

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
PARAGON SCHOOL OF ARTISTIC GYMNASTICS, LLC**

**DJ # 202-48-318
USAO#2017V00297**

BACKGROUND AND PARTIES

1. The parties to this Settlement Agreement (the "Agreement") are the United States of America and Paragon Gymnastics, LLC ("Paragon") (collectively the "Parties").
2. The United States is authorized to investigate alleged violations of Title III of the Americans with Disabilities Act ("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, 36.503, 36.506.
3. The Paragon facility is located at 49 Walnut Street, Norwood, New Jersey.
4. Paragon offers programs for a wide range of ages and gymnastics skill levels, including private lessons; weekly classes for various age groups (e.g., the "Parent Tot" class designed for toddlers accompanied by parents, "Preschool and "Kindergarten" classes designed for children in those age groups to participate in without parents, and "Ninja Zone" classes which combine obstacle courses, martial arts, and gymnastic skills for boys from preschool age through age 11); instructional programs for students in first grade and older grouped by ability and age, tumbling classes for dancers and cheerleaders of all ages; an intramural gymnastics team for qualified girls in first grade and older who qualify; and an invitation-only competitive team. Paragon also hosts parties and summer programs, including a summer camp program for children ages 3 through 12.
5. Paragon employs approximately 7 full-time and 30 part-time workers to facilitate its programs, classes, and parties throughout the year.
6. In January 2017, the United States received a complaint from S.K., the mother of E.K. The complaint alleged that Paragon discriminated against E.K. on the basis of disability when it refused to reasonably modify its

policies, practices, or procedures to allow E.K.'s birthday party to occur at Paragon on January 8, 2017.

7. E.K. is a minor child with an impairment that substantially limits 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, E.K. has a disability within the meaning of 42 U.S.C. § 12102(1 & 2) and 28 C.F.R. § 36.105.
8. As a private organization that provides gymnastics training and hosts children's classes and parties, Paragon is a place of public accommodation subject to Title III's requirements. See 42 U.S.C. § 12181(7)(L) (defining public accommodations to include gymnasiums and "other place[s] of "exercise or recreation"); see also 28 C.F.R. § 36.104(12).
9. 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). Under Title III, 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 demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations of the public accommodation. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. § 36.302(a & b).
10. Title III of the ADA further prohibits public accommodations from denying individuals, on the basis of their association with someone with a disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Paragon. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
11. In addition, Title III of the ADA prohibits public accommodations from imposing impermissible eligibility criteria and from imposing a surcharge on individuals with disabilities to cover the cost of measures to provide individuals with disabilities with nondiscriminatory treatment. 42 U.S.C. § 12182 and 28 C.F.R. § 36.301.
12. 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.

DETERMINATIONS

13. As part of its investigation, Paragon provided documents and information to the United States. The investigation revealed the following information:
- a. In July 2016, E.K. participated in a Paragon summer program. At the time of the program, Paragon was aware that E.K. was a child with a disability.
 - b. On average, Paragon hosts approximately 100 parties per year.
 - c. If a party guest with a disability arrives at a party, Paragon has the ability to adjust the party so that guest can participate, including in instances where Paragon was unaware of the disability prior to the party.
 - d. In December 2016, S.K. booked a 7th birthday party for E.K. to accommodate approximately 15 children. The party was scheduled for the morning of January 8, 2017.
 - e. As part of that booking process, S.K. signed a document entitled "Birthday Party Agreement" ("BPA"). The BPA stated, in part, that children attending the party "must be able to understand and follow directions without assistance" and that if any guest has "special needs," the signatory to the Agreement must provide a "Professional Certified Shadow" to be responsible for that guest or guests, regardless of the nature of that guest's disability.
 - f. Neither the BPA nor Paragon's policy manual defined "special needs" or "Professional Certified Shadow." Paragon interpreted "Professional Certified Shadow" to exclude parents or family members. However, Paragon did and does permit Paragon employees to function in this role.
 - g. Paragon's policy bases the fee for parties on guest headcount. When Paragon determines that it needs to add additional staff to a particular party for reasons unrelated to the addition of guests beyond the agreed-upon headcount, it does so at no additional charge to the parent.
 - h. On January 3, 2017, five days prior to E.K.'s scheduled birthday party, Paragon, as part of its regular practice, contacted S.K to confirm the details for the party, including the final guest total. Paragon routinely uses this information to determine the number of staff required for parties.

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- i. During the course of that conversation, S.K. indicated that E.K. attends a school for children with disabilities and that some of her guests were children with disabilities.
 - j. Paragon refused to permit guest parents to serve as “shadows” for the January 8, 2017 party and did not offer to utilize additional Paragon staff to facilitate the party on that date.
 - k. Paragon thereafter cancelled the January 8, 2017 party.
 - l. Since January 2017, Paragon has modified its BPA to replace “Professional Certified Shadow” with “Special Needs Shadow” and now permits parents or other physically capable adults to serve as shadows for party guests with disabilities.
 - m. The revised BPA does not define “Special Needs Shadow” or “special needs.”
 - n. The revised BPA requires parents to notify Paragon at the time of booking if children with “special needs” will participate in the gymnastics portion of the party so that Paragon can discuss “necessary precautions” with the parents.
 - o. The revised BPA still requires host parents to ensure that any guest with “special needs” has a “Special Needs Shadow” regardless of that guest’s disability.
14. As a result of its investigation, the United States determined that Paragon violated the ADA by:
- a. Denying E.K., on the basis of her disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Paragon. Specifically, Paragon discriminated against E.K. by failing to make reasonable modifications in its policies, practices, or procedures regarding children with disabilities, including E.K. and her guests, where such modifications would not have fundamentally altered the nature of Paragon’s Program. 42 U.S.C. § 12182 and 28 C.F.R. § 36.302.
 - b. Denying E.K.’s parents, on the basis of their association with someone with a disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of Paragon. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.

- c. Imposing impermissible eligibility criteria on individuals with disabilities by uniformly requiring them to utilize a "certified professional shadow" regardless of the nature of the disability, and by imposing a surcharge on those individuals by requiring them to provide that shadow. 42 U.S.C. § 12182 and 28 C.F.R. § 36.301.

ACTIONS TO BE TAKEN BY PARAGON

15. Paragon agrees not to discriminate against any child on the basis of his or her disability; that is, Paragon agrees to provide children with disabilities an equal opportunity to participate in the same parties, gymnastics classes, programs, services, or activities that Paragon provides to children without disabilities.
16. Paragon agrees that it shall not impose eligibility criteria that screens out or tends to screen out individuals with disabilities unless Paragon 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 relating to parties. *See* 28 C.F.R. § 36.301(a).
17. Paragon 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, including, but not limited to, those goods services, facilities, privileges, advantages, and accommodations associated with parties at Paragon.
18. Paragon agrees that it will adopt, maintain, and enforce the policy attached hereto, and by reference incorporated herein as Exhibit 1 to this Agreement. Within 21 days of the effective date of this Agreement, Paragon will provide a copy of the policy and training on the policy to all Paragon employees. Paragon will also maintain a list indicating which employees have received a copy of the policy and the training and when the employee received each. Paragon will make this list available to the United States upon request.
19. Paragon will post a notice containing the following language in a conspicuous area of its facility where its employees and members of the public can readily see: **"WE WELCOME CHILDREN WITH DISABILITIES AND HAVE A POLICY TO ACCOMMODATE THEM. PLEASE ASK IF YOU HAVE QUESTIONS."** Paragon will make copies of the policy referenced in Paragraph 18 of and attached as Exhibit 1 to this Agreement available to members of the public upon request.

20. Paragon shall post on its website the policy attached hereto as Exhibit 1 for at least the term of this Agreement. If Paragon creates a new webpage, it will post the policy in an equally prominent location on the new webpage.
21. Paragon will, within 21 days of the effective date of this Agreement, revise its current party registration form that uniformly requires all children with disabilities to have a "shadow" regardless of the nature or extent of those disabilities, to comply with Title III. Prior to implementing the revised form, Paragon will submit the form for review and approval to the Office of the United States Attorney for the District of New Jersey, attention AUSA Kelly Horan Florio.
22. Within 28 days of the effective date of this Agreement, and continuing for at least the term of this Agreement, Paragon will include the following information on requesting reasonable modifications to its party registration materials (both hard copy and electronic):

When a child with a disability needs a reasonable modification to a program offered by Paragon, or needs a modification to Paragon's rules, policies, or practices in order to participate fully and equally in Paragon's programs, the parents or guardians of the child should inform [designate employee by name or position] as soon as possible. The request should describe the nature of the individual's disability and the modification needed. Upon receiving a request for a modification, Paragon will work with the parents or guardians of the child in order to make an individualized assessment as to whether the requested modification can be granted. Upon reaching a conclusion, Paragon will inform the parents or guardians of the child of that conclusion and, if Paragon determines not to grant the request, the reason why.

Paragon will also post this language in a conspicuous area of its website, so that all members of the public may access the language and make requests for reasonable modifications with respect to any activities, events, or classes held at Paragon.

23. When an individual with a disability (or his or her parents or guardians) requests, either orally or in writing, a reasonable modification of Paragon's policies, practices, or procedures, or informs Paragon that a reasonable modification will be required, Paragon shall:

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- a. Promptly consider the requested modification(s), the age and gymnastic skill level of the child, the party format in which the child is to participate if the request involves a party, and other pertinent facts;
 - b. Upon receiving a request for a modification that is not automatically granted, Paragon 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, Paragon 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, Paragon 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. Paragon will make a good faith effort to provide a response to a request for modification, in writing, prior to the date of the party, class, or other event.
24. Paragon will maintain written records of all requests for modifications made pursuant to Paragraph 23 of the Agreement. The written records will identify the request made and the modification provided. If Paragon determines not to provide the requested modification the record will also identify the reasons justifying that determination. Paragon will retain the records for 3 years from the date of entry and will make the records available to the United States upon request.
25. Where Paragon grants a request for a reasonable modification, including a personal "shadow" for any party participant with a disability, Paragon will not impose a surcharge onto the party hosts or parents of the participating child. See 28 C.F.R. § 36.301(c).

26. Within 90 days of the effective date of this Agreement, Paragon 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, Paragon's obligations under Title III of the ADA for classes, programs, and parties, and the policy attached hereto as Exhibit 1. Prior to conducting this training, Paragon will send the proposed training materials to the United States for review and approval.
27. Reporting:
- a. Initial: Within 90 days following the effective date of this Agreement, Paragon shall submit a report to the United States confirming its fulfillment to date of the requirements set out in Paragraphs 18, 19, 20, 21, 22, 26, and 30 of this Agreement. Paragon will also include in this report a copy of the attendance log from the training conducted pursuant to Paragraph 26 of this Agreement.
 - b. Continuing Reports: During the term of this Agreement, Paragon shall submit a written report to the United States on January 15 of each calendar year. Such report shall include:
 - i. A description of each request for a modification relating to a Paragon party, including the initials of the child on whose behalf the request was made, the description of the request, the date the request was made, Paragon's response to that request, including the date of the response, and, if denied, Paragon's reason for denial;
 - ii. Information about any lawsuit, written complaint, charge, or other allegation that Paragon is or should be aware of that Paragon 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 Paragon relevant to the allegation.
28. During the term of this Agreement, Paragon 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.

29. 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: Kelly Horan Florio
970 Broad Street, 7th Floor
Newark, NJ 07102

MONETARY RELIEF

30. Within 30 days of Paragon's receipt of an executed release of E.K.'s claims against Paragon (a copy of which is attached hereto as Exhibit 2), Paragon agrees to make a payment of:
- a. \$3,000 to E.K. for damages. Paragon will make the payment by check payable to E.K. and will mail the payment to the address listed in Paragraph 29 of this Agreement.
 - b. \$2,000 to the parents of E.K. for damages. Paragon will make the payment by check payable to S.K. and will mail the payment to the address listed in Paragraph 29 of this Agreement.
 - c. \$1,000 to the United States in civil penalties to vindicate the public interest. Paragon will make the payment by check payable to the United States and will mail the payment to the address listed in Paragraph 29 of this Agreement.

ENFORCEMENT

31. 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 # 202-48-318, except as provided in Paragraph 32 of this Agreement.
32. The United States may review Paragon's compliance with this Agreement at any time. If the United States believes that Paragon 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 Paragon 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

Paragon, it may institute a civil action to enforce the terms of this Agreement or the requirements of Title III of the ADA.

33. 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.
34. 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 Paragon 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.
35. 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 Paragon's continuing responsibility to comply with all aspects of the ADA.
36. Paragon acknowledges that it has ongoing obligations to comply with Title III.
37. Paragon shall not discriminate or retaliate against any person because of his or her participation in this matter.
38. A signatory to this document in a representative capacity for Paragon represents that he or she is authorized to bind Paragon to this Agreement.
39. This Agreement shall be binding on Paragon, its agents and employees.
40. This Agreement will remain in effect for three years following the effective date of this agreement.
41. The effective date of this Agreement is the date of the last signature below.

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AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA:

Dated: October 11, 2019

CRAIG CARPENITO
UNITED STATES ATTORNEY


By: Kelly Horan Florio
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PARAGON SCHOOL OF ARTISTIC GYMNASTICS

Dated: Oct 10, 2019

**PARAGON SCHOOL OF ARTISTIC
GYMNASTICS**

By: 

Dorothy Pendergast
Owner, Paragon School of Artistic Gymnastics