

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA AND  
FRESH START LEARNING CENTER  
USAO #2023V00057, DJ #202-66-91**

**I. BACKGROUND**

1. This Settlement Agreement (the “Agreement”) is entered into by the United States of America and Fresh Start Learning Center (“Fresh Start”) (collectively, the “Parties”).
2. Fresh Start is a childcare center that provides childcare services for children ages 18 months to 5 years old in Middletown, Rhode Island.
3. This matter was initiated by the U.S. Attorney’s Office for the District of Rhode Island (“U.S. Attorney’s Office”), a component of the Department of Justice, after receiving a complaint from a parent of a child with a disability, alleging that Fresh Start violated Title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12181–89, and its implementing regulations, 28 C.F.R. Part 36. Specifically, the Complainant alleged that shortly after she notified Fresh Start that her son had been diagnosed with Autism Spectrum Disorder, Fresh Start refused to make any reasonable accommodations and instead terminated Complainant’s son from the daycare program, on account of his disability.

**II. INVESTIGATIONS AND DETERMINATIONS**

4. The U.S. Attorney’s Office is authorized to investigate alleged violations of Title III of the ADA. 42 U.S.C. § 12188(b)(1)(A); 28 C.F.R. § 36.502. It also has the authority to, where appropriate, negotiate voluntary settlements, and to bring civil actions enforcing Title III of the ADA should the terms of the settlement be breached. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.
5. The Complainant’s son has Autism Spectrum Disorder. Autism Spectrum Disorder is a developmental disability that can cause significant social, communication and behavioral challenges. Autism Spectrum Disorder substantially limits one or more major life activities or major bodily functions, including brain function. 28 C.F.R. § 36.105(d)(2)(iii); 42 U.S.C. §§ 12102(1), (2). Accordingly, the Complainant’s son has a disability within the meaning of 42 U.S.C. § 12102 and 28 C.F.R. § 36.105. The Complainant has a relationship with her child with a disability and therefore is also protected under Title III of the ADA. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.
6. Fresh Start is a place of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(J), and its implementing regulation, 28 C.F.R. § 36.104, as it owns and operates a day care center.
7. The ADA prohibits a public accommodation from discriminating 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(a). Specifically, a public accommodation shall not impose or apply eligibility criteria that

screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a). A public accommodation shall make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the reasonable modifications is a fundamental alteration to the nature of such goods and services.

42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302. Title III also prohibits public accommodations from excluding or otherwise denying equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual because of the known disability of an individual with whom the individual is known to have a relationship or association. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.

8. 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 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).
9. Fresh Start cooperated with the United States' investigation in this matter. In the course of the investigation, the United States determined that the Complainant enrolled her son at Fresh Start in January 2022, shortly after he turned 3 years old. After her son attended daycare at Fresh Start for one year, the Complainant submitted a copy of her son's recent neurological evaluation to Fresh Start in February 2023. The evaluation stated that he had a diagnosis of Autism Spectrum Disorder with recommendations for accommodations. On March 16, 2023, shortly after receiving the diagnosis and request for accommodations and without any prior warnings or incident reports, Fresh Start notified the Complainant that her son would be disenrolled from the program due to the high standard of care that he required.
10. On the basis of these determinations, the United States has determined that Fresh Start discriminated against the Complainant's son by denying him, on the basis of disability, the opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations, in violation of 42 U.S.C. § 12182 and 28 C.F.R. § 36.201, and, by association, discriminated against the Complainant by denying her equal access to Fresh Start's daycare services that was offered to parents of children without disabilities. 28 C.F.R. § 36.205. Fresh Start also discriminated against the Complainant and the Complainant's son by failing to make reasonable modifications in its policies, practices or procedures when necessary to afford them an equal opportunity to participate in and benefit from its services, programs and activities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
11. 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 litigation. The parties have therefore voluntarily entered into this Agreement.

### III. INJUNCTIVE RELIEF

12. Effective immediately, Fresh Start: (a) shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations being offered, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered; (b) shall not discriminate against any individual on the basis of disability or on the basis of any individual's association or relationship with an individual with a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any of its current or future locations; and (c) shall make reasonable modifications to policies, practices, and procedures when such modifications are necessary to afford access to such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities unless Fresh Start demonstrates that the requested modifications would fundamentally alter the nature of its goods, services, facilities, privileges, advantages, or accommodations.
13. Fresh Start agrees that, in any group childcare setting, most children will need individualized attention occasionally, that a teacher or staff member may be required at times to provide such individualized attention, and that Fresh Start must make any reasonable modifications necessary to integrate children with disabilities that would not constitute a fundamental alteration to Fresh Start's goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.
14. Within thirty (30) days of the effective date of this settlement agreement, Fresh Start shall designate and maintain one individual who shall have responsibility for monitoring compliance with this Agreement, including ensuring that Fresh Start adopts and implements the policies and procedures set forth in Paragraph 15. Fresh Start shall provide the designated individual with sufficient authority and resources to perform the tasks required by this Agreement, including review of all reasonable modification requests and any decisions to deny admission to, exclude from enrollment, or disenroll a child with a known disability. The designated individual shall maintain records regarding his or her review of all reasonable modification requests and all decisions to deny admission to, exclude from enrollment, or disenroll a child with a disability. The contact information for the individual designated shall be publicized in Fresh Start's parent handbook and disseminated with application materials provided to parents or guardians of prospective enrollees.
15. Within thirty (30) days of the effective date of this Agreement, Fresh Start shall submit to the United States, for review and approval, written policies and procedures regarding Fresh Start's obligations under Title III of the ADA. Within thirty (30) days of the United States' approval, which approval will not be unreasonably withheld, Fresh Start shall adopt and implement the revised and approved policies and procedures, by including all revised policies and procedures on Fresh Start's employee and parent handbooks, policies and procedures shall, at a minimum, include the following:

- a. A nondiscrimination policy stating that Fresh Start does not discriminate in the provision of services to persons with disabilities or their parents or guardians, in all Fresh Start programs.
  - b. A reasonable modifications policy that provides that:
    - i. Fresh Start will make reasonable modifications for children with disabilities and their parents or guardians, unless Fresh Start can show that such requested modifications are a fundamental alteration to Fresh Start's program. Fresh Start will make individualized determinations based on the specific facts of each request and will not apply a general prohibition against providing particular types of reasonable modifications.
    - ii. Upon receiving a request for a modification, Fresh Start will initiate an interactive process with the parent(s) or guardian(s) to explore what reasonable modification(s) may be appropriate pursuant to the ADA.
    - iii. Fresh Start will provide a response to a request for a reasonable modification in writing, within fourteen (14) days from the date the request is received. Fresh Start may:
      - 1. grant the request;
      - 2. make a narrowly tailored request for medical documentation relating to the child's disability and the need for reasonable modifications(s);
      - 3. offer a different reasonable modification that addresses the parent or guardian's request for a modification; or
      - 4. deny the request, provided that if a request for modification is denied, Fresh Start shall document each reason for the denial of the request and shall immediately notify the child's parent(s) or guardian(s), in writing, of the reason(s) for the denial.
  - c. Information for parents or guardians of children with disabilities, explaining how to request reasonable modifications to Fresh Start's policies, practices, and procedures with respect to child care services.
16. Within thirty (30) days from the date upon which Fresh Start adopts the policies and procedures set forth in Paragraph 15, Fresh Start shall provide training on the nondiscrimination requirements of Title III of the ADA to all employees with responsibility for considering requests for or providing reasonable modifications to applicants and enrollees and/or terminating enrollment. Fresh Start shall provide new employees with comparable responsibilities hired during the term of this Agreement with the training set forth in this Paragraph within thirty (30) days of their start date.

17. During the term of this Agreement, Fresh Start will notify the United States of any complaint, lawsuit, charge, or grievance alleging discrimination by Fresh Start on the basis of disability. Such notification must be provided in writing within ten (10) days of when Fresh Start has received notice of the allegation and must include, at a minimum, the nature of the allegation, the name of the individual bringing the allegation, and any documentation possessed by Fresh Start relating to the allegation.
18. Any notices or information provided to the United States related to this Agreement shall be sent by Fresh Start via electronic mail to the United States or via overnight mail to:

Amy Romero  
Assistant U.S. Attorney  
United States Attorney's Office  
One Financial Plaza, 17th Floor  
Providence RI, 02903  
[Amy.Romero@usdoj.gov](mailto:Amy.Romero@usdoj.gov)

#### **IV. MONETARY RELIEF**

19. After receiving the executed Agreement and the Complainant's signed release (a Blank Release Form is at Exhibit A) and IRS Form W-9, and no later than April 1, 2024, Fresh Start will send by FedEx, a check in the amount of SEVEN THOUSAND DOLLARS (\$7,000) made out to the Complainant. This check is compensation to the Complainant and her son pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in Paragraphs 9 and 10. The check shall be mailed to the address listed on the signed release, and a copy of the check shall be concurrently mailed to.

Amy Romero  
Assistant U.S. Attorney  
United States Attorney's Office  
One Financial Plaza, 17th Floor  
Providence RI, 02903  
[Amy.Romero@usdoj.gov](mailto:Amy.Romero@usdoj.gov)

#### **V. MISCELLANEOUS PROVISIONS**

20. The effective date of this Agreement is the date of the last signature below.
21. The duration of this Agreement will be three (3) years from the effective date.
22. In consideration of this Agreement, the United States agrees to close its investigation without further enforcement action, except as provided in Paragraphs 23-24 of this Agreement. The Parties agree and acknowledge that this consideration is adequate and sufficient.

23. The United States may review compliance with this Agreement at any time. Fresh Start will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with reasonably requested information. If the United States believes that Fresh Start has failed to comply adequately or in a timely manner with any requirement of this Agreement or that any requirement has been violated, the United States will notify Fresh Start in writing, and the Parties will attempt to resolve the issue in good faith. If the Parties are unable to reach a satisfactory conclusion within thirty (30) calendar days of the date the United States notifies Fresh Start, the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title III of the ADA.
24. Any time limits for performance imposed by this Agreement may be extended only by the mutual written consent of the Parties. The United States shall not unreasonably withhold consent to a request for an extension of time made in good faith. A failure to comply with deadlines agreed upon in this Agreement constitutes a violation of this Agreement, and the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title III of the ADA.
25. Failure by the United States to enforce any provision of this Agreement will not be construed as a waiver of its right to enforce any provisions of the Agreement.
26. 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.
27. The individuals signing this Agreement represent that they are authorized to do so on behalf of the respective entity for which they have signed.
28. This Agreement will have no impact upon the rights or claims of any individual not identified in this Agreement (or its incorporated appendices) who has made, or may make, claims against Fresh Start for issues discussed herein. This Agreement is limited to resolving claims under Title III of the ADA related to the facts specifically set forth in Paragraphs 9 and 10. Nothing in this Agreement relates to other provisions of the ADA or affects Fresh Start's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities. Nothing in this Agreement will preclude the United States from filing a separate action under the ADA for any alleged violation not covered by this Agreement. Nothing in this Agreement shall be considered an admission of liability on behalf of Fresh Start.
29. This Agreement, including Exhibit A, constitutes the entire agreement between the United States and Fresh Start 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 Exhibit A, shall be enforceable.

30. This Agreement and any amendment hereto shall be public documents. A copy of this Agreement or any information contained herein may be made available to any person, and Fresh Start shall provide a copy of this Agreement to any person upon request.
31. This Agreement shall be binding upon Fresh Start, its agents, employees, successors, and assigns. If Fresh Start acquires a new facility during the term of this Agreement, Fresh Start shall immediately take steps to implement the requirements of this Agreement with respect to that facility.
32. This Agreement does not affect Fresh Start's continuing responsibility to comply with all aspects of the ADA.

By their signatures below, the Parties consent to the execution of all aspects of this Agreement.

**FOR THE UNITED STATES:**

DATED: Dec. 11, 2023

ZACHARY A. CUNHA  
United States Attorney

By: /s/ \_\_\_\_\_  
AMY ROMERO  
Assistant United States Attorney  
One Financial Plaza, 17<sup>th</sup> Floor  
Providence RI, 02903

**FOR FRESH START LEARNING CENTER**

DATED: 12/8/23

/s/ \_\_\_\_\_  
GREGORY D. JOHNSON  
Owner, United Community Impact Group LLC, DBA Fresh Start Learning Center