

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA  
Civil Action No. 4:24-3141

UNITED STATES OF AMERICA

Plaintiff,

v.

Lincoln Public Schools,

Defendant.

**CONSENT DECREE**

**I. INTRODUCTION**

1. This Consent Decree resolves the above-captioned civil action brought by Plaintiff, the United States, against Lincoln Public Schools (LPS) under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-34, and its implementing regulation, 28 C.F.R. Part 35.

2. The United States brought this lawsuit based on complaints alleging that LPS unlawfully discriminates against qualified deaf or hard of hearing individuals by denying them an equal opportunity to attend their neighborhood elementary and middle schools and choose their high school, programs that students without disabilities may access as a right. Complainants further alleged that some students requiring ASL interpretation may attend electives at non-cluster schools, but such access comes with costly transportation burdens and is unequal to the access enjoyed by students without disabilities.

3. After completing a comprehensive investigation, the United States alleges that by applying a cluster school policy LPS operates its program in a manner that discriminates against qualified individuals with disabilities and their parents. The United States further alleges that this cluster school policy does not consider the individualized needs of deaf and hard of hearing students, denies such students an equal opportunity to participate in LPS's neighborhood school and high school choice programs, and that such a policy is unnecessary to provide equally

effective aids, benefits, and services that are as effective as those provided to others. The United States further alleges that by engaging in this policy LPS harms some students' parents who incur transportation and other costs as a result of the alleged cluster school policy.

4. The United States alleges that LPS's cluster school policy denies individuals with disabilities and their parents full and equal enjoyment of its services in violation of Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulation, 28 C.F.R. Part 35. The United States issued its findings of fact and conclusions of law in a Letter of Findings on February 14, 2024.

5. On February 14, 2024, concurrent with the filing of this Consent Decree, the United States filed a Complaint alleging that LPS violates Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-34, and its implementing regulation, 28 C.F.R. Part 35, by requiring deaf and hard of hearing students who require American Sign Language (ASL) interpretation to attend a cluster school serving similar students.

6. This Consent Decree is entered into between the United States and Lincoln Public Schools, and resolves the allegations set forth in Paragraphs 2-4. By entering into this agreement, LPS does not admit to any of the allegations in Paragraphs 2-4 and does not admit any wrongdoing.

## **II. PARTIES AND JURISDICTION**

7. Plaintiff is the United States of America.

8. Defendant LPS is a public entity within the meaning of Title II, 42 U.S.C. § 12131(1)(B) and 28 C.F.R. § 35.104. LPS is a service, program, or activity of Lincoln, Nebraska's public education program under 42 U.S.C. § 12132; 28 C.F.R. §§ 35.102(a).

9. Lincoln Public Schools is in Lincoln, Nebraska. The Parties agree that venue is proper in this district under 28 U.S.C. § 1391(b) because the claim alleged here occurred in the District of Nebraska.

10. The United States is authorized to bring this action and seek remedies for violating Title II of the ADA. 42 U.S.C. § 12133; 28 C.F.R. Part 35, Subpart F.

11. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. § 12133, and 28 U.S.C. §§ 1331 and 1345, because it involves claims arising under federal law and is commenced by the United States.

12. The Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201–02 and 42 U.S.C. § 12133.

### **III. AGREED RESOLUTION**

13. Without admission or adjudication proving any wrongdoing, the United States and LPS agree that it is in all Parties' best interest, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the Parties agree to the entry of this Consent Decree without trial or further adjudication of any issues of fact or law raised in the United States' Complaint.

### **IV. GENERAL RELIEF**

14. Under this Consent Decree, LPS will comply with the requirements of Title II of the ADA, 42 U.S.C. §§ 12131–34, and its implementing regulation, 28 C.F.R. Part 35. In particular, LPS:

- a. Will not exclude qualified individuals with disabilities from the opportunity to participate in its services, or deny individuals with disabilities the benefits of its services, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), §35.130(b)(1)(i);
- b. Will afford qualified individuals with disabilities an equal opportunity to participate in or benefit from any aid, benefit, or service provided to others, 28 C.F.R. § 35.130(b)(1)(ii);
- c. Will not provide different or separate aids, benefits, or services to individuals with disabilities unless doing so is “necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others,” 28. C.F.R. § 35.130(b)(1)(iv);
- d. Will take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, 28 C.F.R.

§ 35.160(a)(1);

- e. Will provide “appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, an equal opportunity to participate in, and enjoy the benefits of [its] services, programs, or activit[ies],”

28 C.F.R. § 35.160(b)(1).

- f. Will not exclude or otherwise deny equal services, programs, or activities to individual because of the known disability of an individual with whom the individual is known to have a relationship or association, 28 C.F.R. § 35.130(g).

#### **V. SPECIFIC INJUNCTIVE RELIEF**

15. Withdraw Cluster School Policy: Effective immediately, LPS will not apply a cluster school policy requiring all deaf or hard of hearing students needing ASL interpretation services to attend a school with other deaf or hard of hearing students (“cluster school”).<sup>1</sup> Within 30 days of the Effective Date, defined in Paragraph 22, LPS will offer to convene relevant placement teams, such as an Individualized Education Program team or a Section 504 team, to reconsider the placement of each student previously subject to a cluster school policy and provide new individualized assessments.<sup>2</sup> The new assessments must ensure that each student with a disability is provided an equal opportunity to participate in and benefit from LPS’s services and is provided with effective communication. LPS will only place a student in the cluster schools if, after an individualized assessment, LPS can demonstrate that the student needs additional supports and interventions (other than ASL interpretation) that can be provided only at the cluster schools (i.e., that such placement is the student’s least restrictive environment), or if the student’s parents request, or consent to, placement at the cluster school. LPS shall not be

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<sup>1</sup> For some students, the cluster school location happens to be the student’s neighborhood school. While such students are already attending their neighborhood schools, they may wish to participate in the high school choice program and should be considered for such opportunities by being provided individualized assessments similar to those set described in Paragraph 15.

<sup>2</sup> This Consent Decree does not supplant LPS’s other federal and state law obligations regarding the rights of children with disabilities, including the Individuals with Disabilities Education Act (IDEA). *See* 20 U.S.C. § 1415.

required to offer new placement team meetings where a student's placement team has, since May 2024, ceased application of the cluster school policy and has considered a non-cluster school placement.

16. If LPS can demonstrate, through the processes set out at 28 C.F.R. § 35.164, that providing a qualified ASL interpreter, as defined by 92 Nebraska Administrative Code § 51, in a neighborhood school would fundamentally alter the nature of an LPS service, program, or activity, or would result in an undue financial and administrative burden, then LPS is not required to provide a qualified interpreter in a neighborhood school. However, where a qualified interpreter cannot be provided in a neighborhood school without causing a fundamental alteration or undue burden, LPS must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, deaf and hard of hearing students who require a qualified interpreter receive the benefits or services provided by LPS.

- a. For each student who is to be provided a qualified interpreter at a neighborhood school, LPS in consultation with the student's parent(s) or guardian(s) will develop an Interpreter Contingency Plan ("Interpreter Contingency Plan") for what will occur if a qualified interpreter is unavailable for any reason. The Interpreter Contingency Plan may account for when LPS is experiencing an unplanned short-term qualified interpreter absence or a long-term qualified interpreter vacancy. The procedures underlying the contingency plan ("Interpreter Contingency Plan Procedures"), will be subject to the United States approval and will go into effect within five days of the Effective Date.

17. ADA/Non-Discrimination Policy: Within 45 days of the Effective Date, LPS will adopt and implement a written non-discrimination policy (ADA/Non-Discrimination Policy), subject to the United States approval, that documents the requirements of Title II and its implementing regulation including the obligation to provide an equal opportunity to individuals with disabilities as well as the obligation to provide effective communication to individuals who

are deaf or hard of hearing. *See* 42 U.S.C. §§ 12131–34; 28 C.F.R. Part 35.

18. ADA Coordinator: Within ten days of the Effective Date, LPS will designate an employee to serve as its ADA Coordinator and will provide the name and contact information for that person to the United States. The ADA Coordinator must be knowledgeable about the ADA’s equal opportunity and effective communication obligations and the terms of this Consent Decree. The ADA Coordinator will coordinate LPS’s efforts to comply with and carry out its responsibilities under Title II of the ADA and this Consent Decree and will be responsible for:

- a. overseeing, managing, and coordinating LPS’s implementation of this Consent Decree and the ADA/Non-Discrimination Policy;
- b. tracking, reporting, and documenting that the requirements set forth in this Consent Decree have been met, and, if not, what requirements have not been satisfied, the reasons for any delays in meeting the requirements, and proposals for when the relevant requirements will be met;
- c. providing the monitoring reports described in Paragraph 20; and
- d. developing a written reporting procedure for complaints of discrimination or retaliation that relate to this Consent Decree that involve a student with a disability or the parent/guardian of a student with a disability within 45 days of the Effective Date. The procedure will include an online complaint form and submission method, a point of contact for receipt of hard copy complaints, and a system for reporting to the ADA Coordinator any complaint related to this Consent Decree received by a school. LPS will provide the United States with a copy of all complaints that LPS has received as of the implementation date of the written reporting procedure each time it submits a monitoring report under Paragraph 20. LPS will also provide a copy of LPS’s findings and resolution of each complaint.

19. ADA Training: Within 30 days of the United States’ approval of the policy required under Paragraph 17 of this Consent Decree, LPS will submit proposed training

materials—including any written or electronic materials that are consistent with the provisions of the approved policy—to the United States for approval, which will not be unreasonably withheld. Within 60 days of receiving approval from the United States of the training materials, and then annually, LPS will provide training to all relevant staff and contractors concerning: Title II of the ADA and disability discrimination in general; the ADA obligation to provide effective communication; LPS’s revised policy under Paragraph 17; the roles and responsibilities of LPS’s ADA Coordinator; and this Consent Decree, including the steps that LPS has taken, and will continue to take to ensure that its obligations under this Decree are met.

- a. This training will be conducted by person(s) with substantive knowledge of Title II of the ADA. The United States will set forth reasonable minimum qualifications for the trainer(s). Subject to the LPS’s good faith efforts to secure a trainer that meets these minimum qualifications, LPS will send the United States the name(s), qualifications, and contact information of the trainer(s) no later than 30 days after the Effective Date of this Consent Decree. If LPS cannot secure a trainer that meets these minimum qualifications by this date, the Parties will negotiate in good faith to reach a resolution.
- b. The initial training will be conducted live, either in-person or via remote meeting platform, with an opportunity to pose questions to the trainer(s) at the end of the training session. Each subsequent training may be conducted by video recording. LPS will ensure that all new relevant staff and contractors receive the training as a component of new personnel training.

## **VI. MONETARY DAMAGES**

20. LPS agrees to pay an amount of \$12,000, combined, to all individuals identified by the United States who suffered compensable damages as a result of LPS’s actions (“aggrieved persons”). The United States will provide LPS with the names and total compensation amounts for each aggrieved person. Within 30 days of receiving this information, LPS will mail a copy of the Complaint, this signed Consent Decree, the Release of Claims, attached as Attachment A,

and instructions for how to accept LPS's payment via certified mail to each aggrieved person. Upon receipt of an aggrieved person's executed Release of Claims and confirmation that the aggrieved person has completed all necessary steps to receive the LPS's payment, LPS will send their compensation by an electronic funds transfer or by a check sent certified mail. LPS will provide the United States with verification of each payment within ten days after it was processed or sent via mail. If an aggrieved person submits an executed Release of Claims, properly completes all necessary steps to receive LPS's payment, and requests their compensation from LPS or the United States at any time during the term of this Decree, LPS will process the appropriate payment.

### **VII. MONITORING, REPORTING AND OTHER TERMS**

21. Reporting Requirements: Beginning three months after the Effective Date and then every six months, LPS will provide written reports (including supporting documentation) to the United States, delineating all steps taken during the reporting period to comply with each substantive provision of this Consent Decree. Each report will include the following for the preceding reporting period:

- a. Placement data: A list of every deaf or hard of hearing LPS student receiving ASL interpretation and for each student, whether they are placed in a cluster school, their neighborhood school, or a choice high school (that is, not their neighborhood school); the reason for placing the student in their current placement, including information about the student's preferred placement, auxiliary aid, or service; and if applicable, the reason(s) for declining to provide the student's preferred placement, auxiliary aid or services.
- b. Complaints, Requests for Auxiliary Aids of Services, Grievances: A copy of every complaint, request for auxiliary aid or service by a student who is deaf or hard of hearing or the student's parent, or grievance. For each complaint, request for auxiliary aid or service, or grievance, a copy of the resolution. If a request for an auxiliary aid or service was denied, a written explanation of the denial.



- c. Training: For all training required in Paragraph 19, LPS will submit written reports detailing: the date and time of each training; a copy of the agenda and materials (e.g., handouts, PowerPoint presentations) used for each training; and the names and titles of the individuals who attended the training.
- d. All Other Relevant Documents: All other documents requested by the United States relevant to this Consent Decree and to the United States' determination of LPS's ongoing compliance with this Decree.

20. Unless otherwise instructed by the United States, LPS must send all notices and reports under this Consent Decree electronically to counsel for the United States: Charlotte Lanvers at [charlotte.lanvers@usdoj.gov](mailto:charlotte.lanvers@usdoj.gov).

21. The United States may review compliance with this Consent Decree at any time and may move to enforce this Decree if it believes that the Decree, or any requirement of it, has been violated, as long as it first gives notice of such a violation to LPS. The notice must provide sufficient specificity about the alleged violation so that LPS is readily able to identify and remedy the issue. LPS must respond to the United States as soon as practicable but no later than ten days after. This Decree is not violated if LPS remedies the alleged violation within 20 days after receiving a sufficiently specific notice of the alleged violation. If LPS does not agree to remedy (or does not remedy) the issue within 20 days, the United States and LPS will negotiate in an attempt to resolve any related dispute; if the Parties cannot reach a mutually acceptable resolution within 20 days, the United States may seek court enforcement of compliance with this Decree.

22. The Effective Date will be the date that the Court enters the Consent Decree. Unless otherwise specified, all time periods designated for an action run from the Effective Date. This Decree will remain in effect for three years from the Effective Date.

23. This Consent Decree does not purport to remedy any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in the Complaint, nor does it affect LPS's continuing responsibility to comply with all provisions of the

ADA.

24. This Consent Decree contains the entire agreement between the United States and LPS concerning the subject matter described in the Complaint, and no other statement, promise, or agreement, either written or oral, made by any party or agent of any party, that is not contained in this Decree, and concerns the subject matter described in the Complaint, will be enforceable.

25. The time frame for completion of any act required by this Consent Decree may be modified with the mutual written consent of the Parties, except that the termination date may be extended only by Order of the Court. The United States will not unreasonably deny requested extensions, if made by LPS before any deadline, and following LPS's due diligence to meet such a requirement.

26. If any provision of this Consent Decree is found to be invalid, unenforceable, or otherwise contrary to applicable law, such provision is restated to reflect as nearly as possible and as much as the law allows and its original intent and will not, in any event, affect any other provisions, all of which will remain valid and enforceable as much as the law allows.

27. This Consent Decree will be binding on LPS, and its subsidiaries, agents, employees, officers, and contractors. If LPS seeks to transfer or assign all or part of its interest in any service covered by this Decree, and the successor or assign intends on carrying on the same or similar use of its educational services, then as a condition of transfer or sale, LPS will obtain the written accession of the successor or assign to any obligations remaining under this Decree for the remaining term of this Decree.

28. Failure by the United States to seek enforcement of this Consent Decree under its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to any instances or provisions.

29. The United States and LPS agree that, as of the date of entry of this Consent Decree, litigation is not reasonably foreseeable concerning the allegations in the Complaint. To the extent that any of these parties previously implemented a litigation hold to preserve

documents, electronically stored information, or things related to the allegations in the Complaint, the Party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves any party of any other obligations imposed by this Decree.

30. For provisions that require the approval of the United States, LPS will submit its proposal ten days before the deadline set forth in this Consent Decree. The United States will timely respond to proposals submitted by LPS and will not unreasonably withhold approval.

31. The signatories represent that they have the authority to bind the parties identified below to the terms of this Consent Decree.

For Lincoln Public Schools

For the United States of America

MIKE GILLOTTI, Associate Superintendent  
for Educational Services

KRISTEN CLARKE, Assistant Attorney  
General Civil Rights Division

MINDY ROBERTS, Director of Special  
Education Services

REBECCA B. BOND, Chief

*/s/ Haleigh B. Carlson*

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CHARLOTTE LANVERS, Trial Attorney  
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Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Date: July 31, 2024

Date: August 15, 2024

ORDER IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE