children attending a camp program who would require diabetes management for the first time during any session, the parent/guardian must immediately submit the completed Diabetes Management Plan as set forth above, and comply with the remaining aspects of this Policy with sufficient time to allow Winnewald to make good faith efforts for continuation of the camp program consistent with this Policy.

The parent/guardian will be available at Winnewald's request to attend and participate on the first day of a camp session with the child and, if deemed necessary by either party, to attend a run-through prior to the first day, and to continue to meet with and advise the staff working with the child about proper diabetes care. The parent/guardian or other emergency contacts (which may include the child's health care provider) will be available by phone each day that the child participates in a camp session.

The parent/guardian will provide specific information and training about the child's diabetes and particular needs related to diabetes care to Winnewald and will permit the child's personal health care providers to share information with staff and other health care personnel to assure the child's safety and compliance with the child's Diabetes Management Plan. The parent/guardian will promptly inform Winnewald of relevant changes in the child's health status.

The parent/guardian will provide, along with instructions about proper maintenance or use of all items, all supplies and equipment necessary for the child's safe participation in all activities. The parent/guardian will provide and properly maintain all supplies and equipment for the child's diabetes and assist with proper disposal of equipment and supplies. Children may carry their own medical supplies and snacks in a safe fashion that meets local code or safety standards for the care and disposal of medical supplies so that these supplies are in close proximity to the child. When the child cannot hold these supplies, the supplies will be held at the administrative office or health office, or by a staff member.

As applicable, the parent/guardian will furnish meals and snacks not regularly provided by Winnewald that are necessary to meet the child's needs. The parent/guardian will also ensure that the carbohydrate content falls within the proper amounts set forth in the Diabetes Management Plan so that the totals will be predetermined and calculated by the parent/guardian. Carbohydrate values will be calculated and provided on labels on each food item provided by the parent/guardian so that the staff or qualified health care professional may monitor the appropriate use of insulin and insulin pumps or other equipment to administer insulin.

The parent/guardian will check the child's blood sugar levels each morning before the child arrives at camp to ensure they are within the established "target range" in the child's Diabetes Management Plan.

If you have any questions about this Policy, please contact the Director of the Summer Camp.

ATTACHMENT A

DIABETES MANAGEMENT PLAN

[Description of Winnewald Day Camp's Activities, hours, etc.]

This plan should be completed by both the child's health care provider (*diabetes nurse educator, endocrinologist, or primary care provider/physician*) and the child's parent/guardian.

It should be immediately updated with any new information, as necessary.

Effective Dates: _____

Child's Name: _____

Date of Birth: _____

Physical Condition: _____

Date of Diagnosis: _____

Grade: _____

Contact Information: *Circle the primary contact person and phone number*

Parent/Guardian: _____

Home Address: _____

Employer: _____

Employer's Address: _____

Telephone: Home _____ Work _____ Cell _____

Parent/Guardian (2): _____

Home Address: _____

Employer: _____

Employer's Address: _____

Telephone: Home _____ Work _____ Cell _____

Who has custody of the child? _____

Child's Health Care Provider:

Name: _____

Address: _____

Telephone: _____

Emergency Number: _____

Other Emergency Contacts:

Names: _____

Relationship: _____

Telephone: Home _____ Work _____ Cell _____

Notify parent/guardian or emergency contact in the following situations: _____

Recommended Monitoring of Child: _____

Specify any medical time requirements: _____

Can child perform own monitoring? ☐ Yes ☐ No

Exceptions: _____

Identify the type of any meter, monitor, nebulizer, applicator, needle, pump, or any other devices necessary for the child's Diabetes Management Plan (*include model and instruction booklet*):

What signs does the child demonstrate when child is symptomatic: _____

Foods to avoid, if any: _____

Instructions for when food is provided to the child (*e.g. as part of a party or food sampling event*): _____

Exercise and Sports Limitations:

List, identify, and explain any restrictions to exercise, sports, or any other activities: _____

Treatment supplies to be kept at the Summer Camp site and provided by parent/guardian are as follows *(please provide specific instructions regarding the storage and treatment of all supplies)*:

For children with medical concerns, please complete the supplemental form.

This Diabetes Management Plan has been approved by:

Child's Physician/Health Care Provider

Date

I give permission to Winnewald Day Camp to perform and carry out the care tasks as outlined in the Diabetes Management Plan. I also consent to the release of the information contained in this Diabetes Management Plan to all staff members and any other adults who have custodial care of my child, such as those persons on the emergency list and who may need to know this information to maintain my child's health and safety. A written revocation or amendment to this document must be delivered to the summer camp director by the child's Parent/Guardian in order to effectuate a revocation of the same.

The Camp reserves the right to request additional documentation after review of the information contained in the document.

Acknowledged and received by:

Child's Parent/Guardian

Date

Child's Parent/Guardian

Date

ATTACHMENT B

PHYSICAL EXAMINATION

[To be completed by Parent/Guardian and Child's Health Care Provider.]

To Parent/Guardian: Please complete the information in the box BEFORE submitting to your child's health care provider:

Name of applicant: _____
Gender: (circle one) M F
Date of Birth: _____ / _____
Address: _____ _____

To Child's Health Care Provider: This form should be completed and approved by the child's diabetes nurse educator, endocrinologist, or primary care provider/physician. Your cooperation in supplying the following information about an applicant for the Winnewald Day Camp is greatly appreciated. The child will not be accepted without your approval on this form.

Date of most recent exam: _____

I have read the Diabetes Management Plan, attached to this form, and certify that it provides a complete regimen of care for this child's safety during summer camp. I recognize that the child will be active at this camp and represent that this plan accounts for all applicable varying activity levels. Any restrictions are noted below.

Have any complications of health been detected? Yes / No (circle one)

If yes, please specify: _____

Is the child emotionally and physically mature or responsible enough to independently manage his/her health concerns? Yes ____; No _____. If not, please explain the minimum level of the medical licensure or training required for the child's safety (unless fully described in the Diabetes Management Plan): _____

Do you have any specific concerns regarding the management of this child's safety or health at camp not fully described in the Diabetes Management Plan? Yes ____; No _____. If yes, please explain: _____

Do you recommend any limitation on child's activity while at camp beyond those described in the Diabetes Management Plan? Yes ____; No _____. If yes, please describe: _____

I certify that the information above is correct to the best of my knowledge and agree to answer questions and provide management guidance to the _____ camp program as requested at the sole cost and expense of the parent/legal guardian of the child.

Primary Health Care Provider's Name: (typed or printed)

Address: _____

Phone: (____) _____

Health Care Provider's Signature:

Parents/Guardians Name: (typed or printed)

Address: _____

Phone: (____) _____

Parents/Guardians Signature:
