

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
CHILDREN'S CHOICE ACADEMY
UNDER THE AMERICANS WITH DISABILITIES ACT**

This settlement agreement ("Agreement") is entered into between the United States of America ("United States") and Children's Choice Academy ("CCA") (collectively, the "Parties").

BACKGROUND

1. This Agreement resolves the United States' investigation of CCA for alleged discrimination against an individual with a disability in violation of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
2. This matter is based upon a complaint filed with the United States Attorney's Office for the District of New Jersey alleging that CCA discriminated against the Complainant's son, an individual with a disability, in violation of title III by denying the child an opportunity to participate in child day care on the basis of his exposure to Hepatitis C.
3. CCA disputes that it is responsible for violating the ADA, but nevertheless 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. 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

4. 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.
5. The Complainant's son was exposed at birth to Hepatitis C, and Complainant alleges that, as a result, CCA regarded the Complainant's son as having or possibly having Hepatitis B and/or C and/or HIV, which are physical impairments that substantially limit major life activities. "[A]n individual is 'regarded as having such an impairment' if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, even if the public accommodation asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA." 28 C.F.R. § 36.105(f)(1). The Complainant's son therefore has a disability within the meaning of the ADA because CCA regarded the child as having such an impairment. 42 U.S.C. § 12102(3); 28 C.F.R. § 36.105(a)(1)(iii).

6. CCA provides day care services to approximately 70 children. CCA's office and day care center are located at 46 West Ferris St, East Brunswick NJ 08816.
7. CCA 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, CCA 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.
8. 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).
9. Ensuring that public accommodations, including day care centers, do not discriminate against persons with disabilities, including persons with Hepatitis or HIV, 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

10. Following its investigation, the United States determined that:
 - a. The Complainant's infant son was exposed to Hepatitis C at birth. Due to the age of her son at the time the Complainant sought his enrollment in a CCA child care program, no diagnosis could be made as to whether or not her son actually carried the virus. The Complainant disclosed her son's possible exposure to Hepatitis C to CCA prior to submitting an application for her son's enrollment in the CCA day care program.
 - b. Contrary to the Complainant's assertion that she informed CCA employees that her son was exposed to Hepatitis C, CCA employees recalled that the Complainant told them that her son was exposed to and/or was positive for Hepatitis B and/or HIV.

- c. CCA notified the Complainant that due to her son possibly having Hepatitis or HIV, it could not enroll him in CCA's day care program.
11. As a result of its investigation, the United States determined that CCA 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 CCA. Specifically, CCA denied the Complainant's child admission to its day care on the basis of the child's disability or perceived disability without making an individualized assessment that the child posed a direct threat to the health or safety of others that could not be mitigated by reasonable modifications of CCA's policies, practices, or procedures. 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.302, 36.208.
 - 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 CCA. 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 Hepatitis B, Hepatitis C or HIV could not be enrolled at CCA's child day care facility in the absence of an individualized assessment that the presence of the particular child posed a direct threat or that it would be a legitimate safety requirement necessary for safe operation. 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.301; 36.208.
12. CCA denies the Complainant's allegations and denies that it violated the ADA.

REMEDIAL ACTIONS TO BE TAKEN BY CCA

13. CCA agrees not to discriminate against any child on the basis of his or her disability; that is, CCA agrees to provide children with disabilities an equal opportunity to participate in the same day care programs, services, or activities that CCA provides to children without disabilities.
14. CCA agrees that it shall not impose eligibility criteria that screens out or tends to screen out individuals with disabilities unless CCA 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 CCA's day care facility. *See* 28 C.F.R. § 36.301(a).
15. CCA 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 CCA's day care programs.

16. Nothing in this Agreement requires CCA to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations being offered by CCA if, after CCA conducted an individualized assessment, CCA determines that that individual poses a direct threat to the health or safety of others. 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. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation, including CCA, 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). A “direct threat” analysis by a public accommodation cannot be based on speculation, generalizations, unfounded fears, or stereotypes about the risks posed by the presence of a person with Hepatitis B, C, or HIV in that place of public accommodation.
17. CCA agrees that within 45 days of the effective date of this Agreement, CCA will submit to the United States, for review and approval, draft written policies, practices, and procedures regarding CCA’s obligations under title III of the ADA, each of which is to be adopted and implemented at CCA within 21 days following the United States’ approval. The policies and procedures shall include:
 - a. A Non-Discrimination Policy, adopted pursuant to Paragraphs 13-15 of this Settlement Agreement. The Non-Discrimination Policy will: be posted conspicuously in the main/reception area of all CCA facilities; be posted on the homepage of the CCA website, currently located at <http://www.childrenschoicenj.com>; and will be printed on all brochures and promotional materials during the term of this Agreement; and
 - b. Policies and procedures to ensure that CCA documents each decision to deny an individual, on the basis of disability, the full and equal enjoyment of services, facilities, or privileges offered by CCA.
18. Within 30 days of the United States’ approval of the above-Non-Discrimination Policy, CCA shall distribute to each CCA employee or any third-party personnel engaged to provide services directly to children within the CCA facility:
 - a. The Non-Discrimination Policy adopted pursuant to Paragraph 17;
 - 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 CCA to discriminate against children with disabilities, including Hepatitis and HIV; and

d. Training on Title III of the ADA (for CCA employees only).

New employees shall also be provided the materials listed in this paragraph and receive such training within 30 days of their start date for the duration of this Agreement.

19. Within one year of the effective date, CCA shall again distribute the Non-Discrimination Policy and internal procedures referenced in Paragraph 17 to then-current employees.
20. CCA will maintain records reflecting the dates upon which materials or training was provided in accordance with Paragraph 18-19, 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 10 days of any written request for them.
21. 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.
22. Within 14 days of CCA becoming aware of a complaint relating to discrimination under Title III of the ADA, CCA shall send an email to counsel for the United States at daniel.meyler@usdoj.gov with a copy of any such complaint or, if an oral complaint was made, a description of the complaint and CCA's response.
23. Within 90 days of the effective date of this Agreement, CCA shall provide a written report to the United States documenting CCA's compliance with the Agreement.

MONETARY RELIEF

24. Within 10 days after receiving Complainant's signed release (attached as Exhibit A), CCA will deliver a check in the total amount of \$5,000, payable to Complainant (whose name will be provided separately by the USAO to CCA), 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 CCA's denial of her son in its program on the basis of disability. CCA shall provide written notification to counsel for the United States, including a copy of the check, within seven days of completing the actions described in this paragraph.

IMPLEMENTATION AND ENFORCEMENT

26. 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 No. 202-48-340 (USAO No. 2018V00701), except as provided in Paragraph 25 below.

27. Pursuant to 42 U.S.C. § 12188(b)(1)(A)(i), the United States may review CCA'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 CCA, 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 CCA, 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 CCA.
28. 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.
29. 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 CCA 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.
30. This Agreement shall be binding on CCA, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assignees. In the event that CCA 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, CCA shall obtain the written accession of the successor or assignee to any obligation remaining under this Agreement for the remaining term of this Agreement.
31. A signatory to this document in a representative capacity for CCA represents that he or she is authorized to bind CCA to this Agreement.
32. This Agreement constitutes the entire agreement between the United States and CCA 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.
33. 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 Hepatitis and HIV. Nothing in this Agreement changes CCA's obligation to otherwise comply with the requirements of the ADA.
34. CCA shall not discriminate or retaliate against any person because of his or her participation in this matter.

EFFECTIVE DATE/TERMINATION DATE

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

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

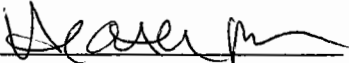
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United States Attorney

By:  _____

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12/17/2019
Date

AGREED AS TO FORM:



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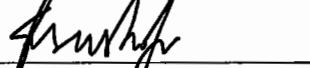
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Heather.Muzumdar@ThompsonHine.com

12/9/19

Date

AGREED AND CONSENTED TO:



SASHA LERNER

Executive Director

Children's Choice Academy

46 West Ferris Street

East Brunswick, NJ 08816

(732) 613-4488

12/07/2019

Date