

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND WATCHUNG HILLS REGIONAL SCHOOL DISTRICT
DJ # 204-48-293**

BACKGROUND

1. The parties to this settlement agreement (the “Agreement”) are the United States of America and Watchung Hills Regional High School District Board of Education (“School District”).
2. This matter was initiated on a complaint received by the United States Attorney’s Office for the District of New Jersey alleging that Watchung Hills Regional High School (“WHRHS”), which is part of the Watchung Hills Regional High School District, discriminated against one or more students on the basis of disability by failing, in violation of Title II of the ADA, to (a) evacuate one or more students with mobility disabilities at WHRHS during at least one emergency evacuation and (b) reasonably modify its policies and procedures for students with mobility disabilities.

JURISDICTION

3. The United States Department of Justice, of which the United States Attorney’s Office (“USAO”) for the District of New Jersey is a component, is responsible for administering and enforcing Title II of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. Part 35.
4. Complainant is the parent of an individual with a disability within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.104. Complainant’s child, A.A., has a neurological movement disorder, which substantially limits one or more major life activities, including, but not limited to, walking standing, lifting, bending, and neurological functions.
5. The School District is a public entity within the meaning of Title II of the ADA, 42 U.S.C. § 12131, and therefore is subject to the requirements of Title II, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35.
6. Title II of the ADA prohibits public entities from discriminating against any individual on the basis of disability, including by excluding such individual from participation in or denying such individual the benefits of the services, programs, or activities of the public entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).
7. The United States is authorized to investigate alleged violations of Title II of the ADA. The United States is also authorized to issue findings, and where appropriate, to negotiate and secure voluntary compliance agreements. If voluntary compliance cannot be achieved, the Attorney General is authorized under 42 U.S.C. § 12133 to bring a civil action enforcing Title II of the ADA. *See* 42 U.S.C. § 12133; 28 C.F.R. Part 35, Subpart

F.

8. Pursuant to 28 C.F.R. § 35.190(e), the United States Department of Justice has exercised its discretion to retain this complaint for investigation under Title II of the ADA. This Agreement does not address rights and responsibilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, or any other laws.
9. The School District has fully cooperated with the United States' investigation concerning the above-referenced complaint.
10. The United States and the School District agree that it is in all the parties' best interest, and the United States believes that it is in the public interest, to resolve this complaint on mutually agreeable terms without litigation and have therefore agreed to the terms of this Agreement. Accordingly, the School District has agreed to resolve this matter as set forth below. In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit in this matter, except as provided in paragraph 21 of this Agreement.

INVESTIGATION AND FINDINGS

11. Background

- a. WHRHS is located at 108 Stirling Road, Warren, N.J. and serves students from Warren Township and the neighboring communities of Watchung, Green Brook in Somerset County and Long Hill Township in Morris County.
- b. WHRHS, which sits on approximately 85 acres, serves approximately 2,100 students housed in one building.
- c. WHRHS is comprised of a one story main building with three wings, the North Wing, South Wing, and West Wing. Each wing is comprised of two floors.
- d. The West and North wings are connected, contain multiple classrooms, and are accessible by elevators and stairwells. There is no egress to the outside from the second floor in emergency situations.
- e. The South Wing is comprised of two unconnected corridors containing multiple classrooms and is accessible by stairwells only. There is no elevator access to the South Wing, and there is no means of egress to the outside from the second floor in emergency situations
- f. At the time of the investigation, at least two students enrolled at WHRHS, including A.A., used wheelchairs because of disabilities that impacted mobility.

- g. For the 2014-2015 school year, A.A. [fictitious initials used for confidentiality reasons] was enrolled in at least one class on the second floor of the West Wing.
- h. For the 2014-2015 school year, at least one other student with a mobility disability was enrolled in at least one class on the second floor of the North and/or West Wing.

12. Pre-Incident Safety Plan and Training

- a. At the time of an emergency evacuation at WHRHS on October 7, 2014 (“the Emergency Evacuation”), although WHRHS had a written safety and evacuation plan, the plan did not include any provisions for evacuating students with mobility disabilities.
- b. Before the Emergency Evacuation, WHRHS had not provided training to its security personnel or other staff members about evacuating students with mobility disabilities.
- c. Before the Emergency Evacuation, WHRHS did not allow students with mobility impairments to participate fully and equally during drills, but WHRHS alleges took all reasonable steps to ensure their safety and well-being.

13. Pre-Incident Safety Discussions

- a. At the time of the Emergency Evacuation, A.A. used a wheelchair as a result of a neurological movement disorder, which substantially limited the major life activities of walking and use of the neurological/muscular system.
- b. WHRHS had no written policy concerning the evacuation of students with mobility disabilities. However, WHRHS personnel assured A.A.’s parents that that A.A.’s classes would be held on the first floor of the school to facilitate A.A.’s evacuation in the event of an emergency.
- c. Nonetheless, despite these assurances, A.A.’s history class remained on the second floor of the West Wing.

14. Evacuation Incident: October 7, 2014

- a. On October 7, 2014, an unplanned fire alarm occurred at WHRHS.
- b. As a result of the unplanned fire alarm, the Director of Security, who coordinates school safety issues, gave an evacuation order over the school’s PA system.
- c. In response to the evacuation order, WHRHS evacuated students without mobility disabilities.
- d. During the evacuation of the student body, A.A. could not evacuate the West Wing because the elevator had been stopped.

- e. Some students without disabilities waited with A.A. An unidentified adult told the students without disabilities to evacuate the building and to no longer wait with the students with disabilities.
- f. WHRHS did not evacuate A.A. during the Emergency Evacuation. Instead, A.A. remained on the second floor of the West Wing with an Administrator until the “all clear” signal was given.

ACTIONS TO BE TAKEN BY THE SCHOOL DISTRICT

- 15. Consistent with the ADA, the School District and WHRHS shall not discriminate against any individual on the basis of disability, including mobility disabilities, and will provide all children with disabilities an equal opportunity to participate in all of WHRHS’s programs, services, and activities.
- 16. Consistent with the ADA, the School District, by and through its officials, agents, employees, and all persons in active concert or participation with WHRHS in the performance of its function as a public school, shall not engage in any act or practice that (i) excludes a disabled student from participating or benefitting from, or does not afford a disabled student an opportunity to participate in or benefit from the services, programs, or activities of the School District that is equal to that afforded others; or (ii) fails to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability in violation of Title II of the ADA.
- 17. The School District shall ensure that students with disabilities must not be excluded from participation in or be denied the benefits of WHRHS’s safety protocols and practices, including but not limited to evacuations – whether actual evacuations or drills – consistent with 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35. To effectuate this goal, the School District has adopted and implemented a new policy , which the United States has approved.
- 18. The School District will provide annual training to all school employees on Title II of the ADA regarding: (i) the duty to ensure that students with disabilities have the opportunity to participate in or benefit from the services, programs, or activities of WHRHS that is equal to that afforded to others; and (ii) the duty to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability in violation of Title II of the ADA (“ADA Training”), according to the following schedule.
 - a. Within ninety (90) days of the effective date of this Agreement, the School District will provide ADA Training to all school employees who have direct and daily interaction with students with disabilities, including but not limited to the administrators of WHRHS, teachers who have students with disabilities in their classrooms, aides of students with disabilities, and security personnel.

- b. In addition, no later than October 31, 2017, the School District will provide ADA Training to all WHRHS employees, including contractors interacting with students, who did not otherwise receive ADA Training prior to that date.
 - c. For subsequent school years, the School District will provide ADA Training to all WHRHS employees, including contractors interacting with students, no later than October 31st of each year. The School District will provide ADA Training to all new WHRHS employees or on-site contractors who interact with students on a daily basis within twenty (20) days of the start of their employment with WHRHS. The School District shall ensure that such ADA Training is provided by an appropriately qualified individual concerning the scope and substance of such training. The School District, in the alternative, may implement an online ADA training program.
 - d. The School District shall bear the cost of ADA Training described in this paragraph.
19. The content of the training required in the immediately preceding paragraph, together with the text of all training manuals or written materials used in the training required in the immediately preceding paragraph, shall be consistent with the provisions of this Agreement and approved in advance by counsel for the United States and Board of Education counsel.
20. Within thirty (30) days of the effective date of this Agreement, the School District shall adopt and implement evacuation plans for all students with disabilities that have mobility impairments attending WHRHS such that all students have the opportunity to participate in evacuations – whether actual evacuations or drills – conducted by WHRHS.

ENFORCEMENT

21. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any portion of it has been violated, the United States will raise its concern with the School District and will attempt to resolve its concern with the School District in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues within thirty (30) days of the date it provides notice to the School District, the United States may institute a civil action in federal district court.
22. For the purposes of the immediately preceding paragraph, it is a violation of this Agreement for the School District to fail to comply in a timely manner with any of the requirements in this Agreement without obtaining sufficient advance written agreement with the United States for an extension of the relevant timeframe imposed by the Agreement.
23. Failure by the United States to enforce any provision of this Agreement shall not be

construed as a waiver of the United States' right to enforce that provision or any other provision of this Agreement.

24. This Agreement constitutes the entire agreement between the parties. This settlement shall not be considered an admission of wrongdoing or liability by the School District but is entered into to resolve a disputed claim. No other 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 shall be enforceable.
25. The School District shall not retaliate in violation of 42 U.S.C. § 12203 against the Complainant, the child, or any person based on their cooperation with the USAO's investigation of this matter, nor on the basis of any person's involvement in the administration of this Agreement.
26. Failure by the United States to enforce a deadline or provision in this Agreement will not be construed as a waiver of the United States' right to enforce any deadlines or provisions of this Agreement.
27. All notices, demands, or other communications, including reporting materials, to be provided under this Agreement shall be in writing and delivered by email or overnight delivery to the following persons and addresses (or such other persons and addresses as any party may designate in writing from time to time):

For the United States:

Michael E. Campion
U.S. Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-3141
michael.campion@usdoj.gov

For the School District:

Marc H. Zitomer, Esq.
Schenck, Price, Smit & King, LLP
220 Park Avenue
PO Box 991
Florham Park, New Jersey 70932

28. The School District will make a copy of this document available to any person upon request.
29. This Agreement shall remain in effect for three (3) years from its effective date.

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

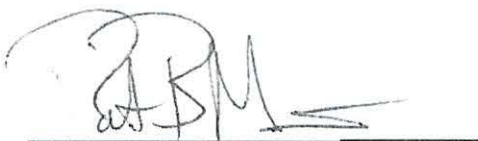
FOR THE UNITED STATES

Date: 9/11/17

WILLIAM E. FITZPATRICK
ACTING U.S. ATTORNEY

By: 
MICHAEL E. CAMPION
Assistant United States Attorney
Chief, Civil Rights Unit

FOR THE SCHOOL DISTRICT:

By: 
ROBERT MORRISON
Board President
WHRHS School District

Date: 9/6/17


Witness

Dated: 9/6/17