



SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
SUNNY SKIES CHILD CARE, INC.
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ # 202-37-279

BACKGROUND

1. The parties to this Settlement Agreement are the United States of America and Sunny Skies Child Care, Inc. (“Sunny Skies”) in Clawson, Michigan.
2. The United States Department of Justice, of which the United States Attorney’s Office for the Eastern District of Michigan is a component, is the federal agency responsible for administering and enforcing title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12188 *et seq.* 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 raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.7.
3. Sunny Skies is a private organization that provides child day care services in multiple locations for infants, toddlers, and school age children. As the operator of child care centers, Sunny Skies is a place of public accommodation, and its operations affect commerce. 42 U.S.C. § 12181(7)(F); 28 C.F.R. § 36.104.
4. This Settlement Agreement (“Agreement”) resolves a matter that was initiated by a complaint filed with the Department of Justice alleging that Sunny Skies discriminated against an individual because of her disability, 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 by denying denied a child with a disability participation in certain goods, services, facilities, privileges, advantages, or accommodations, and did not afford equal goods, services, facilities, privileges, advantages, or accommodations to the child. Specifically, the Complainant alleges that after learning about her daughter’s severe

peanut allergy, Sunny Skies terminated the child's enrollment from Sunny Skies and required the parents to pick her up from the care center immediately. Sunny Skies fully cooperated in the United States' investigation.

5. The child's peanut allergy is a physical impairment that substantially limits one or more major life activities, including the operations of the immune system, which is a major bodily function. Accordingly, the child has a disability within the meaning of 42 U.S.C. § 12102; 28 C.F.R. § 36.105(a)(1)(i).
6. The United States and Sunny Skies agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this complaint on mutually agreeable terms without litigation and therefore have agreed to the terms of this Agreement.
7. This Agreement is neither an admission of liability by Sunny Skies nor a concession by the United States that its claims are not well founded. By entering into this Agreement, Sunny Skies is not admitting that any action taken with respect to Complainant or her child was wrongful, unlawful, or in violation of any local, state or federal act or statute.
8. In consideration of the terms of this Agreement, the United States agrees to refrain from undertaking further investigation or filing a civil suit in this matter regarding the areas covered under the Remedial Action section of this Agreement, except as provided in the Enforcement and Implementation sections of the Agreement.

REMEDIAL ACTIONS TO BE TAKEN BY SUNNY SKIES

9. Pursuant to title III of the ADA, Sunny Skies will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of its child care services. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201.
10. Sunny Skies will make reasonable modifications to policies, practices, or procedures that are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, including allergies, at its child care facilities, unless it can demonstrate that making the modifications would fundamentally alter the nature of Sunny Skies' goods, services, facilities, privileges, advantages or accommodations. 28 C.F.R. § 36.302
11. Sunny Skies shall evaluate each request for reasonable modification on an individualized basis, based on objective evidence and current medical standards, and in a manner consistent with the terms of this Agreement.
12. Sunny Skies will not retaliate against or coerce any person who made, or is making a complaint according to the provisions of this Agreement or who exercised his or her rights under this Agreement or the ADA. 42 U.S.C. § 12203.

13. Sunny Skies will adopt, maintain, and enforce the non-discrimination policy attached hereto and incorporated by reference herein as Exhibit 1 to this Agreement. Within ten (10) days of the effective date of this Agreement, Sunny Skies will prominently display a copy of this non-discrimination statement in all its facilities and administrative offices, if any, as well as on the homepage of any current or future website.

14. Within thirty (30) days of the effective date of this Agreement, Sunny Skies shall revise, or adopt as new if necessary, its policies and procedures to include, at a minimum, the following:
 - A. The designation of one individual per operating location who is authorized to receive and review requests for modifications to policies, practices, and procedures with respect to childcare services. This individual's contact information shall be publicized in the parent handbook or another manner easily accessible for parents or guardians of children with disabilities, and disseminated with application materials provided to parents or guardians of prospective enrollees.

 - B. A process by which parents or guardians of children with disabilities can request reasonable modifications to Sunny Skies' policies, practices, and procedures with respect to childcare services. This information shall be publicized in the parent handbook or another manner easily accessible for parents or guardians of children with disabilities, and disseminated with application materials provided to parents or guardians of prospective enrollees.

 - C. Sunny Skies will promptly consider all requests for reasonable modification of policies, practices, or procedures with respect to its childcare services.

 - D. Upon receiving a request for a modification that Sunny Skies does not promptly grant, Sunny Skies will initiate an individualized assessment, i.e., a discussion with the parent or guardian to explore what modification(s) may be necessary that considers object medical evidence and actual risks, as opposed to mere speculation, stereotypes, or generalizations about individuals with disabilities. Following the discussion, Sunny Skies may:
 - i. Grant the request;

 - ii. Or if more information is needed, make a narrowly tailored request for documentation relating to the child's disability and any necessary modification(s).

 - E. After an individualized assessment is completed, if a request for a modification is denied, Sunny Skies will document each and every reason for the denial of the

request and shall submit that information to the parents or guardians who requested such modification and the designated individual referenced in paragraph 14(A).

- F. Sunny Skies will provide a response to a request for modification, in writing, no later than fifteen (15) business days from the date the request is received.
15. Sunny Skies shall submit the new or revised policies and procedures to the United States for review and approval.
 16. Within thirty (30) days from the date upon which the United States approves Sunny Skies' policies and procedures set forth in paragraph 14, Sunny Skies shall publicize the policies and procedures by distributing them to all of its operating locations and to all parents or guardians who have children currently enrolled in any Sunny Skies facility.
 17. Within sixty (60) days of the date on which the United States gives its approval to Sunny Skies' updated policies and procedures, and each year annually in conjunction with professional development hours required by Michigan child care licensing rules for program directors, site supervisors, and caregivers, Sunny Skies will provide training on title III of the ADA and the policies adopted pursuant to Paragraph 14 of this Agreement to all Sunny Skies employees. This training will cover the provision of reasonable modifications to children with disabilities, including allergies. Such training, which may be provided by a third-party, will be sufficient in duration and content to train the individual in:
 - A. The ADA generally;
 - B. Reasonable modifications to policies, practices, and procedures to avoid discrimination based on disability in a child care setting.
 - C. Materials specific to common reasonable modifications for children with allergies including the administration of emergency rescue medications such as the EpiPen, and food preparation and handling.

Any training materials being used by Sunny Skies for the purposes of meeting its training obligations pursuant to paragraphs 17 and 18 of this Agreement must be approved by Counsel for the United States.

18. Sunny Skies will ensure that any personnel hired after the completion of the training sessions(s) conducted pursuant to paragraph 17 of this Agreement must be trained within thirty (30) calendar days of hire as a component of new employee training and orientation. Sunny Skies may use video recordings or online training for any ADA training of personnel hired after the training provided pursuant to paragraph 17.

19. Sunny Skies shall create and maintain an attendance log that documents the name of each individual who attends the trainings, his or her title, and the date he or she attended the training. Copies of such attendance sheets shall be provided to the United States within 10 days of any request for them.
20. Within seven (7) days of receipt of any complaint related to any alleged violations of the ADA, Sunny Skies shall send an email to counsel for the United States with a copy of any such complaint or, if an oral complaint was made, a description of the complaint, and Sunny Skies' response.

SPECIFIC RELIEF FOR COMPLAINANT

21. To compensate the Complainant and her daughter for the harm they have endured, including, but not limited to, the delay in receipt of full and equal services, fees paid for unequal benefits, emotional distress, pain and suffering, and other consequential injury, pursuant to 42 U.S.C. § 12188(b)(2)(B) and 28 C.F.R. § 36.504(a)(2), Sunny Skies will pay \$3,000 to the Complainant within thirty (30) days of the effective date of this Agreement.

ENFORCEMENT

22. The United States may review compliance with this Agreement at any time. If the United States believes that this Agreement or any of its requirements have been violated, it may institute a civil action in Federal District Court to enforce this Agreement or the requirements of title III, following written notice to Sunny Skies of possible violations and a period of thirty (30) days in which Sunny Skies has the opportunity to cure the alleged violations.
23. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for Sunny Skies to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written Agreement with the United States for an extension of the relevant time frame imposed by the Agreement.
24. Failure by the United States to enforce this entire Agreement or any of its provisions or deadlines shall not be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.
25. This Agreement shall be binding on Sunny Skies, its agents, employees and contractors. In the event Sunny Skies seeks to transfer or assign all or part of its interest in any facility covered by this Agreement, and the successor or assignee intends on carrying on the same or similar use of the facility, as a condition of sale, Sunny Skies shall obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.

IMPLEMENTATION

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

27. This Agreement is limited to the facts set forth above and does not purport to remedy or resolve any other existing or potential violations of the ADA or any other Federal law.
28. This Agreement does not affect Sunny Skies' continuing responsibility to comply with all applicable aspects of title III of the ADA. In particular, title III imposes an obligation to make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, and facilities to individuals with disabilities.
29. A copy of this document or any information contained in it will be made available to any person by Sunny Skies or the United States upon request.
30. This Agreement will remain in effect for **three (3) years** from the effective date of this Agreement. The person signing this document for Sunny Skies represents that he or she is authorized to bind Sunny Skies to this Agreement.

Agreed and Consented to:

For the UNITED STATES OF AMERICA

For SUNNY SKIES:

MATTHEW SCHNEIDER
United States Attorney
Eastern District of Michigan

LUTTRELL D. LEVINGSTON
Assistant United States Attorney
United States Attorney's Office
Eastern District of Michigan
Civil Rights Unit
211 W. Fort St., Suite 2001
Detroit, MI 48226

Dated: _____

Dated: _____

EXHIBIT 1

NON-DISCRIMINATION POLICY

PROHIBITION OF DISCRIMINATION ON THE BASIS OF DISABILITY

Sunny Skies will not discriminate against any individual on the basis of disability with regard to the full and equal enjoyment of the goods and services of Sunny Skies. Sunny Skies will also not discriminate against any individual because of the known disability of an individual with whom the individual is known to have a relationship or association.

Sunny Skies will make reasonable modifications to its policies, practices, or procedures when necessary to afford its goods and services to individuals with disabilities, including children with allergies, unless Sunny Skies can demonstrate that making the modifications would fundamentally alter the nature of its goods and services.

Sunny Skies will take such steps, as may be necessary, to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden, *i.e.*, significant difficulty or expense.