

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
YOUTH FITNESS AND FUN, LLC**

**DJ # 202-48-312**

**BACKGROUND AND PARTIES**

1. The parties to this Settlement Agreement (the "Agreement") are the United States of America and Youth Fitness and Fun, LLC, d/b/a Flyers' Team, Flyers' Academy, and/or Flyers' Gymnastics Academy, Inc. (hereinafter "Flyers," and together with the United States, the "Parties").
2. The United States is authorized to investigate alleged violations of Title III of the Americans with Disabilities Act ("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, 36.503, 36.506.
3. The United States initiated its investigation of Flyers after receiving a complaint from the parents of K.D., a minor, that Flyers violated Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing Title III, 28 C.F.R. Part 36. K.D. is a child with multiple medical disabilities, including one that requires the use of a gastrointestinal feeding tube, and those impairments substantially limit one or more major life activities. 42 U.S.C. § 12102; 28 C.F.R. § 36.105 (defining "disability" for purposes of Title III of ADA). Accordingly, K.D. has a disability within the meaning of 42 U.S.C. § 12102(1 & 2) and 28 C.F.R. § 36.105.
4. Title III of the ADA prohibits public accommodations 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). The Flyer's facility is a place of public accommodation because it is a gymnasium or other place of exercise or recreation. *Id.* § 12181(7)(L); 28 C.F.R. § 36.104(12). As a result, Flyers is a public accommodation because it owns, operates, leases or leases to a place of public accommodation, and is thus subject to the ADA's Title III requirements. Ensuring that gymnastics centers and other places of exercise and recreation do not discriminate against persons with disabilities is an issue of general public importance.

5. Under Title III of the ADA, a public accommodation must make reasonable modifications to its policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless the entity can show that making the modifications would fundamentally alter the nature of the service, program, or activity. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. § 36.302(a & b).
6. The parents of K.D. alleged that Flyers discriminated on the basis of disability against K.D. when it refused to reasonably modify its policies, practices, or procedures so that K.D. could participate in an age-appropriate gymnastic program offered by Flyers in the fall of 2016.
7. Flyers has cooperated with the United States' investigation and has committed to fully complying with the ADA. 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.

#### INVESTIGATION

8. The Flyers facility is located at 129 North White Horse Pike, Hammonton, New Jersey.
9. Flyers offers programs for a wide range of ages and gymnastics skill levels, including private lessons; weekly classes for various age groups (e.g., the "Tiny-Tot Gymnastics" class designed for two- and three-year-olds and the "Boys Ninja Fitness," for boys who are at least 5-years old); and programs based on the child's gymnastics skill level (i.e., invitation-only teams that participate in local, regional, and international competitions). Flyers contends that there is a broad spectrum of gymnastic skills levels among children, thus, not all children participating in a Flyers program are grouped strictly by age; some of Flyers programs are designed specifically for children who seek to train or perform at a competitive level.
10. Flyers has approximately ten employees and/or volunteers working with approximately 200-250 children registered to participate in one or more of Flyers' programs.
11. Between 2012 and 2017, Flyers enrolled four children with disabilities in one or more of its programs. Aside from the complaint concerning K.D., Flyers has not previously received a complaint concerning its treatment of a child with a disability.
12. Flyers does not maintain policies, practices, or procedures for complying with the ADA.

13. K.D., who is a person with a disability, has participated in a range of age-appropriate, physically-demanding activities, including karate, dance, soccer, and horse-back riding. She also regularly participates in gym class at her public school.
14. In the fall of 2016, K.D.'s parents sought to enroll K.D. in an age-appropriate gymnastics program. At the time, K.D. was 6 years old.
15. K.D.'s parents registered K.D. to participate in a "trial class" at Flyers and signed the standard waiver of liability. On the registration form, K.D.'s parents noted her disabilities. Flyers' personnel noted on the registration form that a physician's note would be required. K.D.'s parents also discussed K.D.'s needs with Flyers staff prior to her participation. They explained that K.D. may need to rest more frequently than other children and that when assisting K.D. in tumbling exercises, the "spotter" that assists all children should be aware of K.D.'s feeding tube when spotting K.D. Aside from those needs, K.D. did not require any additional modifications or one-on-one attention.
16. Initially, and based on its standard procedures, Flyers allowed K.D. to participate in a trial class to assess her ability and to determine an appropriate placement for her. K.D. returned for a second trial class in a different program. Her parents brought a note from her physician, clearing K.D. to participate in age-appropriate gymnastics. After this second "trial class," Flyers and K.D.'s parents agreed on an appropriate program for K.D.
17. Before K.D. began attending that program on a regular basis, however, K.D.'s parents received a phone call from a Flyers administrator. That administrator stated her view that, after having reviewed the physician's note, the administrator determined that K.D. medical needs were too severe to participate in a gymnastics program at Flyers, that K.D. might overexert herself, and that it would neither be appropriate nor feasible to change the program to meet K.D.'s needs.
18. Flyers violated the ADA by imposing impermissible eligibility criteria, refusing to allow K.D. to participate in an integrated setting, and by refusing to make reasonable modifications for K.D. where such modifications (i.e., allowing K.D. to sit out certain exercises and for the spotter to be "aware" of K.D.'s feeding tube when spotting her for tumbling) would not have fundamentally altered the nature of Flyers' program.

#### ACTIONS TO BE TAKEN BY FLYERS

19. Flyers agrees not to discriminate against any child on the basis of his or her disability; that is, Flyers agrees to provide children with disabilities an equal

opportunity to participate in the same gymnastics classes, programs, services, or activities that Flyers provides to children without disabilities.

20. Flyers acknowledges that individuals with disabilities are entitled to have an equal opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, and accommodations, and that individuals with disabilities shall not be required to enroll in a "separate or different" Special Needs Class. *See* 28 CFR § 36.203(b). Flyers further agrees to make reasonable modifications to its policies, practices, and procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.

21. When an individual with a disability (or his or her parents or guardians) requests a reasonable modification of Flyers' policies, practices, or procedures with respect to its gymnastics programs, Flyers shall:

- a. Promptly consider the requested modification(s), the age and gymnastic skill level of the child, the program in which the child is or will be enrolled, and other pertinent facts;
- b. Upon receiving a request for a modification that Flyers does not automatically grant, Flyers will initiate a discussion with the individual making the request and/or that individual's parents or guardians—and, when appropriate, the child—to explore what modification(s) may be necessary. Following the discussion, Flyers 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); this request may include documentation from a medical professional with knowledge of the child and his or her disabilities and the accommodations requested.
- c. After an individualized assessment of the request is completed, and if the request for a modification is denied, Flyers will document each and every reason for the denial of the request and shall submit that documentation to the individual and/or the individual's parents or guardians.
- d. Flyers will make a good faith effort to provide a response to a request for modification, in writing, within 5 business days from the date the request is received.

22. Flyers agrees that it will adopt, maintain, and enforce the policy attached hereto, and by reference incorporated herein as Exhibit 1 to this Agreement. Within 20 days of the effective date of this Agreement, Flyers will post a copy of the policy in a conspicuous area of its facility where its employees and members of the public can readily read the policy.
23. Within 20 days of the effective date of this Agreement, Flyers will post to its website a copy of the policy attached hereto as Exhibit 1. The policy will be accessible from a new tab entitled "Nondiscrimination Policy," to be located on the drop-down list under "About Us," located at <http://www.flyersacademy.com/home>. Alternatively, Flyers may, with the advance approval of the United States Attorney's Office (which will not be unreasonably withheld), post the policy in another location on its website.
24. Flyers shall continue to post the policy attached hereto as Exhibit 1 for at least the term of this Agreement. If Flyers creates a new webpage, it will post the policy in an equally prominent location on the new webpage. The posting/publication of the policy will, in all instances, occur in a font style and size equivalent to other material on Flyers' website.
25. Within 60 days of the effective date of this Agreement, Flyers shall designate an employee to serve as an ADA liaison. That employee shall have sufficient training and authority to endeavor to ensure that Flyers remains in compliance with this Agreement. This employee should be available to discuss, explain and coordinate the handling of ADA training and complaints pursuant to this Agreement.
26. Within 90 days of the effective date of this Agreement, and continuing for at least the term of this Agreement, Flyers will include the following language in its registration materials (both hard copy and electronic):

When a child with a disability needs a reasonable modification to a program offered by Flyers, or needs a modification to Flyers' rules, policies, or practices in order to participate fully and equally in Flyers' gymnastics programs in the most integrated setting, the parents or guardians of the child should inform [FLYERS' ADA liaison]. The request should describe the nature of the individual's disability and the modification needed. Upon receiving a request for an accommodation, Flyers will work with the parents or guardians of the child in order to make an individualized assessment as to whether the requested accommodation can be granted.

27. The language required under the preceding paragraph will, in all instances, occur in a font style and size equivalent to other notices on Flyers' registration material.

28. Within 60 days of the entry of this Agreement, Flyers will provide its employees with training regarding Title III of the ADA. The training will cover the anti-discrimination provisions of Title III of the ADA, the duty to make reasonable modifications to policies, practices, and procedures under the ADA, Flyers' obligations under Title III of the ADA, and the policy attached hereto as Exhibit 1. This training will be provided by the Flyers' employee who is designated as the ADA liaison (pursuant to Paragraph 25 of this Agreement). This training shall be conducted live, and include an opportunity to pose questions to the individual(s) conducting the training at the conclusion of the training session. Flyers' will send the proposed training materials to the United States for pre-approval.

29. Reporting.

- a. Initial: Within 90 calendar days following the effective date of this Agreement, Flyers shall submit a report to the United States confirming its fulfillment to date of the requirements set out in Paragraphs 22, 23, 25, 26, 28, and 32 of this Agreement. Flyers will include in this report a copy of the attendance log from the training conducted pursuant to Paragraph 28 of this Agreement.
- b. Continuing Reports: During the term of this Agreement, Flyers shall report to the United States not less than once every 12 months. Such report shall include:
  - i. A description of each request for a modification to a Flyers' program, including the initials of the child on whose behalf the request was made, the description of the request, the date the request was made;
  - ii. A description of Flyers' response to the request for a modification, including the date that Flyers' reached a decision on the request, the nature of that decision, and the name of the Flyers employee primarily responsible for handling the request;
  - iii. Knowledge of any lawsuit, written complaint, charge, or other allegation that Flyers has engaged in disability-based discrimination. Such notice will include, at a minimum, a description of the nature of the allegation, the name(s) of the

individual(s) bringing the allegation, and all documentation possessed by Flyers relevant to the allegation.

30. During the term of this Agreement, Flyers agrees to cooperate with the United States with respect to any request by the United States for information or documents relating to its compliance with the terms of this Agreement.
31. All information provided pursuant to the above reporting requirements under this Agreement should be provided to the United States at the following address:

United States Attorney's Office  
Attn: David Simunovich  
970 Broad Street, 7<sup>th</sup> Floor  
Newark, NJ 07102

#### MONETARY RELIEF

32. Within 20 days of Flyers' receipt of an executed release of K.D.'s claims against Flyers (a copy of which is attached hereto as Exhibit 2), Flyers agrees to make a payment of \$1,000 to K.D. Flyers will make the payment by check payable to K.D. and will mail the payment to the address listed in Paragraph 31 of this Agreement.

#### ENFORCEMENT

33. 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 # 202-48-312, except as provided in Paragraph 34 of this Agreement.
34. The United States may review Flyers' compliance with this Agreement at any time. If the United States believes that Flyers has failed to comply in a timely manner with any requirement of this Agreement without obtaining from the United States advance written agreement for a modification of the relevant terms, the United States will so notify Flyers 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 30 days of the date it provides notice to Flyers, 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.

35. 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.
36. 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 Flyers 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.
37. 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 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 Flyers' continuing responsibility to comply with all aspects of the ADA.
38. Flyers shall not discriminate or retaliate against any person because of his or her participation in this matter.
39. A signatory to this document in a representative capacity for Flyers represents that he or she is authorized to bind Flyers to this Agreement.
40. This Agreement shall be binding on Flyers, its agents and employees.
41. This Agreement will remain in effect for three years following the effective date of this agreement. Notwithstanding the term of this Agreement, Flyers acknowledges it has ongoing obligations to comply with Title III.
42. 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: Apr. 5, 2018

CRAIG CARPENITO  
UNITED STATES ATTORNEY

By: 

David V. Simunovich  
Assistant United States Attorney  
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Newark, NJ 07102  
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FOR YOUTH FITNESS AND FUN, LLC

Dated: 4/12/18, 2018

YOUTH FITNESS AND FUN, LLC  
d/b/a Flyers' Gymnastics Academy, Inc.  
d/b/a Flyers' Team  
d/b/a Flyers' Academy

By: 

Christine Deskovic  
Owner, Youth Fitness and Fun, LLC

# Exhibit 1

## **POLICY ON PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY**

Flyers (Flyers' Team, Flyers' Academy, and Flyers' Gymnastics Academy) is committed to making its programs and activities available on a nondiscriminatory basis as required by the Americans with Disabilities Act (ADA).

Flyers will not discriminate against any individual on the basis of disability with regard to the full and equal enjoyment of its goods, services, privileges, advantages and accommodations. Flyers will make reasonable modifications to its programs for children with disabilities, both new applicants and those already enrolled, on a case-by-case basis, to permit them to participate in its gymnastics programs in the most integrated setting possible, unless Flyers can demonstrate that making the modifications would fundamentally alter the nature of its goods and services.

### ***Individualized Assessment and Reasonable Modification***

When informed that a child with a disability has applies to participate in one of Flyers' programs, Flyers will provide the parent/guardian of that child with a copy of this Policy. Flyers will also provide a written copy of this Policy upon request.

When a request for a modification is made, Flyers will individually assess the needs of the child on whose behalf the request is made and will address each request for a modification on a case-by-case basis. Flyers will work with families to provide reasonable modifications in accordance with this Policy and applicable laws and may, to that end, request certain documentation concerning the child's needs. Absent extenuating circumstances, Flyers will provide the parent/guardian with a decision on the request for a reasonable modification within 5 business days of the request having been made.

If an agreement cannot be reached for Flyers to provide reasonable modifications, Flyers will notify the parent/guardian, in writing, of the modifications Flyers will provide (if any) and which modifications it will not provide. Pursuant to the ADA, Flyers may choose not to provide a modification if that modification would fundamentally alter the nature of its service, program, or activity.

### ***Point of Contact***

If you have any questions about this Policy, please contact the [FLYERS' ADA liaison].