

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND
SYLVAN LEARNING CENTERS, L.L.C.
UNDER THE AMERICANS WITH DISABILITIES ACT
DJ 202-35-195

BACKGROUND

1. This Settlement Agreement (“Agreement”) is made and entered into between the United States of America (“United States”) and Sylvan Learning Centers, L.L.C. (“Sylvan”) on behalf of itself and its affiliates which currently own Sylvan Learning Centers (“Centers”), as well as additional affiliates which may acquire one or more Sylvan Learning Centers during the life of this Agreement. This Agreement is applicable to Centers currently owned or acquired during the term of this Agreement by Sylvan and its affiliates. This Agreement resolves an investigation of Sylvan conducted by the United States Department of Justice (“Department”) under title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 et seq. The Department initiated this investigation after it received a complaint from the mother of an individual who is deaf. The complainant alleged that Sylvan discriminated against her son, a prospective Sylvan student (“Prospective Student”) in violation of the ADA, by refusing to provide him with the auxiliary aids and services he needed to communicate effectively and participate equally in Sylvan’s programs and services. Sylvan denies such allegations. The Department’s investigation was conducted under the authority granted by title III of the ADA, 42 U.S.C. § 12188(b)(1)(A)(i); 28 C.F.R. § 36.502.
2. The Parties to this Agreement are the United States and Sylvan. Current Centers are listed in Appendix A of this Agreement.
3. Sylvan provides tutoring, both in person and online, and personalized instruction to students primarily in grades pre-K through 12. Sylvan is a place of public accommodation, as defined in section 301(7)(J) of the ADA, 42 U.S.C. § 12181(7)(J), and its implementing regulation, 28 C.F.R. § 36.104.
4. The ADA requires public accommodations to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, unless 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. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303.

5. The term “qualified sign language interpreter” as used herein will mean: an interpreter who is able to interpret competently, accurately, and impartially for a student who is deaf or hard-of-hearing, both receptively and expressively, using specialized terminology necessary for effective communication in an educational setting. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter under this Agreement. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone else signing and change their signed or finger spelled communication into spoken words is not a qualified sign language interpreter. 28 C.F.R. § 36.104.
6. Sylvan agrees that it has and will maintain policies, practices, and procedures as outlined in this Agreement to ensure that individuals with disabilities, including individuals who are deaf or hard-of-hearing, have an opportunity equal to that of nondisabled individuals to use the accommodations provided by Sylvan.
7. In order to avoid further investigation or litigation of the issues discussed herein, and in consideration of the mutual promises and covenants contained in this Agreement, the United States and Sylvan hereby agree to the following:

REMEDIAL ACTION

Effective Communication Policy with Students with Hearing Disabilities

8. Consistent with the ADA, Sylvan 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 Sylvan by excluding or providing unequal treatment to persons who are deaf or hard-of-hearing.
9. Sylvan will provide auxiliary aids and services, including qualified sign language interpreters, to students with hearing disabilities when necessary to ensure effective communication, unless to do so would pose an undue burden. 42 U.S.C. § 12182(b)(2)(A) (iii); 28 C.F.R. §§ 36.104 and 36.303. Auxiliary aids and services include, but are not limited to, providing qualified sign language interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, videotext displays, or any other effective methods of making aurally delivered materials available to students with hearing disabilities. 28 C.F.R. § 36.303. Sylvan will not impose a surcharge on the persons using the auxiliary aids and services for the costs associated with providing auxiliary aids and services. 28 C.F.R. § 36.301(c).

10. Sylvan affirms that, as of the effective date of this Agreement, it has adopted and incorporated into its Operations Manual the Effective Communication Policy with Students with Hearing Disabilities attached as Appendix B to this Agreement.
11. If it has not done so previously, within sixty (60) days of the effective date of this Agreement, Sylvan will distribute the policy attached as Appendix B to its Center Managers, Center Education Directors, District Managers and Regional Managers, as well as to its employees at the Company's national call center ("1-800-EDUCATE"). Sylvan will also distribute the policy attached as Appendix B to all newly-hired Center Managers, Center Education Directors, District Managers and Regional Managers, as well as to its employees at the Company's national call center during its regular orientation of new employees, and redistribute the policy to all appropriate personnel on an annual basis for the life of this Agreement.
12. If it has not done so previously, within sixty (60) days of the effective date of this Agreement, Sylvan will ensure that each of its Centers has compiled and will maintain for the life of this Agreement a list of qualified sign language interpreters and/or agencies providing interpreter services for the purpose of fulfilling requests for interpreter services.

Notification to Public of Effective Communication Policy with Students with Hearing Disabilities

13. If it has not done so previously, within sixty (60) days of the effective date of this Agreement, Sylvan will post and maintain on its Internet website (www.educate.com) and in a prominent location in the public areas of each of its Centers the Notice of Sylvan's Effective Communication Policy, attached as Appendix C to this Agreement. Physical copies will be refreshed, as needed.

Training

14. Within ninety (90) days of the effective date of this Agreement, Sylvan will train all of its employees in the categories specified in paragraph 11 of this Agreement on the ADA and Sylvan's obligations to provide effective communication to people with hearing disabilities. Sylvan will incorporate this training into its regular training programs.

Grievance Procedure

15. If it has not done so previously, within forty-five (45) days of the effective date of this Agreement, Sylvan will designate an employee at the corporate level who will be responsible for the company's ADA compliance, including monitoring complaints from customers with disabilities, for the life of this Agreement.

16. If it has not done so previously, within sixty (60) days of the effective date of this Agreement, Sylvan will prominently post on its Internet website (www.educate.com) the name and contact information of the employee to whom ADA-related complaints may be directed.
17. For the life of this Agreement, Sylvan will handle any ADA-related complaints it receives as follows: the designated employee (see paragraph 15, above) will investigate the complaint with the appropriate Sylvan staff where the complaint originated to ensure compliance with this Agreement and the ADA. The designated employee also will contact the complainant to discuss the complaint and possible resolutions. The designated employee will complete his or her investigation and respond in writing to the complainant within twenty (20) business days after the complaint is received. Sylvan will maintain written records of complaints from customers with disabilities and Sylvan's responses throughout the life of this Agreement. Copies of such records will be provided to the Department upon request.
18. Sylvan agrees to administer disciplinary measures it deems appropriate to any employee who it determines has engaged in conduct that denies customers with disabilities their rights under the ADA.
19. Within six (6) months of the effective date of this Agreement, Sylvan will submit a report to the Department on the actions it has taken to comply with the requirements of Paragraphs 8-18, above.

MONETARY RELIEF FOR COMPLAINANTS

20. The ADA authorizes the United States Attorney General to seek a court award of compensatory damages on behalf of individuals aggrieved as the result of violations of the ADA. 42 U.S.C. § 12188(b)(2)(B); 28 C.F.R. § 36.504(a)(2). Within ten (10) days of the effective date of this Agreement, Sylvan will compensate the Prospective Student in this matter who was allegedly denied Sylvan's services by sending him a check in the amount of one thousand dollars (\$1,000.00), by certified mail to the address provided by the Department. Sylvan will simultaneously send a copy of the check and the accompanying letters to counsel for the United States.
21. In consideration of the promises made in paragraph 20 of this Agreement, the Department agrees that within ten (10) days of its receipt of the Agreement signed by an authorized representative of Sylvan, it will obtain the Prospective Student's signature on the Waiver and Release of Claim form attached hereto as Appendix D. The Department will mail the signed Waiver and Release of Claim form to Sylvan within fifteen (15) days of the Department's receipt of same.

CIVIL PENALTY

22. The ADA also authorizes the United States Attorney General to seek a civil penalty as a result of violations of the ADA. 42 U.S.C. § 12188(b)(2)(C); 28 C.F.R. § 36.504(a)(3). Within ten (10) days of the effective date of this Agreement, Sylvan will issue a check or money order in the amount of two thousand five hundred dollars (\$2,500.00) payable to the United States Treasury as a civil penalty. Counsel for Sylvan will delivery the check or money order to counsel for the United States.

ENFORCEMENT

23. If at any time Sylvan desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval shall not be unreasonably withheld or delayed.
24. The Department may review compliance with this Agreement at any time. If the Department believes that Sylvan has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify Sylvan in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to Sylvan, it may institute a civil action in federal district court to enforce the terms of this Agreement or title III of the ADA and may, in such action, seek any relief available under the law.
25. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for Sylvan to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
26. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
27. This Agreement shall be binding on Sylvan, its agents and employees. In the event Sylvan and its affiliates seek to transfer or assign all or substantially all of their interest in one or more of its Centers, and the successor or assign intends on carrying on the same or similar use of the Center(s), as a condition of sale Sylvan shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

28. A copy of this document or any information contained in it will be made available to any person by Sylvan or the Department on request.
29. This Agreement constitutes the entire Agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments), shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect Sylvan's continuing responsibility to comply with all aspects of the ADA.
30. This Agreement will remain in effect for two (2) years from the effective date of this Agreement.
31. Sylvan represents and warrants that the person signing for Sylvan is authorized to bind Sylvan to this Agreement.
32. The effective date of this Agreement is the date of the last signature below.

FOR SYLVAN LEARNING CENTERS,
L.L.C.:

FOR THE UNITED STATES:
RENA J. COMISAC
Acting Assistant Attorney General
Civil Rights Division

BY: _____
C. ALAN SCHROEDER,
Vice President & General Counsel
1001 Fleet Street
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BY: _____
JOHN L. WODATCH, Chief
JEANINE WORDEN, Deputy Chief
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Disability Rights Section - NYA
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
(202) 307-1378

Dated: _____

Dated: _____