

SETTLEMENT AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

AND THE

STATE OF GEORGIA
DEPARTMENT OF HUMAN SERVICES

OCR TRANSACTION NUMBER: 09-102792

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I. Introduction

This Settlement Agreement (hereinafter, “the Agreement”) is entered into by the U.S. Department of Health and Human Services (“HHS”), Office for Civil Rights (“OCR”), and the Georgia Department of Human Services (“DHS”), Division of Family and Children Services (“DFCS”) to resolve violations identified in the investigation of OCR Complaint No. 09-102792. The complaint alleged that DHS’ Gwinnett County Division of Family and Children Services discriminated against the Complainant by denying her application to become a Foster-Adopt parent based on her disabilities, in violation of Section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act of 1990, as amended.

OCR conducted an investigation to determine whether DHS discriminated against the Complainant. OCR determined that DHS’ denial of the Complainant’s application based on her disabilities was in violation of 28 C.F.R. §35.130(a), (b)(1)(i) and 45 C.F.R. §84.4(a), (b)(1)(i). Additionally, by improperly using disability as a criterion to make placement decisions, DHS treated the Complainant differently on the basis of disability in determining whether or not she could adequately parent and afforded her different opportunities on the basis of disability in violation of 28 C.F.R. §35.130(b)(1)(i-iv) and (b)(3), and 45 C.F.R. §84.4(b)(1)(ii), (b)(iv) and (b)(4). Lastly, DHS did not make reasonable modifications to its policies, practices and procedures in violation of 28 C.F.R. §35.130(b)(7). DHS/DFCS disagrees with OCR’s findings of noncompliance. However, DHS/DFCS enters into this Agreement to voluntarily resolve this matter. DHS/DFCS participation in this Agreement does not constitute an admission to OCR’s findings regarding this complaint, nor does it constitute an admission to OCR’s findings or determinations regarding any other matter involving DHS/DFCS.

II. Parties to the Agreement

- A. United States Department of Health and Human Services, Office for Civil Rights; and the
- B. State of Georgia Department of Human Services, Division of Family and Children Services, the state agency responsible for the delivery of health and social services in the state of Georgia.¹

III. Jurisdiction

- A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS. It has jurisdiction over this complaint under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (collectively, “Section 504”). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

¹ This Agreement covers the Georgia Department of Human Services (DHS); DHS’s Division of Family and Children Services (DFCS); and each of DFCS’s 159 County Offices. DHS and DFCS may be used interchangeably in this Agreement.

- B. OCR also has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35 (collectively, “the ADA”). Title II prohibits discrimination on the basis of disability in State and local government programs and services.

IV. General Obligations

Pursuant to Section 504 and Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of DHS, or be subject to discrimination by DHS. DHS shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DHS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity, as required by federal law.

V. General Provisions

- A. Facilities Covered by the Agreement: This Agreement covers all DHS facilities that provide foster and adoption program application approval, placement of children, and determinations on whether a program participant will be retained as a foster parent or Foster-Adopt parent.
- B. Effective Date and Term of the Agreement: This Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will remain in effect for 24 months after the Effective Date (the “Term”). At such time, if OCR determines that DHS has completed all actions required by the Agreement and demonstrated to OCR’s satisfaction an ability to sustain compliance, OCR’s review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, DHS acknowledges that it will comply with Section 504, Title II of the ADA, and other applicable Federal nondiscrimination statutes and their implementing regulations, for so long as it remains a public entity or continues to receive Federal financial assistance.
- C. OCR’s Review of DHS’ Compliance with the Agreement: OCR may review, at any time, DHS’ compliance with this Agreement. As part of such review, OCR may interview witnesses, examine and copy documents, and require DHS to provide written reports and permit inspection of DHS facilities and services. Throughout the term of this Agreement, DHS agrees to retain records identified by OCR or that DHS believes will assist OCR to assess DHS’ compliance with the Agreement and to submit the records to OCR upon request. OCR will maintain the confidentiality of all documents, files and records received from DHS and will not disclose their contents except where necessary in formal enforcement proceedings or where otherwise required by law.
- D. Failure to Comply with the Agreement: Throughout the term of this Agreement, if at any time OCR determines that DHS has failed to comply with any provision of

the Agreement, OCR shall notify DHS in writing (“Notice Letter”). The Notice Letter shall include a statement of the provisions with which DHS has failed to comply and the basis for OCR’s determination and shall allow DHS at least thirty (30) calendar days to either: (a) describe the remedial actions that have been taken to achieve compliance with this Agreement; or (b) dispute the accuracy of OCR’s findings. On notice to DHS, OCR may shorten the 30-day period if it determines that a delay would result in irreparable injury to the affected parties. If DHS does not respond to the Notice Letter, or if, upon review of DHS’ response, OCR determines that DHS has not taken sufficient corrective action to comply with the terms of the Agreement, OCR may unilaterally terminate this Agreement and take any action authorized by law to secure compliance with Title II of the ADA and/or Section 504, including referring the matter to the U.S. Department of Justice or taking steps to suspend, terminate, refuse to grant or continue Federal financial assistance to DHS.

- E. Effect on Other Compliance Matters: The terms of the Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of the Agreement and that may be pending before OCR or any other Federal agency. This Agreement does not preclude OCR from conducting future compliance reviews of DHS or from conducting investigations of complaints filed against DHS that are received after the Effective Date of this Agreement. Nothing in this Agreement shall be construed to limit or restrict OCR’s statutory or regulatory authority to conduct compliance reviews or complaint investigations.
- F. DHS’ Continuing Obligations: Nothing in this Agreement is intended to relieve DHS of its continuing obligations to comply with other applicable Federal nondiscrimination statutes and their implementing regulations, including Section 504 and its implementing regulation at 45 C.F.R. Part 84; and Title II of the ADA and its implementing regulation at 28 C.F.R. Part 35.
- G. Prohibition Against Retaliation and Intimidation: DHS shall not retaliate against, intimidate, threaten, coerce or discriminate against any person who has filed a complaint or who has assisted or participated in the investigation of any matter addressed in this Agreement or alleged to violate Section 504 or Title II of the ADA.
- H. Technical Assistance: OCR agrees to provide appropriate technical assistance to DHS/DFCS regarding compliance with the Agreement, as requested and as reasonably necessary.
- I. Non-Waiver Provision: Failure of OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR’s right to enforce other deadlines or any provisions of this Agreement.

- J. Entire Agreement: This Agreement constitutes the entire understanding between DHS and OCR in resolution of OCR Transaction Number 09-102792 (formerly Transaction Number 07-63233). Any statement, promise or agreement not contained herein shall not be enforceable under this Agreement.
- K. Modification to Agreement: The Agreement may be modified by mutual agreement of the parties in writing.
- L. Effect of DHS Program Changes: DHS/DFCS reserves the right to change or modify its programs. Significant program changes that may affect compliance with this Agreement, Section 504, or Title II of the ADA must be promptly reported to OCR.
- M. Publication or Release of Agreement: OCR places no restrictions on the publication of the terms of this Agreement. In addition, OCR may publish this Agreement and may be required to release related case materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulations, 45 C.F.R. Part 5. DFCS will protect the contents of this Agreement in accordance with Georgia confidentiality laws.
- N. Third Party Rights: This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- O. Miscellaneous: When OCR verifies that DHS has satisfactorily completed all actions contained in this Agreement, OCR shall consider all matters related to this investigation resolved and so notify DHS in writing.

VI. Specific Provisions

- A. Designation of ADA/Section 504 Coordinators: In addition to the state-level ADA/Section 504 coordinator that is required by 28 C.F.R. § 35.107 and 45 C.F.R. § 84.7, within ten (10) calendar days of the Effective Date of this Agreement, DFCS shall designate a qualified staff person for each DFCS region to serve as the ADA/Section 504 Coordinator for his/her respective region.

The ADA/Section 504 Coordinators shall ensure that each DFCS office complies with and carries out its ADA/Section 504 responsibilities and compliance with this Agreement. The Regional DFCS ADA/Section 504 Coordinators will be available to answer questions from foster care and adoption applicants and program participants and provide appropriate information regarding an individual's rights and DFCS' obligations under the ADA and Section 504. DFCS will disseminate publicly the name, telephone number, and office address of the statewide ADA/Section 504 Coordinator and the Regional DFCS ADA/Section 504 Coordinators.

- B. Nondiscrimination Policy: Within forty-five (45) calendar days of the Effective Date of this Agreement, DFCS will provide OCR a copy of its Nondiscrimination Policy, consistent with 28 C.F.R. Part 35 and 45 C.F.R. Parts 80, 84, and 91, which states that the relevant DFCS office does not discriminate on the basis of race, color, national origin, disability, or age.
- C. ADA/Section 504 Grievance Procedure: Within one hundred twenty (120) calendar days of the Effective Date of this Agreement, DFCS shall submit to OCR its ADA/Section 504 Grievance Procedure, which will be modified for and posted in each DFCS office. The Grievance Procedure shall identify the Section 504 Coordinator responsible for receiving disability discrimination complaints in the relevant DFCS office. The Grievance Procedure must be consistent with 28 C.F.R. § 35.107 and 45 C.F.R. § 84.7. DFCS will exercise its discretion to analyze and modify sample policies as necessary to ensure that it functions effectively for DFCS operations.
- D. Reasonable Modifications Policy: Within one hundred twenty (120) calendar days of the Effective Date of this Agreement, DFCS shall submit to OCR for its review and approval a foster care policy that includes language regarding ‘reasonable modifications’ for qualified individuals with disabilities who request a reasonable accommodation/modification. DFCS will consider such requests on a case-by-case basis.
- E. Approval and Notice: OCR shall review the Nondiscrimination Policy, ADA/Section 504 Grievance Procedure and the policy submitted in response to Item VI.D (“Submitted Policies”) within thirty (30) calendar days of receipt of each Policy. The Submitted Policies shall not be implemented by DFCS without OCR’s approval, which shall not be unreasonably withheld.

DFCS will communicate the Final Submitted Policies based on the following timeframes:

1. Within sixty (60) calendar days from the date that the Submitted Policies become Final, the state-level DFCS ADA/Section 504 Coordinators will e-mail the Final Submitted Policies to each county DFCS office. Each county DFCS office will post the Final ADA/Section 504 Grievance Procedure in their respective offices, within sixty (60) calendar days from the date that the policies are e-mailed. Within ninety (90) calendar days, DFCS will also make all Final Submitted Policies available to the public at <http://odis.dhs.ga.gov/Main/Default.aspx>;
2. Within ninety (90) calendar days from the date that the Submitted Policies become Final, DFCS will add the Submitted Policies to the Foster Parent Manual and the Foster and the Adoptive Parent recruitment materials; and
3. Within ninety (90) calendar days from the date that the Submitted Policies become Final, the state-level DFCS ADA/Section 504 Coordinators will e-

mail the Final Submitted Policies to each county DFCS office. DFCS will make the Final Submitted Policies available in alternative formats for sensory impaired customers upon the customer's request.

- F. Individualized Assessment Standard Operating Procedures: Within one hundred twenty (120) calendar days of the Effective Date of this Agreement, DFCS shall submit to OCR standard operating procedures for documenting and assessing DFCS foster care and adoption program applicants and participants with disabilities. The Individualized Assessment Standard Operating Procedures shall:
1. describe the methodology DFCS will use to assess and approve foster care and adoption program applicants and participants with disabilities;
 2. describe the auxiliary aids and services or modifications that may afford qualified applicants and participants with known disabilities equal opportunities to participate in the foster care and adoption program; and
 3. describe how DFCS will consult with DFCS' state-wide Section 504 Coordinator before taking any action which might adversely affect the ability of applicants and participants with disabilities to participate in the foster care and adoption program.

OCR shall review the Individualized Assessment Standard Operating Procedures within thirty (30) calendar days of receipt. The Individualized Assessment Standard Operating Procedures shall not be implemented by DFCS without OCR's approval, which shall not be unreasonably withheld.

Within thirty (30) calendar days of the Individualized Assessment Standard Operating Procedures becoming Final, DFCS will disseminate and implement the Individualized Assessment Standard Operating Procedures.

- G. Documenting Individualized Assessments: Within ninety (90) calendar days of the Effective Date of this Agreement, DFCS will establish and implement a process within its Statewide Automated Child Welfare Information System (SACWIS) to maintain a record of administration and results of individualized assessments. The record will include tracking of the following information:
1. the name of the relevant foster care and adoption program applicant and the date and time of each individualized assessment;
 2. the findings of the individualized assessment(s); and
 3. a statement documenting the basis of the denial, including if the denial is based on a disability, and whether reasonable modifications could allow the applicant to participate.

VII. Training

- A. Training of the ADA/Section 504 Coordinator: Within ninety (90) calendar days of the Effective Date of this Agreement and annually thereafter, DFCS will ensure that the DFCS Statewide ADA/Section 504 Coordinator and each Regional DFCS ADA/Section 504 Coordinator receive training on their responsibilities under this Agreement and the requirements of the ADA and Section 504, including but not limited to, Title II of the ADA's and Section 504's prohibitions on retaliation and requirements regarding individualized assessments and reasonable modifications.
- B. Training of the DFCS Foster Care Adoption Staff: Within six (6) months from the date that all Submitted Policies become Final, and annually thereafter DFCS will provide training on the Submitted Policies to each member of the DFCS Foster Care and Adoption staff involved in assessing and/or supporting foster care and adoption program applicants and participants. The training will include the requirements of the ADA and Section 504, including but not limited to, Title II of the ADA's and Section 504's prohibitions on retaliation and requirements regarding individualized assessments and reasonable modifications.
- C. Training of Foster Care and Adoption Contractors: Within one hundred fifty (150) calendar days of the Effective Date of this Agreement and DFCS will provide training to its Foster Care and Adoption contractors on the Submitted Policies and the requirements of the ADA and Section 504, including but not limited to, Title II of the ADA's and Section 504's prohibitions on retaliation and requirements regarding reasonable modifications. DFCS will require that its contractors adhere to the ADA and Section 504 policy as a term of its contract with Foster Care and Adoption Contractors.

VIII. Reporting Requirements

DFCS agrees to provide OCR with the following:

- A. Within thirty (30) calendar days of the Effective Date of this Agreement, the name, telephone number, functions, and office address of the DFCS Statewide ADA/Section 504 Coordinator and each Regional DFCS ADA/Section 504 coordinator.
- B. Within ninety (90) calendar days of the following policies becoming Final, copies of the:
 - 1. ADA/Section 504 Grievance Procedures; and the
 - 2. Nondiscrimination Policy.
- C. Within ninety (90) calendar days of the following policies becoming Final, copies of the:

1. Reasonable Modifications Policy; and
 2. Individualized Assessment Standard Operating Procedures.
- D. At six (6) months, twelve (12) months and twenty-two (22) months of the Effective Date of this Agreement, a written statement indicating the actions DHS/DFCS have taken to disseminate and/or publish the Items set forth in Section VI, above.
- E. Within ninety (90) calendar days after the training is completed in Section VII of this Agreement, DFCS will provide documentation of the training, referenced above in Section VII of this Agreement, including the training agenda (if applicable), any instructional materials (if applicable), and a list of attendees by name and title.
- F. At six (6) months, twelve (12) months and twenty-two (22) months after the Effective Date of this Agreement, copies of Individualized Assessment documentation referenced in Section VI.G of this Agreement.
- G. At six (6) months, twelve (12) months and twenty-two (22) months after the Effective Date of this Agreement, documentation showing the number and type of grievances and/or complaints filed against any DFCS office by prospective foster and adoptive parents with disabilities, which include the status and/or outcome of each grievance and/or complaint.

IX. Signatures

The individuals signing represent that they are authorized to execute this Agreement and legally bind the parties to this Agreement.

/s/

12/15/2015

Bobby Cagle
Director
Georgia Division of Family & Children Services

Date

/s/

12/17/2015

Timothy Noonan
Regional Manager
Office for Civil Rights, Region IV
U.S. Department of Health and Human Services

Date