

Precedent-Setting Agreement Aids Children With Disabilities

A recent settlement between a day care facility with offices in Connecticut and Pennsylvania and the government is being called "precedent-setting."

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In what attorneys who represent children with disabilities are calling a precedent-setting agreement, a day care facility with 22 centers in Connecticut and Pennsylvania will pay \$20,000 to a Connecticut family whose 2-year-old son was denied Diastat, which is medicine to treat epilepsy.

"This is definitely precedent-setting. Hanging out there were several cases decided on the other side," said Jonathan Chappell, an attorney with Feldman, Perlstein & Greene in Farmington.

Chappell, who was not involved in the case of the 2-year-old, but who specializes in representing children with disabilities, said the government's agreement with Tender Care Learning Centers "will be helpful for lawyers in future cases. Defendants should work on ADA [Americans with Disabilities Act] compliance to make sure they are aware of these kinds of cases."

Bonnie Roswig, the attorney who brought the complaint that the U.S. Attorney's Office in Connecticut agreed to follow up on, called the agreement "something that has never happened before. There was a case out of Illinois in 2016 that involved a young adult in a city recreation program who had epileptic seizures but the judge in that case said administering Diastat was not a reasonable accommodation under the ADA. The Connecticut ruling is different and is precedent-setting."

Not only should the agreement with Tender Care Learning Centers help attorneys who specialize in representing those with disabilities, it's also a warning to similar day care facilities, Roswig said.

"They better understand that they are advised to comply with the ADA," said Roswig, director of the Disability Rights Project with the Center for Children's Advocacy in Hartford. "I believe this agreement can affect what happens in other states."

In the case at hand, Roswig said, the toddler attended the Tender Care Learning Centers in Hamden. In 2018, Roswig said, the boy's family was told without notice that beginning immediately they'd no longer administer the medication if he'd have a crisis. Roswig said the \$20,000 was based on damages and emotional distress to the family, who reside in Cheshire. As part of the agreement, Tender Care Learning Centers will retrain its staff so they know how to administer the medication and will educate staff at all its facilities to comply with ADA guidelines.

"The agreement underscores the concept that individuals with disabilities should not be discriminated against. It's as simple as that," Roswig said.

Representing the government was Ndidi Moses, assistant U.S. attorney for the District of Connecticut. Moses, also the past president of the Connecticut Bar Association, didn't respond to a request for comment Thursday.

Frank Reabe, chief executive officer and director of the learning centers, signed the agreement. He also did not respond to a request for comment.

According to the Epilepsy Foundation, about 3 million adults and 400,000 children have epilepsy in the United States.