

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND KINDERCARE EDUCATION LLC,  
UNDER TITLE III OF THE ADA  
DJ # 202-14-207**

**BACKGROUND**

1. The Parties to this Settlement Agreement are the United States of America and KinderCare Education LLC (“KinderCare”).
2. KinderCare provides early education, child care, and before- and after-school care services to children between the ages of six weeks and twelve years. KinderCare currently operates under three brands: KinderCare Learning Centers, KinderCare Education at Work, and Champions Before- and After-School Programs. In total, KinderCare currently operates approximately 1,800 facilities across the country.
3. This matter was initiated by a complaint filed by the Center for Children’s Advocacy of Connecticut (CCA) on behalf of the parents of two children with Type 1 diabetes (also known as insulin dependent diabetes) alleging that KinderCare refused to assist their children with insulin administration, in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36. Based on those complaints, the United States Attorney’s Office for the District of Connecticut (the “United States”) opened an investigation to determine whether any violations of title III of the ADA had occurred. A third complaint against KinderCare by the parent of another child with Type 1 diabetes was filed with the United States by CCA during the course of the investigation.
4. The United States and KinderCare have reached an agreement that is in the parties’ best interests, and that the United States believes is in the public interest, to resolve this matter on mutually agreeable terms. The parties have therefore voluntarily entered into this Settlement Agreement, as set forth below.
5. This Agreement applies to KinderCare, all of its Facilities operating in the United States under each of its individual brands, and any brands it subsequently acquires and operates in the United States during the term of this Agreement. For purposes of this Agreement, the term “Facility(ies)” means any child day care center, camp, before-care program, aftercare program, or other educational program owned or operated by KinderCare in the United States.

**Title III of the ADA**

6. The United States, through 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.

7. Ensuring that childcare providers do not discriminate on the basis of disability is an issue of general public importance. The United States 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 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, 503, 506.
8. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
9. KinderCare is a private entity that owns, leases (or leases to), or operates places of public accommodation, including a nursery or other place of education and/or a day care center, and as such, KinderCare is a public accommodation within the meaning of title III of the ADA, 42 U.S.C. § 12181(7)(J & K); 28 C.F.R. § 36.104.
10. Children with Type 1 diabetes have a physical impairment that substantially limits one or more major life activities, including the operations of the endocrine system, which is a major bodily function. Accordingly, such children have a disability within the meaning of 42 U.S.C. § 12102; 28 C.F.R. § 36.105(a)(1)(i).
11. Although KinderCare advised the United States that KinderCare provides a wide range of accommodations to children with disabilities, including blood glucose testing, administration of Glucagon, tracking and monitoring carbohydrates, special dietary accommodation, insulin administration via pumps, and more, the United States has determined that KinderCare's policy, practice or procedure was that KinderCare staff would not directly administer insulin to children via a syringe or pen.

#### **Actions to Be Taken by KinderCare**

12. KinderCare shall comply with the requirements of title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.
13. KinderCare shall not discriminate against an individual on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12182(a); 28 C.F.R. §§ 36.201, 36.205.
14. KinderCare shall evaluate each request for reasonable modification on the basis of disability on an individualized basis, relying on objective evidence and current medical standards, and in a manner consistent with the terms of this Agreement.
15. KinderCare agrees that where a parent or guardian<sup>1</sup> and a child's physician or other qualified health care professional deem it appropriate (based on the child's current health status) for a child to be assisted in diabetes care by a layperson, that training child care staff members to assist with routine diabetes care tasks, including the administration of insulin by pen, syringe, or pump, is generally a reasonable modification under the ADA unless KinderCare can demonstrate that the individual circumstances cause a fundamental alteration to its goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.

16. KinderCare's Manager of Inclusion Services. KinderCare maintains a central office department currently referred to as "Inclusion Services."<sup>2</sup> All KinderCare faculty and staff are responsible for providing services to children with disabilities. They do so under the supervision and leadership of the Regional Vice President, District Leader and Center Director with support provided by Inclusion Services. The Inclusion Services Department is tasked with, among other things, reviewing and assisting KinderCare Facilities with responding to requests for reasonable modifications. KinderCare's Inclusion Services staff shall receive adequate training and resources to ensure that KinderCare adopts and implements all of the policies, procedures, and actions necessary to implement this Agreement. Contact information for KinderCare's Inclusion Services hotline shall be publicized on KinderCare's website and in any handbooks or application materials provided to parents of current or prospective enrollees.
17. Within sixty (60) days of the Effective Date of this Agreement, KinderCare's Inclusion Services Department will contact all parents of children currently enrolled at KinderCare Facilities who have requested a reasonable modification within the past year that KinderCare staff provide administration of insulin via pen or syringe, and whose request was denied. KinderCare will initiate an interactive process to discuss reasonable modifications necessary to support an uninterrupted day of child care for such children, including the administration of insulin to children via a syringe or pen. KinderCare shall maintain records regarding this process, as well as any denied reasonable modification requests during the term of this Agreement.
18. Policies and Procedures: Within sixty (60) days of the effective date of this Agreement, KinderCare shall submit to the United States, for review and approval, written policies and procedures regarding KinderCare's obligations under title III of the ADA, to be adopted and implemented at all KinderCare Facilities. KinderCare shall adopt and implement the revised policies and procedures within fifteen (15) days of the United States' approval. KinderCare policies shall, at a minimum, include the following:
- a. A Disability Nondiscrimination Policy that states: (i) KinderCare does not discriminate in the provision of services to children with disabilities, and (ii) KinderCare child care centers will make reasonable modifications for children with disabilities, upon request from the child's parent, unless such a request amounts to a fundamental alteration of the program.
  - b. Information for parents of children with disabilities, explaining how to request modifications to KinderCare's policies, practices, and procedures with respect to child care services. This information shall be publicized on KinderCare's website and its parent and employee training materials, and disseminated with application materials provided to parents of prospective enrollees with disabilities.
  - c. A sample Diabetes Medical Management Plan (DMMP) that is consistent with the National Diabetes Education Program's Sample Diabetes Medical Management Plan: <http://www.diabetes.org/assets/pdfs/advocacy/safe-at-school/childcare-dmmp.pdf>. A link to the sample DMMP shall be included on KinderCare's website and disseminated with application materials provided to parents of prospective enrollees with diabetes.

19. On receiving a request for a reasonable modification for a child with a disability, KinderCare shall conduct an individualized assessment of the child's needs resulting from his/her disability. This assessment shall include, where appropriate, initiating a discussion with the parent(s) and, at the request of parents or guardians and when necessary authorizations have been given, any professionals (such as educators or health care professionals) who work with children in other contexts to explore what reasonable modification(s) may be available. Following the discussion, KinderCare may:
- a. Grant the request;
  - b. Make a narrowly tailored request in writing for more information relating to the child's necessary modifications(s); or
  - c. Deny the request, in whole or in part, where, consistent with this Agreement and the ADA, KinderCare can demonstrate that making the requested modification will result in a fundamental alteration, as defined in the ADA, its implementing regulations, and interpreting case law and agency guidance. KinderCare shall respond in writing to any individual making a request for reasonable modification within ten (10) business days from the date the request is received. If a request for reasonable modification is denied per paragraph 19(c), KinderCare shall notify the child's parent(s) in writing, of the specific reason(s) for the denial and advise the individual making the request that, if circumstances change, they may make a new request. Copies of such denials, and related documents, must be maintained by KinderCare and provided to the United States in KinderCare's annual report required by Paragraph 24 of this Agreement.
20. Publication/Dissemination of Disability Nondiscrimination Policy. Within sixty (60) days of KinderCare's implementation of its revised Disability Nondiscrimination Policy, KinderCare shall ensure that it is posted and easily accessible from a new footer on the KinderCare web site and the web site of each of its child care brands.
21. Training for Managers. Within ninety (90) days after the Effective Date of this Agreement and annually thereafter, KinderCare shall develop a live or virtual classroom training program ("ADA Managers Training") that shall be provided to management personnel with the title of District Leader, Regional Manager, Area Manager or Center Director. The ADA Managers Training shall be initiated within one hundred twenty (120) days of the Effective Date of this Agreement and completed no later than one hundred and eighty (180) days after the Effective Date.
- a. The ADA Manager Training shall address:
    - i. The requirements of title III of the ADA;
    - ii. The existence and general content of this Agreement;
    - iii. KinderCare's nondiscrimination obligations under the ADA, including the obligations outlined in this Agreement;

- iv. Diabetes and topics related to aspects of caring for a child with insulin dependent diabetes including general information on the methods available for administering insulin.
  - b. The ADA Manager Training shall be conducted by an individual or individuals with substantive knowledge of the ADA, and of diabetes. The ADA Managers Training shall be conducted live, via webinar, or via other interactive technology, and include a question and answer session, and instructions on how to contact the KinderCare Inclusion Services hotline, which will be staffed for any questions, prior to the conclusion of the ADA Managers Training.
  - c. For persons who must receive ADA Managers Training pursuant to this Agreement, but who did not receive training on a designated training date required under this Agreement (for instance, because they were on leave from KinderCare or because they began their affiliation with KinderCare subsequent to the training date), KinderCare shall provide the ADA Manager Training to such persons within ninety (90) days after the individual's return or commencement of service to KinderCare;
  - d. KinderCare shall send, via electronic mail, to the United States the proposed curriculum for the ADA Managers Training, as well as the trainer(s)' name(s), qualifications (including resume(s)), and contact information, no later than ninety (90) calendar days after the Effective Date of this Agreement. KinderCare shall consider in good faith and adopt any reasonable changes to the curriculum provided by the United States.
  - e. KinderCare shall maintain attendance logs reflecting the names and titles of attendees of the ADA Manager Training.
22. Training for Teachers and Child Care Workers. Within one year of the Effective Date of this Agreement, and annually thereafter, KinderCare shall provide training for its teachers and any other staff who may be directly responsible for supervision of children at KinderCare's Facilities about KinderCare's obligations under title III of the ADA, including but not limited to the obligation to provide reasonable modifications for children with disabilities. This training shall also provide an overview of KinderCare's obligations under this Agreement, and with respect to providing assistance to children with Type 1 diabetes.
23. Child-Specific Training. In addition to the training required by paragraphs 22 and 23 of this Agreement, KinderCare shall ensure that, as necessary to individual circumstances, each of its child care centers, working with the parent(s), provides Child & Disability-Specific Training to appropriate employees where necessary to afford a child with a disability the full and equal enjoyment of the child care center. For example, where a parent requests and is granted a reasonable modification regarding assistance with a child's diabetes management, individualized training should be arranged by KinderCare, in consultation with the parent, and conducted by a qualified health professional (such as the child's health care provider, or a local diabetes educator), on the tasks necessary to safely care for that child while at the KinderCare center, including the implementation of the child's Diabetes Medical Management Plan (DMMP). This training would typically include, among other things,

training on blood sugar testing; administration of insulin through pen, syringe, or pump; administration of the emergency drug Glucagon; and a refresher on practicing universal precautions.

24. Annual Reporting. For the term of this Agreement, KinderCare shall submit a Report to the United States documenting its compliance with this Agreement every year on the anniversary of the Effective Date, except for the Final Report which shall be sixty days prior to that anniversary.

a. The Report shall include, for the relevant time period:

i. All dates of KinderCare's ADA training conducted pursuant to this Agreement;

ii. A certification by Counsel that all required individuals have received training; and

iii. All documents reflecting the basis for each decision, if any, to deny a request for assistance with diabetes care for an applicant or enrolled child at KinderCare, including all supporting documents.

b. All Reports required pursuant to this Agreement shall be delivered to the undersigned counsel via electronic mail.

25. KinderCare agrees to pay EIGHT THOUSAND DOLLARS (\$8,000) in compensatory damages to each of the three (3) aggrieved individuals/families previously identified by the United States in its investigation. Within ten (10) business days of KinderCare's receipt of an executed release and a form W-9 from each, (release attached hereto as Attachment A), KinderCare shall forward a check to the United States in the appropriate sum, and made payable to each such individual in his or her full legal name, as identified to KinderCare by the United States.

26. Nothing in this agreement shall require KinderCare to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "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. 42 U.S.C §12182(b)(3), 28 C.F.R. §36.208. In determining whether an individual poses a direct threat to the health or safety of others, KinderCare 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).

### **Implementation and Enforcement**

27. Enforcement. As consideration for the Agreement set forth above, the United States will not institute any civil action under the ADA based on the allegations in this matter, except as provided in paragraph 28 below.

28. Compliance Review and Enforcement. The United States may review KinderCare'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 KinderCare 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 (30) days of the date that the United States provides notice to KinderCare, the United States may institute a civil action against KinderCare in the appropriate United States District Court to enforce this Agreement or title III of the ADA.

29. Effective Date. The Effective Date of this Agreement is the date of the last signature below.
30. Term. The duration of this Agreement will be three (3) years from the Effective Date.
31. Entire Agreement. This Agreement, including *Attachment A*, constitutes the entire agreement between the United States and KinderCare on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.
32. Non-Waiver. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce any provision of the Agreement.
33. Severability. 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 KinderCare 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.
34. Binding Nature of Settlement Agreement. This Agreement shall be binding upon KinderCare, all of its child care brands, its agents, employees, successors, and assigns. If KinderCare acquires a brand or Facility(ies) during the term of this Agreement, KinderCare shall immediately take steps to implement the requirements of this Agreement with respect to that brand and/or Facility(ies). Specifically, KinderCare will train all new managers in accordance with paragraph 21 within ninety (90) days of the date of the acquisition. Training for new teachers and other staff should be completed as required by paragraphs 22 and 23. All other terms of this Agreement also apply to a newly acquired brand and/or Facility(ies).
35. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.
36. Other Violations. This Agreement is not intended to remedy any other potential violations of the ADA or any other law.
37. Continuing Responsibility. This Agreement does not affect KinderCare's continuing responsibility to comply with all aspects of the ADA.

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<sup>1</sup> All subsequent references to parents shall be understood to include parents or guardians.

<sup>2</sup> The name of the Inclusion Services Department and/or its place within the organizational chart is subject to change at any time, and the name "Inclusion Services" in this Agreement shall be deemed to refer to such department regardless of such change.

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FOR THE UNITED STATES

Hartford, Connecticut  
September 25, 2018

Seattle, Washington  
September 17, 2018

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FOR KINDERCARE EDUCATION LLC

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KinderCare

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September 26, 2018