



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

Office for Civil Rights, Region VI
1301 Young Street, Suite 1169
Dallas, TX 75202

AUG 23 2011

Mr. David Brown, Administrator
Citizens Medical Center
2701 Hospital Drive
Victoria, TX 77901

Reference Number: 07-69649-- [REDACTED] obo [REDACTED] vs. *Citizens Medical Center*

Dear Mr. Brown:

This letter is to advise you that the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint, which was received in our office on July 3, 2007. The Complainant, [REDACTED] (Complainant), alleged that Citizens Medical Center of Victoria, Texas (Medical Center) refused to provide child care services for her son [REDACTED] in its wellness and rehabilitation facility on the basis of his disability, autism spectrum disorder. The Complainant alleged that the Medical Center's actions violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 *et seq.* (Section 504) and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.* (ADA). OCR has determined that the Medical Center discriminated against the Complainant's son on the basis of disability in violation of Section 504 and Title II of the ADA. OCR has also determined that the Medical Center's policies fail to ensure that persons with disabilities are afforded an equal opportunity to receive child care services in the Medical Center's wellness and rehabilitation facility. The purpose of this letter is to outline the basis of OCR's determination and provide the Medical Center with the opportunity to make changes to ensure that it complies with the applicable statutes and regulations.

I. Legal Authority

Our investigation was conducted under Section 504 and its implementing regulation, 45 C.F.R. Part 84 (prohibiting discrimination on the basis of disability by recipients of Federal financial assistance from HHS) and Title II of the ADA and its implementing regulation at 28 C.F.R. Part 35 (prohibiting discrimination based on disability in all programs, services, and regulatory activities of state and local governmental components relating to the provision of health care and social services, regardless of whether such components receive Federal financial assistance). As a recipient of financial assistance from HHS, the Medical Center is obligated to comply with Section 504 and its implementing regulation by ensuring that its programs and activities, including its wellness and rehabilitation center, provide services without discrimination against persons with disabilities. In like manner, as a local governmental entity that provides health services (the public county hospital of Victoria County, Texas), the Medical center must comply with the ADA's disability non-discrimination mandate.

II. Background

The Complainant alleges that on [REDACTED], the Medical Center discriminated against her son on the basis of his disability (autism spectrum disorder), when it denied him the opportunity to participate in its child care program.

A) Complainant's Son

The Complainant's son has a diagnosis of autism and sensory integration/motor planning deficits. Autism spectrum disorder is a neurological disorder which affects the thought process and how a person perceives the world. The Complainant's son is on the high functioning end of the autism spectrum in some respects, but he is limited and needs picture cards and verbal prompts to assist him in completing tasks such as brushing his teeth. He is able to communicate basic wants and needs, but is not able to carry on an extended conversation.

B) The Covered Entity

Citizens Medical Center is a general acute care hospital located in Victoria, Texas and is licensed for 344 beds. The City of Victoria is located in South Texas and has a population of around 85,000. The Medical Center's service area includes the surrounding counties, with a referral population of 140,000.

The Medical Center's Citizens Healthplex (HealthPlex) rehabilitation and wellness facility offers health and fitness memberships to anyone 18 years of age or older on a monthly or annual basis. Memberships provide unlimited access to the facility's fitness floor and to all group fitness classes. The HealthPlex also offers a child care program called Kidz-N-Motion. The Kidz-N-Motion program offers short-term child care for children 3 months to 10 years of age and provides arts and crafts, basic games, and general play time activities for children. Parents may leave their child for up to two hours per day provided they remain on the HealthPlex premises during this time.

C) Facts

The Complainant stated that on [REDACTED], she and her son visited HealthPlex because she was interested in a fitness membership. A HealthPlex employee (Marla) took the Complainant on a tour of the facility while her son was placed in the Kidz-N-Motion program. The Complainant indicated that she informed a Kidz-N-Motion staff person that her son had autism and sensory issues. According to the Complainant, the staff person said that she understood and had no problem with caring for the Complainant's son. The Complainant further stated that the Kidz-N-Motion staff person commented to her that her son was polite and exhibited good behavior while the Complainant was touring the facility.

During the tour, the Complainant told Marla about her previous experience with the local YMCA's child care program in which the child care workers were inattentive to her son and she found him climbing on a table. Later that day, she received a voice mail from Marla advising her that her son would not be allowed to participate in the Kidz-N-Motion program. In the voice mail, Marla told the Complainant that she and HealthPlex Director Brett Barnett decided against her son's participation in the Kidz-N-Motion program because they believed that her son would need extra care because of the YMCA child care incident and that he needed to be "independent."

The Complainant stated that she spoke with Mr. Barnett about HealthPlex's decision not to permit her son to participate in the Kidz-N-Motion program. Mr. Barnett told her that he had been employed by HealthPlex for 18 months and that it is the policy of the HealthPlex not to accept children with special needs into the Kidz-N-Motion program and that he was not aware of any special needs children who were allowed to participate in the Kidz-N-Motion program.

Further, the Complainant stated that she continued her search for a health care center where she could work out after HealthPlex refused to provide childcare for her son. She soon joined the DeTar Health Center (DHC), a fitness facility operated by another hospital in Victoria, Texas, DeTar Medical Center. DHC offers free child care to its members with children from 8 months to 10 years of age and typically utilizes 1-2 child care aides at any one time to provide child care services. DHC was aware of Complainant's son's disability and accepted him into its program and provided care for him until the [REDACTED] [REDACTED] at which time he turned 10 years old and no longer met the age eligibility requirement. Further, DHC Director Julie Hughes stated that it was not necessary for its staff to assign an aide to provide one-to-one care for the Complainant's son because of his disability and reported that no extra measures or other modifications were needed to care for the Complainant's son that would not have been necessary for other non-disabled children.

On August 24, 2009, after determining that OCR had jurisdiction over the Medical Center, OCR opened an investigation of and sent a Data Request to the Medical Center. In its September 2, 2009 response to OCR's Data Request, the Medical Center denied discriminating against the Complainant's son on [REDACTED] on the basis of his disability (autism spectrum disorder) when it denied him the opportunity to participate in its Kidz-N-Motion program. The Medical Center stated that the Kidz-N-Motion program exists to provide general supervision of members' children ages 3 months to age 10 and it supervises many children at any one time. The Medical Center stated that HealthPlex accepts children into its Kidz-N-Motion program who meet the age eligibility criteria and who do not "present behavioral or serious challenges that prevent staff from providing safe and appropriate supervision for all the children in the environment at any given time". The Medical Center advised OCR that the application process for child care services consists of the parent/guardian completing and submitting a one page Enrollment and Health History form to enroll the child. The form contains questions regarding the health and medical status of the child along with other relevant information. The HealthPlex's Member Services Supervisor is responsible for reviewing any case in which there is concern about caring for a child in the Kidz-N-Motion program. The Director of HealthPlex and, if necessary, the Medical Center's Administration make the final decision regarding the eligibility of a child to participate in the Kidz-N-Motion program.

In its September 2, 2009 response, the Medical Center stated that it did not provide the requested child care service for the Complainant's son because he needed extra care and attention that its child care program could not provide. The Medical Center further contends that the Complainant asked that the Kidz-N-Motion program provide one-on-one care for her son but the HealthPlex staff told her that the childcare program cannot provide such care for children with special needs. According to the Medical Center, there are, at most, two child care aides in the Kidz-N-Motion area at any given time to supervise children. According to the Medical Center, if any one child, for whatever reason, requires a child care aide's full and undivided attention, HealthPlex would be unable to provide adequate supervision to the rest of the children.

III. Issues

1) Whether the Medical Center discriminated against the Complainant's son on the basis of disability by refusing to provide child care services for him in its child care program, Kidz-N-Motion, in violation of Section 504 and its implementing regulation at 45 C.F.R. §§84.4 (a) and (b)(1)(i) and (vii) and Title II of the ADA and its implementing regulation at 28 C.F.R. §§35.130(a) and (b)(1)(i) and (vii).

2) Whether the Medical Center's policy regarding eligibility criteria for accepting children into its Kidz-N-Motion child care program fails to ensure that persons with disabilities are afforded an equal opportunity to access the Kidz-N-Motion program in violation of Section 504 and its implementing regulation at 45 C.F.R. §§84.4(a) and (b)(1)(i) and (vii) and Title II of the ADA and its implementing regulation at 28 C.F.R. §§35.130(a) and (b)(1)(i) and (vii).

IV. Legal Standard

The regulation implementing Section 504 at 45 C.F.R. §84.4 provides as follows:

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II of the ADA at 28 C.F.R. §35.130 provides as follows:

(a) 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 a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

The Section 504 regulation at 45 C.F.R. §84.3(j)(1)(i) defines a person with a disability as any person "who has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." The

regulation at 45 C.F.R. §84.3(l)(4) provides that a qualified person with a disability is a person with a disability who “meets the essential eligibility requirements for the receipt of such services.”

With respect to an individual, the Title II ADA regulation at 28 C.F.R. §35.104 defines the term “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” A “qualified individual with a disability” is defined at 28 C.F.R. §35.104 as an “individual with a disability who, with or without reasonable modifications to rules, policies or practices . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

In, October, 1997, the U.S. Department of Justice (DOJ) published a document entitled, *Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act (Guidance)* providing additional guidance to places of public accommodation regarding their obligations to persons with disabilities seeking child care services. Among other things, the Guidance states as follows:

Centers cannot exclude children with disabilities from their programs unless their presence would pose a *direct threat* to the health and safety of others or require a *fundamental alteration* of the program.

Centers have to make *reasonable modifications* to their policies, practices and procedures to integrate children, parents, and guardians with disabilities into their programs unless doing so would constitute a *fundamental alteration*....

Child care centers cannot just assume that a child's disabilities are too severe for the child to be integrated successfully into a center's child care program. The center must make an *individualized assessment* about whether it can meet the particular needs of the child without fundamentally altering its program. In making this assessment, the caregiver must not react to unfounded preconceptions or stereotypes about what children with disabilities can and cannot do, or how much assistance they may require. Instead the caregiver should talk to the parents or guardians or other professionals (such as educators or health care professionals) who work with the child in other contexts.

...

Most children will need individualized attention occasionally. If a child who needs one-to-one attention due to a disability can be integrated without fundamentally altering a child care program, the child cannot be excluded solely because the child needs one-to-one care.

...

[T]he ADA generally does not require centers to hire additional staff or provide constant one-to-one supervision of a particular child with a disability.¹

V. Discussion and Analysis

A) The Medical Center Discriminated against the Complainant's Son on the Basis of Disability in Rejecting Him for Child Care Services

1. The Complainant's Son Was an Individual with a Disability

OCR finds that the Complainant's son was substantially limited in the major life activities of learning, caring for himself and communicating due to his diagnosis of autism spectrum disorder and sensory integration/motor planning deficits. Autism spectrum disorder is a neurological disorder which affects the thought process and how a person perceives the world. In some respects, the Complainant's son is limited and needs picture cards and verbal prompts to assist him in completing tasks such as brushing his teeth. He is able to communicate basic wants and needs but is not able to carry on an extended conversation. He also receives assistance to modify his work in school. Therefore, the Complainant's son meets the requirements for a person with a disability as defined by the Section 504 regulation at 45 C.F.R. §84.3(j)(1)(i) and the Title II ADA regulation at 28 C.F.R. §35.104.

2. The Complainant's Son Was a Qualified Individual with a Disability

OCR also assessed the evidence to determine whether the Complainant's son was a "qualified individual with a disability" who, with or without reasonable modifications, "meets the essential eligibility requirements for the receipt of such services." 45 C.F.R. §84.3(l)(4) and 28 C.F.R. §35.104.

In its September 2, 2009 response to OCR's Data Request, the Medical Center stated that the eligibility criteria for children to participate in its Kidz-N-Motion program consists of: a) a child must be between ages 3 months to age 10; b) the HeathPlex member must be onsite during the time that his or her child is receiving child care services from Kidz-N-Motion; and c) the child "must not present behavioral or other serious challenges that prevent staff from providing safe and appropriate supervision for all of the children in the environment at any given time."²

OCR finds that the Complainant's son clearly met the first two criteria-- he was [REDACTED] years old at the time of the alleged act of discrimination and the Complainant told the HealthPlex staff that she was willing to be onsite at all times when her son would be cared for by Kidz-N-Motion staff. The remaining assessment in determining if her son met the eligibility criteria for the receipt of services is whether, with or without a reasonable modification, the Complainant's son could participate in the program without presenting behavioral or other serious challenges that would prevent staff from providing safe and appropriate supervision for all of the children at any given time. The evidence

¹ Although the above referenced Department of Justice regulations and guidance are specifically applicable to Title III of the ADA which prohibits discrimination on the basis of disability by public accommodations, the regulations and guidance are consistent with OCR's interpretation of Section 504 with respect to the obligations of entities covered by Section 504 to provide child care services to persons with disabilities and to implement policies and practices to ensure that persons with disabilities are afforded an opportunity to participate in or benefit from their programs and activities without discrimination based on disability.

² During its investigation, OCR found that HealthPlex Director Barnett told the Complainant that her son could not be accepted for the Kidz-N-Motion program because he was not "independent". However, this criterion was not included in the Medical Center's official position contained in its September 2, 2009 Data Response, so it was not considered as one of the Medical Center's eligibility standards in determining whether a child will be admitted to the program.

obtained by OCR during its investigation indicates that the Complainant's son could participate in the program without presenting behavioral or other serious challenges that would prevent staff from providing safe and appropriate supervision for all of the children at any given time and therefore was a qualified individual with a disability for purposes of receiving child care services.

- a. The Complainant's son met the essential criteria for participation in the program without one-to-one care as a reasonable modification.

Although the Medical Center claimed that it could not provide child care services for the Complainant's son because it could not provide the "one-to-one" care he needed, there is no evidence that such care would have been required. As noted above, the Complainant sought out an alternative workout facility where her son could receive child care services and she joined the DHC in [REDACTED], shortly after her son was rejected for child care by HealthPlex. Ms. Hughes, DHC Director, advised OCR that it was not necessary for its staff to assign an aide to provide one-to-one care for the Complainant's son because of his disability. DHC cared for him for over two years [REDACTED] and reported that no extra measures or other modifications were needed to care for him that would not have been necessary for non-disabled children. DHC, like Kidz-N-Motion, utilizes no more than 1 or 2 aides at a time to care for children and provides care for up to 20 children at a time. DHC informed OCR that its staff never encountered episodes in which workers found that the son's behavior presented challenges that were difficult or impossible to manage nor was it ever necessary for his mother to take him out of day care because of unmanageable conduct.

Evidence also shows that the Complainant's son was placed in Kidz-N-Motion on [REDACTED] while the Complainant was given a tour of the HealthPlex. The Complainant told OCR that her son behaved well during this time even though there were two babies in Kidz-N-Motion at the same time that were screaming and crying. Complainant reported that the woman who cared for her son told her that he was polite and well behaved.

While the Medical Center contends that the Complainant requested that Kidz-N-Motion provide one-to-one care while her son was receiving child care services, there is no evidence to corroborate this assertion, and the Complainant states that she did not ask for one-to-one care for her son. In fact, her son later received child care services from DHC and the Complainant did not request one-to-one care in that instance.

Moreover, while the Medical Center asserts that the Complainant's son needed one-to-one care to participate in Kidz-N-Motion, the evidence shows that HealthPlex did not conduct an individualized assessment to determine the son's eligibility for the program or need for a reasonable modification, but instead rejected him based on assumptions that his disability would preclude his eligibility for child care services. In the Medical Center's September 2, 2009 Data Request Response, it advised OCR that the application process for receiving child care services consists of the parent/legal guardian completing a one page Enrollment and Health History form which contains questions about the child's health, medical status and other relevant information. It appears that the Complainant was not offered an application form, which would have permitted HealthPlex to evaluate whether her son was eligible for services or if it could have provided such services with reasonable modifications to its programs. The evidence thus does not support the conclusion that the Complainant's son needed one-to-one care in order to participate in Kidz-N-Motion.

- b. Even if the Complainant's son needed one-to-one care as a reasonable modification to meet the essential eligibility criteria for participation in the program, the evidence does not support the conclusion that the provision of one-to-one care would fundamentally

alter the program or pose a direct threat to the health or safety of other children in the program.

In this case, OCR found that the Medical Center refused to accept the Complainant's son in its Kidz-N-Motion program and that the Complainant did not ask the Medical Center for reasonable modifications, such as one-to-one care. Nevertheless, in the Medical Center's September 2, 2009 Data Response, it stated that it was not required to provide such modifications to its Kidz-N-Motion program. In its response the Medical Center stated, "[C]itizen's HealthPlex cannot provide one-on-one attention and care for children with special needs." The Medical Center expressed concern that providing child care services for the Complainant's son would require a child care aide's full and undivided attention (one-to-one care) and create a situation where the Kidz-N-Motion staff would be unable to provide adequate supervision for the rest of the children. As noted above, the DOJ Guidance does not require a covered entity to accept children for enrollment into day care if "their presence would pose a direct threat to the health and safety of others or require a fundamental alteration of the program." See 28 C.F.R. §§35.139 and 35.164. It appears that the Medical Center argues that accepting the Complainant's son into the Kidz-N-Motion program would require it to modify its program by providing one-to-one care for him and that such supervision would fundamentally alter the nature of the HealthPlex's group care facility or pose a direct threat because a Kidz-N-Motion worker giving attention to Steven might be precluded from properly supervising the other children in the day care.

As noted, OCR finds that the evidence does not support the conclusion that the Complainant's son would have required one-to-one attention in order to be adequately supervised. OCR further finds that even if the Complainant's son would have needed one-to-one attention while receiving day care services, the Medical Center has not provided evidence that such care would have fundamentally altered the program or posed a direct threat.

In *Burriola v. Greater Toledo YMCA*, 133 F.Supp.2d 1034, 1038 (N.D. Ohio 2001), the plaintiffs alleged that Jordan Burriola ("Jordan"), an 8-year-old boy with autism, was involuntarily and unlawfully terminated from the YMCA daycare program based on his disability. This case was brought under Title III of the ADA, Section 504, and other authority. The court ordered that the plaintiff's motion for a preliminary injunction be granted and that the defendants be required to make appropriate modifications to reinstate Jordan to the daycare program. With regard to the daycare's defense that accepting Jordan into its program would constitute a fundamental alteration because he would require one-on-one attention, the court stated:

To the extent that defendants argue a fundamental alteration would occur because the modifications require the staff to give one-on-one attention to Jordan, I still find plaintiffs are likely to succeed. In any group child care setting, a group counselor may be required, at times, to provide one-on-one care to an individual child. Counselors must give individual attention to children who become upset or injured; they may be called upon by any child to answer a question or help with a task. . . . [A] daycare counselor should be aware of what all the children are doing at all times. Counselors must be aware of improper, or odd behavior of all the children to prevent fights, accidents, or other mishaps.

Burriola, at 6.

The Medical Center has not submitted evidence as to the degree or extent of one-to-one care that the Complainant's son would require to participate in Kidz-N-Motion or as to the impact such care would

have on other children in the program, OCR therefore finds that the Medical Center has not demonstrated that even if it had to provide one-to-one care to the Complainant's son for him to participate in Kidz-N-Motion, the provision of such care would fundamentally alter the program or pose a direct threat to the health or safety of other children in the program.

OCR thus finds that the evidence supports the conclusion that with or without a reasonable modification, the Complainant's son could participate in the Kidz-N-Motion program without presenting behavioral or other serious challenges that would prevent staff from providing safe and appropriate supervision for all of the children at any given time and that the Complainant's son therefore is a qualified person with a disability.

3) The Complainant's Son Was Denied Child Care Based on His Disability

As noted, the Medical Center denied child care to the Complainant's son, a qualified individual with a disability, based on its perception that he needed a reasonable modification for his disability. Such a denial of a service, benefit or opportunity is a denial based on disability. Therefore, OCR concludes that the Medical Center violated 45 C.F.R. §§84.4(a) and (b)(1)(i) and (vii) and Title II of the ADA and its implementing regulation at 28 C.F.R. §§35.130(a) and (b)(1)(i) and (vii).

B) The Medical Center's Child Care Policies Discriminate against Children with Disabilities

During its investigation, the Complainant explained to OCR that she discussed her child's exclusion from Kidz-N-Motion with HealthPlex director Brett Barnett. On [REDACTED], Mr. Barnett explained to the Complainant that it is the policy of Kidz-N-Motion not to accept special needs kids. Further, in a data request response dated September 2, 2009, Administrator David Brown wrote that "HealthPlex cannot provide one-to-one care for children with special needs" Mr. Barnett's statement to the Complainant evidences that the Medical Center's admission policy excludes children with disabilities who have unspecified "special needs." Further, the admission policy in Mr. Brown's data response letter excludes any special needs child with a disability who might require any one-to-one care. The Medical Center has not provided any evidence that justifies the exclusion of children with disabilities from the program. Further, apart from its unsupported statement that the provision of one-to-one care to a child with a disability would prevent staff from providing appropriate supervision to other children in the program, the Medical Center has not demonstrated that it could not serve a child with a disability who needed one-to-one care.

OCR finds that the policy of excluding children with "special needs" from Kidz-N-Motion and the policy of excluding children with special needs who need one-to-one care without a demonstration that all such children are unable to meet essential eligibility criteria with or without a reasonable modification, or that admission of such children would fundamentally alter the program or pose a direct threat to the health or safety of other children in the program, discriminates against children with disabilities. These policies exclude qualified children with disabilities from participation in the Kidz-N-Motion program on the basis of disability, in violation of Section 504 and Title II of the ADA and their implementing regulations.

VI. Conclusion and Remedy

Our investigation of the above complaint leads OCR to conclude that the Medical Center discriminated against the Complainant's son based on his disability, autism spectrum disorder, in violation of Section 504 and its implementing regulation and Title II of the ADA and its implementing

regulation. OCR also finds that the Medical Center's policies in its HealthPlex Kidz-N-Motion program deny children with disabilities an equal opportunity to benefit from the Medical Center's services. OCR is affording the Medical Center an opportunity to make changes that will help ensure compliance with the applicable regulations.

The Medical Center has fifteen (15) calendar days from the date of this letter to respond and sixty (60) calendar days from the date of this letter to negotiate a Settlement Agreement with OCR. To that end, we have enclosed a proposed Settlement Agreement for your consideration. If compliance has not been secured by the end of the sixty-day negotiation period, OCR may initiate formal enforcement action by commencing administrative proceedings, or by other means authorized by law. These proceedings could result in the termination of Federal financial assistance to the recipient.

We request that the Medical Center review the enclosed Resolution Agreement and contact Mr. Roger Geer, Regional Attorney, at (214) 767-3450 within **15 days** of the date of this letter to discuss the proposed compliance measures.

The complainant may have the right to file a civil lawsuit to remedy unlawful discrimination. The complainant may wish to consult an attorney about his or her right to pursue a private lawsuit, any applicable statute of limitations that sets the deadline or maximum period of time within which a lawsuit may be filed, and other relevant considerations.

No federally funded recipient or public entity or person may intimidate, threaten, coerce, discriminate or retaliate against anyone because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint under the statutes or regulations enforced by OCR. The Complainant or any other individual who believes that he or she is being subjected to such discriminatory or retaliatory conduct because of filing a complaint with OCR or participating in the resolution of a complaint, may file a complaint with OCR concerning such conduct, which shall be handled under OCR's investigative procedures.

We wish to advise you that under the Freedom of Information Act, it may be necessary to release this document and related correspondence in response to an inquiry. In the event we receive such a request, we will make every effort to protect information which identifies individuals, or that, if released, would constitute an unwarranted invasion of privacy. We appreciate your cooperation regarding this matter.

Sincerely,
/s/

Ralph D. Rouse
Regional Manager

Enclosure

SETTLEMENT AGREEMENT

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

And

CITIZENS MEDICAL CENTER

Transaction Number: 07-69649

I. Introduction

The parties to this Settlement Agreement (the Agreement) are the United States Department of Health and Human Services, Office for Civil Rights (OCR), and Citizens Medical Center (Medical Center), a general acute care hospital located in Victoria, Texas. This Agreement resolves OCR transaction number 07-69649, which constitutes a complaint filed by an individual (the Complainant), who alleged that the Medical Center discriminated against her son on the basis of his disability (autism spectrum disorder), in violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Specifically, the Complainant alleged that, in 2007, the Medical Center refused to provide child care services for her son in its HealthPlex Rehabilitation and Wellness Center child care program (Kidz-N-Motion) because he has autism spectrum disorder. OCR determined that the Medical Center discriminated against the Complainant's son on the basis of disability and that the Medical Center's child care policies discriminate against individuals on the basis of disability.

A. Parties to the Agreement:

1. United States Department of Health and Human Services, Office for Civil Rights; and
2. Citizens Medical Center, Victoria, Texas.

B. Jurisdiction: The Medical Center receives Federal financial assistance through its participation in the Medicaid program and is subject to Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. § 794 , and its implementing regulation, 45 C.F.R. Part 84 (Section 504). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. Also, the Medical Center, as the county hospital of Victoria, County, Texas, is a local governmental entity that provides health care. As such, it is subject to OCR's regulatory authority under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and its implementing regulations, 28 C.F.R. Part 35 (ADA).

C. Purpose of the Agreement: To resolve these matters without further burden or the expense of litigation, the Medical Center agrees to the terms stipulated in this Agreement and affirms that it will comply with all provisions of Section 504 and Title II of the ADA. The Medical Center's willingness to enter into this Agreement with OCR in no way constitutes an admission of liability. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the Medical Center and OCR. The actions described in this Agreement fully address the issues described in the complaint.

II. Definitions

For purposes of this Agreement, the terms listed below shall have the following meaning:

A. Disability means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

B. Reasonable modifications are modifications to the Medical Center's policies, practices, or procedures when such modifications are necessary to ensure equal access for children with disabilities to the Medical Center's services, programs and activities, unless the Medical Center can demonstrate that making such modifications would fundamentally alter the nature of such services, programs, or activities.

C. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services.

D. Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient of Federal financial assistance.

III. General Provisions

A. Recipient Covered by Agreement: This Agreement covers the Medical Center, a general acute care hospital in Victoria, Texas.

B. Suspension of Administrative Actions: Subject to the continued performance by the Medical Center of the stated obligations and required actions contained in this Agreement and in conformity with Section III-H, Failure to Comply with the Terms of this Agreement, OCR shall suspend administrative actions on OCR transaction number 07-69649.

C. Effective Date and Term of the Agreement: This Agreement shall become effective as of the date that both Parties have signed it (the Effective Date). This Agreement shall remain in effect for eighteen (18) months following the Effective Date of this Agreement (the Term). At such time, the Agreement shall terminate, provided that OCR determines that the Medical Center has complied with the Agreement. All provisions are effective on the Effective Date unless otherwise stated. Notwithstanding the Term of this Agreement, the Medical Center acknowledges that it shall continue to comply with Section 504 and Title II of the ADA as long as it is covered by these respective statutes.

D. Medical Center's Continuing Obligation: Nothing in this Agreement is intended to relieve the Medical Center of its continuing obligation to comply with other applicable nondiscrimination statutes and their implementing regulations, including Section 504 and Title II of the ADA.

E. Effect on Other Compliance Matters: The terms of this Agreement do not apply to any other issues, reviews, investigations or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal agency. Any unrelated compliance matter arising from subsequent reviews or investigations shall be addressed and resolved separately. Nothing in this Agreement will be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to the Medical Center and the subject matter of this Agreement. This Agreement does not address or resolve issues involved in any other complaint investigation, compliance review, or administrative action under Federal laws by other Federal Agencies, including any action or investigation under Section 504 or the ADA.

F. Prohibition Against Retaliation and Intimidation: The Medical Center shall not retaliate, 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.

G. OCR's Review of the Medical Center's Compliance with Agreement: OCR may, at any time, review the Medical Center's compliance with this Agreement. Throughout the term of this Agreement, the Medical Center agrees to retain the records required by OCR to assess its compliance with this Agreement and to submit the requested reports to OCR.

H. Failure to Comply with the Terms of Agreement: During the Term of this Agreement, if at any time OCR determines that the Medical Center has failed to comply with any provision of this Agreement, OCR shall notify the Medical Center in writing. The notice shall include a statement of the basis for OCR's determination and shall allow the Medical Center fifteen (15) calendar days to either explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or provide information that would cause OCR to review or change its determination. If the Medical Center does not respond to the notice or, if upon review of the Medical Center's response, OCR finds that the Medical Center has not complied with any provision of this Agreement, OCR may, upon notice to the Medical Center, take steps to suspend, terminate, or refuse to grant or continue Federal financial assistance; refer the matter to the U.S. Department of Justice; or, as it deems appropriate, take any other action authorized by law.

I. Non-Waiver Provision: Failure by 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 provisions of this Agreement.

J. Entire Agreement: This Agreement constitutes the entire understanding between the Medical Center and OCR in resolution of OCR transaction number 07-69649. Any statement, promise or agreement not contained herein shall not be enforceable through this Agreement.

K. Modification of Agreement: This Agreement may be modified by mutual agreement of the parties in writing.

L. Publication or Release of Agreement: OCR places no restrictions on the publication of this Agreement or its terms. In addition, OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 522, and its implementing regulation, 45 C.F.R. Part 5.

M. Third Party Rights: This Agreement can be enforced only by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.

N. Technical Assistance: OCR will provide appropriate technical assistance to the Medical Center regarding compliance with this Agreement, as requested and as reasonably necessary.

IV. General Obligations

A. Nondiscrimination Policy: Pursuant to Section 504 and Title II of the ADA, the Medical Center agrees that it shall not discriminate against any qualified individual with a disability with respect to its child care programs, services and activities. The Medical Center shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the Medical Center can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

B. Nondiscrimination by Association: The Medical Center shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of the individual with a person with disability.

V. Notice of Nondiscrimination and Establishment of Grievance Procedure

A. Notice of Nondiscrimination under the ADA and Section 504

Within forty-five (45) calendar days after the Effective Date of this Agreement, the Medical Center shall develop and submit to OCR for review and approval a Notice of Nondiscrimination that: 1) states that the Medical Center does not discriminate on the

basis of disability and that reasonable modifications to policies, practices, and procedures will be made for persons with disabilities; 2) provides the process for filing and resolving grievances about disability discrimination, including complaints regarding the failure to provide reasonable modification; and 3) provides the name, telephone number, e-mail address, functions and office location of the ADA/Section 504 Coordinator. (See sample notice at Appendix A). The Notice of Nondiscrimination shall not be implemented by the Medical Center without the approval of OCR.

B. ADA/Section 504 Grievance Procedure

Within forty-five (45) calendar days after the Effective Date of this Agreement, the Medical Center shall develop and submit to OCR for review and approval a grievance procedure for addressing complaints of disability discrimination, including complaints regarding the failure to provide reasonable modifications. The grievance procedure shall incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging any actions prohibited under the ADA or Section 504. (See sample grievance procedure at Appendix B). The grievance procedure shall not be implemented by the Medical Center without the approval of OCR. Within thirty (30) calendar days of approval by OCR, the Medical Center shall implement the approved grievance procedure.

C. ADA/Section 504 Coordinator

Within thirty (30) calendar days after the Effective Date of this Agreement, the Medical Center shall designate a person (ADA/Section 504 Coordinator) who shall have responsibility for coordinating the efforts of the Medical Center to comply with and carry out its responsibilities under Section 504 and Title II of the ADA, ensuring that the Medical Center fully implements and complies with the policies and procedures set forth in Section IV of this Agreement as well as reviewing any decisions to exclude any child with a disability from receiving child care services.

VI. Notice to Medical Center Staff and Participants in Programs and Activities

The Medical Center shall take the following steps to notify Medical Center staff and participants in its programs and activities of the following information:

A. Within thirty (30) calendar days after OCR's approval of the Medical Center's Notice of Nondiscrimination described at V. A. above, the Medical Center shall prominently display signage with the Medical Center's Notice of Nondiscrimination in visible locations at all Medical Center entry points including a visible location at the entry to the HealthPlex. This information shall also be available at the Medical Center's website, in brochures about the Medical Center distributed to patients and participants in the Medical Center's programs and activities and as part of the Kidz-in-Motion Enrollment and Health History Form.

B. Within thirty (30) calendar days of OCR's approval of the Medical Center's grievance procedure described at V.B, above, the Medical Center shall disseminate the grievance procedure to Medical Center staff and publish it in a Medical Center-wide communication piece for Medical Center staff.

VII. Training

The Medical Center shall provide training by a qualified trainer(s) to the Medical Center's ADA/Section 504 Coordinator and the HealthPlex and Kidz-N-Motion staff as specified below:

- A.** Within forty five (45) calendar days after the Effective Date of this Agreement, the Medical Center shall develop and submit to OCR for review and approval a Training Plan to address the training requirements described in this section of the Agreement. The Training Plan shall describe: 1) a summary of the proposed training; 2) copy of the training materials; 3) the person(s) or organization(s) who will assist the Medical Center with the training along with the credentials of those person(s)/organization(s) to provide training on this subject matter; and 4) when the training will occur.
- B.** Within thirty (30) calendar days after OCR's approval of the Training Plan, the Medical Center shall provide training regarding the obligation of the Medical Center to provide services without discrimination to all qualified individuals with a disability with respect to its child care programs, services and activities. Specifically the training shall include instruction on its obligation under Section 504 and Title II of the ADA to provide non-discriminatory services to qualified individuals with autism spectrum disorder. New employees with comparable responsibilities hired during the term of this Agreement shall be provided comparable training within thirty (30) calendar days of hiring. The training shall include, but not be limited to, the following elements:
- (1) a general overview of autism spectrum disorder;
 - (2) the legal obligation under Section 504 and Title II of the ADA to provide non-discriminatory services to qualified individuals with autism spectrum disorder and other qualified individuals with disability;
 - (3) the legal obligation under Section 504 and Title II of the ADA to not exclude individuals with disabilities from Medical Center programs, services and activities unless their presence would pose a direct threat to the health and safety of others or require a fundamental alteration of the program;

- (4) the legal obligation under Section 504 and Title II of the ADA to make reasonable modifications to policies, practices and procedures to integrate qualified children, parents and guardians with autism spectrum disorder or other qualified individuals with a disability into Medical Center programs, services and activities;
- (5) the legal obligation under Section 504 and Title II of the ADA to make an individualized assessment about whether a Medical Center program, service, or activity can meet the needs of an individual with autism spectrum disorder or another disability without fundamentally altering its program. Staff must also make an individualized determination in assessing whether an individual with autism spectrum disorder or another disability is a direct threat. Such determinations must be based on a consideration of the particular activity and the actual abilities and disabilities of the individual and not generalizations or stereotypes about the effects of the disability;
- (6) the legal obligation under Section 504 and Title II of the ADA to not exclude qualified individuals with autism spectrum disorder or other qualified individuals with a disability from the Medical Center's programs, services or activities simply because they need occasional individualized attention due to their disability as long as the child's disability does not require the Medical Center to fundamentally alter its program;
- (7) The Medical Center's Disability Nondiscrimination Policy referenced in Section IV above.

VIII. Reporting Requirements

The Medical Center agrees to provide OCR with the following:

- A. Within thirty (30) calendar days after OCR's approval, the Medical Center shall submit documentation that it has: 1) implemented a Disability Nondiscrimination Policy as referenced at Section V.A. of this Agreement; 2) implemented a grievance procedure as referenced at Section V. B. of this Agreement;
- B. Within thirty (30) calendar days after the Effective Date of this Agreement, the name, telephone number, e-mail, functions, and office address of the ADA/Section 504 coordinator that the Medical Center has designated as referenced at Section V.C of this Agreement.

C. Within thirty (30) calendar days after OCR's approval of the Medical Center's Disability Nondiscrimination Policy, the Medical Center shall submit photos documenting that the the approved Disability Nondiscrimination Policy has been prominently posted in visible locations at all Medical Center entry points and in a visible location at the entry to the Medical Center's HealthPlex Rehabilitation and Wellness Center.

D. Within thirty (30) calendar days after OCR's approval of the Medical Center's Disability Nondiscrimination Policy, the Medical Center shall submit a copy of brochures about the Medical Center distributed to patients and participants in the Medical Center's programs and activities and its Kidz-N-Motion Enrollment and Health History Form with the Disability Nondiscrimination Policy approved by OCR.

E. Within thirty (30) calendar days after OCR's approval of the Medical Center's grievance procedure, a written statement indicating the actions that the Medical Center has taken to disseminate the grievance procedure to Medical Center staff and a copy of the Medical Center-wide communication piece advising Medical Center staff of the grievance procedure.

F. Within fifteen (15) calendar days after completion of the training referenced at Section VII of this Agreement, documentation of the individuals, by name and title, who have attended the training, date(s) of the training, materials utilized to train Medical Center staff and the name and title of the person(s) providing the training.

G. On the dates detailed at Section VIII. H. of this Agreement, the Medical Center shall provide a written report ("Compliance Report") setting forth the following information:

(1) the number and type of grievances filed with the Medical Center by, or on behalf of, individuals with disabilities, including but not limited to autism spectrum disorder, against the Medical Center's HealthPlex and/or Kidz-N-Motion programs and/or a staff member of these programs;

(2) the status and/or outcome of each such grievance, including date that the grievance was filed and date of the Medical Center's decision regarding such grievance, if applicable;

(3) the number and type of complaints filed by, or on behalf of, individuals with disabilities, including but not limited to autism spectrum disorder, against the Medical Center's HealthPlex and/or Kidz-N-Motion programs and/or a staff member of these programs, with any Federal, state or local agency, medical board or licensing entity;

- (4) the status and/or outcome of each such complaint;
- (5) the number of applicants to the Kidz-N- Motion program identified as having a disability during the application process;
- (6) the number of such applicants who were enrolled, the date of enrollment and the identified disability for each enrollee;
- (7) the number of such applicants who were not enrolled, the reason for the failure to enroll each such applicant and a description of any efforts in which the Medical Center engaged to determine or provide a reasonable modification for each such applicant;
- (8) as to such applicants who were enrolled, the number of such applicants who were enrolled for whom reasonable modifications were requested, the number of such applicants who were not provided the reasonable modification requested, and, for each such applicant, the reasons for the refusal to provide the requested modifications and any alternate reasonable modification that was provided.
- (9) the number of applicants who were enrolled and who received requested reasonable modification and the specific reasonable modification provided by the Medical Center.

H. Submission of Compliance Reports

The Medical Center shall submit the aforementioned Compliance reports to OCR at six (6) months, twelve (12) months, and seventeen (17) months after the Effective Date of the Agreement. The first two reports shall cover the preceding six (6) month period; the last report shall cover preceding five (5) month period.

VI. Signatures

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

/s/

8/29/11

David P. Brown Administrator

Date

/s/

8/31/11

Ralph Rouse, Regional Manager
Office for Civil Rights, Region VI
U.S. Department of Health and Human Services

Date

Appendix A

NONDISCRIMINATION POLICY UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, the Citizens Medical Center (Medical Center), including its HealthPlex and Kidz-N-Motion programs, does not exclude, deny benefits to, or otherwise discriminate against any individual on the basis of disability in admission to, participation in, or receipt of the services and benefits under any of its programs or activities, whether carried out by the Medical Center directly or through a contractor or any other entity with which the Medical Center arranges to carry out its programs or activities. The Medical Center makes reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford equal access to its services, programs and activities. The Medical Center will not exclude any individual from the full and equal enjoyment of its services and facilities because of the individual's association with a person with a disability.

Grievances alleging that a Medical Center service, program or activity is not accessible to persons with disabilities should be directed to ***[Name and contact information of ADA/Section 504 Coordinator]***. Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:

Office for Civil Rights, Region VI
U.S. Department of Health & Human Services
1301 Young Street, Suite 1169
Dallas, Texas 75202 Phone: (214) 767-4056;
Fax: (214) 767-0432; TDD: 214-767-8940

Appendix B

GRIEVANCE PROCEDURES UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990 AND SECTION 504 OF THE REHABILITATION ACT OF 1973

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, the Citizen's Medical Center ("Medical Center") does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any Medical Center program or activity. The Medical Center does not retaliate or discriminate against, or coerce, intimidate or threaten any individual who: (1) opposes any act or practice made unlawful by Section 504 or Title II of the ADA; or (2) files a grievance and/or complaint, testifies, assists, or participates in any investigation, proceeding, or hearing under Section 504 or Title II of the ADA.

The Medical Center has adopted an internal grievance procedure providing for the prompt and equitable resolution of grievances alleging any action prohibited by the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Federal regulations implementing these laws. The applicable Federal laws and regulations may be examined in the office of [*name and contact info for ADA/Section 504 Coordinator*], who has been designated to coordinate the efforts of the Medical Center to comply with the ADA and Section 504.

Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for the Medical Center to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

Procedure:

- Grievances must be submitted to the ADA/Section 504 Coordinator as soon as possible but no later than sixty (60) calendar days after the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A grievance must be in writing, containing the name and address of the person filing it. The grievance must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The ADA/Section 504 Coordinator (or his/her designee) will conduct an investigation of the grievance. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the grievance. The ADA/Section 504 Coordinator will maintain the files and records of the Medical Center relating to such grievances.
- The ADA/Section 504 Coordinator will issue a written decision on the grievance no later than thirty (30) calendar days after its filing.

- The person filing the grievance may appeal the decision of the Section 504 Coordinator by writing to the (*Administrator/Chief Executive Officer/Board of Directors/etc.*) within fifteen (15) calendar days of receiving the ADA/Section 504 Coordinator's decision.
- The ADA/Section 504 Coordinator will issue a written decision on the appeal no later than thirty (30) calendar days after its filing.
- Filing a grievance with the ADA/Section 504 Coordinator does not prevent the applicant, resident and/or his family member or guardian from filing a complaint with the:

Office for Civil Rights, Region VI
U.S. Department of Health and Human Services
1301 Young Street Suite 1169
Dallas, Texas 75202
Voice Phone 214.767.3450
FAX 214.767.0432
TDD 214.767.8940

The ADA/Section 504 Coordinator will make appropriate arrangements to ensure that individuals with disabilities are provided other reasonable modifications if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing interpreters for the deaf, providing taped cassettes of material for the blind, or assuring a barrier-free location for the proceedings.