

Voluntary Resolution Agreement

Between the

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

and

TOWN OF SIMSBURY, CONNECTICUT

Transaction Number: 08-087407

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I. Introduction

This Voluntary Resolution Agreement (Agreement) is entered into by the United States Department of Health and Human Services (HHS), Office for Civil Rights (OCR) and the Town of Simsbury, Connecticut (the Town). This Agreement resolves a discrimination complaint filed with OCR on August 13, 2008. (OCR Transaction Number 08-087407).

A. Parties to the Agreement

1. United States Department of Health and Human Services, Office for Civil Rights, and
2. The Town of Simsbury, Connecticut.

B. Jurisdiction

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.* and its implementing regulation at 28 C.F.R. Part 35 (collectively referred to herein as “Title II”) prohibit discrimination on the basis of disability by public entities. OCR is the designated agency that oversees compliance with Title II with respect to state and local governments that administer services, programs, or activities related to social services and health care. The Town, a local government within the state of Connecticut, is a public entity for the purposes of Title II.

C. Background

The Town’s Department of Culture, Parks and Recreation (DCPR) provides and administers a Summer Day Camp program (Summer Camp) for children in grades first through sixth. The Camp is generally scheduled for eight weeks in the summer, with four two-week sessions. The camp activities include swim lessons, games, sports, crafts, and field trips.

On August 13, 2008, OCR received a complaint alleging that the Town engaged in unlawful discrimination on the basis of disability. Specifically, the complainant alleged that the Town failed to provide a reasonable modification to its policies and procedures, which resulted in denying his daughter, a child with insulin-dependent diabetes, the opportunity to participate in its Summer Camp.

D. Purpose of Agreement

To resolve these matters expeditiously and without the further burden or expense of administrative action or litigation, the Town agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Title II. The promises, obligations, or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the Town and OCR. The actions described in this Agreement fully address the issues described in the complaint.

II. General Provisions

A. Scope of Agreement

This Agreement covers the programs and activities of the Town DCPR, including the operation of the Summer Camp. It resolves the specific issues raised in the complaint filed against the Town on August 13, 2008.

B. Suspension of Administrative Actions

Subject to the continued performance by the Town of the stated obligations and required actions contained in the Agreement and in conformity with Section II.G. (Failure to Comply with the Terms of this Agreement), OCR shall suspend administrative actions on OCR Transaction Number 08-087407.

C. Effective Date and Term of the Agreement

This Agreement shall become effective as of the date that both Parties have signed it (Effective Date). Unless otherwise provided in the Agreement, all provisions of the Agreement become effective on the Effective Date. This Agreement shall remain in effect for two (2) years following the Effective Date of this Agreement (Term). At such time, if OCR determines that the Town has completed all actions required by the Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, the Town acknowledges it shall comply with Title II so long as it remains a public entity.

D. Authority of Signers

The individuals signing this Agreement represent that they are authorized to legally bind the Parties to this Agreement.

E. Effect on Other Compliance Matters

The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement.

F. Review of Compliance

OCR may, at any time, review the Town's compliance with this Agreement. As a part of such review, OCR may require written reports, interview witnesses, examine and copy Town documents, or inspect Town buildings or facilities.

G. Failure to Comply with the Terms of Agreement

During the Term of this Agreement, if at any time OCR determines that the Town has failed to comply with any provision of this Agreement, OCR shall notify the Town, through its First Selectperson, in writing. The notice shall allow the Town thirty (30) calendar days to explain the reasons for the noncompliance and describe the actions that have been or shall be taken to achieve compliance with this Agreement or to dispute OCR's findings. If the Town does not respond to the notice, or if, upon review of the Town's response, OCR determines that the Town has not complied with the terms of the Agreement, OCR reserves the right to take any action authorized by law to secure compliance with Title II, including reopening its investigation of the Town's compliance with Title II.

H. 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.

I. Modification of the Agreement

This Agreement constitutes the entire agreement by the Parties and no other statement, promise or agreement, either written or oral, made by either Party or any agents of a Party that is not contained in this Agreement, including any attachments, shall be enforceable. This Agreement may only be modified by mutual agreement of the Parties in writing.

J. Technical Assistance

OCR will provide appropriate technical assistance to the Town regarding compliance with this Agreement, as requested and as reasonably necessary.

K. Prohibition against Retaliation and Intimidation

The Town, through its employees and contractors, shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or assisted or participated in any manner in the investigation of matters addressed in this Agreement.

L. Publication or Release of Agreement

OCR places no restriction on the publication of the terms of this Agreement. OCR may be required to release this Agreement and all related materials to any person upon request, consistent with the Freedom of Information Act, 5 U.S.C. §552, and its implementing regulation at 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.

III. Specific Provisions

A. Disability Nondiscrimination

The Town agrees to make its Summer Camp available to individuals with disabilities, including children with diabetes, on a nondiscriminatory basis, as required under Title II.

B. Reasonable Modifications

The Town agrees to assess the individual needs of children with diabetes who apply to or register for Summer Camp and to make reasonable modifications to its policies, practices or procedures when such modifications are necessary to provide an equal opportunity to participate in its Summer Camp, unless the Town can demonstrate that making such modification would fundamentally alter the nature of the service, program, or activity.

C. Policy on Diabetes Management

The Town has adopted and shall implement the “Policy on Diabetes Management” (Policy), attached hereto as Appendix A and incorporated herein by reference.

1. When a parent or guardian has inquired about or registered for its Summer Camp on behalf of a child with diabetes, the Town will advise the parent or guardian of its Policy and the procedures for requesting a diabetes-related reasonable modification, as outlined in the Policy.
2. If a child with diabetes registers for Summer Camp, the Town shall provide training to the appropriate Summer Camp staff, as outlined in the Policy.

D. Training

1. Within sixty (60) days after the Effective Date of this Agreement, the Town shall submit to OCR a copy of the training agenda, training curriculum materials, and the names and positions of staff to be trained for OCR’s review and approval, which shall not be unreasonably withheld.

2. Within thirty (30) calendar days after OCR's approval described in III.D.1., and annually thereafter, the Town shall provide training to all Town staff with responsibilities under this Agreement, including staff who register children for Summer Camp and communicate with families regarding reasonable modifications. The training shall be sufficient in duration and content to train staff on the terms of this Agreement, the Town's Title II obligations described in this Agreement, and the terms and applicable procedures of the Policy.

E. Notice to Community

The Town shall provide a summary of its Policy, including the procedure to request a reasonable modification, in its written brochures and on its website.

IV. Recordkeeping and Reporting Provisions

1. During the Term of this Agreement, the Town will retain records necessary to document compliance with the Provisions of this Agreement.

2. Within forty-five (45) calendar days after the conclusion of the last session of the first Summer Camp that is provided by the Town after the Effective Date of this Agreement, and then one year thereafter, the Town shall provide OCR with the following data for the applicable reporting period.

- a. The total number of children with diabetes who registered or applied to attend Summer Camp;
- b. The total number of children with diabetes who attended Summer Camp, including the dates of attendance;
- c. For each child with diabetes who applied to attend or attended Summer Camp, a description of the diabetes-related reasonable modification(s) requested;
- d. For each child with diabetes who attended Summer Camp, a description of the diabetes-related reasonable modification(s) that the Town provided, including an explanation of the process used to determine the modification and supporting documentation;
- e. For each child with diabetes who applied to attend or attended Summer Camp, a description of any requested diabetes-related care that the Town did not agree to provide, including a description of any alternative reasonable modification offered or provided by the Town, the basis for offering or providing an alternative reasonable modification, and, if an agreement could not be reached, a copy of its final written determination;
- f. A description of every grievance regarding diabetes-related care or the Policy, which the Town received during the applicable reporting period, including the outcome, the date the grievance was filed, and the date of the written decision;

- g. Documentation demonstrating that training pursuant to Section III.D.1.and, if applicable, Section III.C.2, was provided, including the training agenda and curriculum, the date(s), time(s), and locations(s) of the training, the name of the person who conducted the training(s), and the names and titles of those who participated in the training; and
- h. Documentation demonstrating that notice to the community was provided pursuant to Section III.E.

V. Signatures

For the Town of Simsbury

/s/

4/9/12

 Mary Glassman, First Selectperson
 Town of Simsbury, Connecticut

 Date

For the United States Department of Health and Human Services

/s/

4/16/12

 Peter K. Chan
 Regional Manager, Region I
 U.S. Department of Health and Human Services
 Office for Civil Rights

 Date

VOLUNTARY RESOLUTION AGREEMENT

APPENDIX A

POLICY ON DIABETES MANAGEMENT
TOWN OF SIMSBURY

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I. Policy on Diabetes Management

ATTACHMENTS

- A. Diabetes Management Plan**
- B. Physical Exam Form**

**POLICY ON DIABETES MANAGEMENT
TOWN OF SIMSBURY**

Summer Camp Program

The Town of Simsbury (the Town) is committed to making its programs and activities available on a nondiscriminatory basis, including to children with disabilities, as required under Title II of the Americans with Disabilities Act (ADA). In accordance with the ADA and its implementing regulation, the Town will make reasonable modifications to its policies, practices or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the Town can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The Town recognizes that children with insulin-dependent diabetes who participate in the Town's summer camp program may require assistance with diabetes management. The management regime of every child with diabetes may be different and, for this reason, one policy cannot dictate the particular protocol for all individuals. This Policy is limited to diabetes management and does not apply to the administration of any medications unrelated to diabetes management, which may be governed by [Name of Town's Policy].

The Town affirms that successful participation of the children and accommodation of the children's needs depend on an actively cooperative relationship and ongoing communication between the parent/guardian of the child and the Town.

A. Town's Responsibilities:

1. Individualized Assessment and Reasonable Modification

The Town will provide this Policy; the procedure to request a reasonable modification; a Diabetes Management Plan Form (Attachment A); and a Physical Examination Form (Attachment B), on the Recreation Department website. When informed that a child with diabetes has applied to a particular session of the program, the Town will provide the parent/guardian of such child notice of this Policy. The Town will provide a written copy of the Policy, including the attachments, upon request.

Absent extenuating circumstances, within two weeks prior to the first day of the camp session, the Town will make an individual assessment of the needs of each child with diabetes on a case-by-case basis and will work with families to provide reasonable modifications in accordance with this Policy and applicable laws. To this end, the Town will assess the level of assistance or supervision that is reasonable based upon the situation and will provide whatever assistance is appropriate and consistent with the Diabetes Management Plan (Attachment A). The Town may request additional information or guidance from the child's health care provider or parent/guardians, as necessary.

If an agreement cannot be reached for the Town to either provide reasonable modifications consistent with the prescribed regimen as set forth in the child's Diabetes Management Plan or an equally effective modification appropriate to the child's individual

needs, the Town will notify the parent/guardian of its final determination. The determination will document which modifications the Town will provide and which modifications it will not provide, demonstrating that the modification not provided would fundamentally alter the nature of its service, program, or activity.

At any time, the parent/guardian may file a formal grievance with the Town's First Selectman.

Reasonable modifications may include, but are not limited to, (1) the administration of blood glucose monitoring tests, (2) the operation of insulin pumps, (3) the administration of fast-acting carbohydrates, and (4) the administration of glucagon by a health care professional or trained staff member while a child with diabetes participates in any summer camp program, whether on Town premises or elsewhere while attending the Town's summer camp programs.

Notwithstanding the foregoing, in all cases the Town will allow the parent/guardian or authorized agent to enter the Town's premises to monitor the child's blood glucose levels and take appropriate action in response to those levels. The Town will also allow the child to monitor his or her own blood glucose levels and take appropriate action, when the child's parent/guardian has provided the Town with the written authorization to do so.

If the child self-identifies, or staff recognizes symptoms of hyperglycemia or hypoglycemia, the Town staff will assist the child to check blood sugar and treat the symptoms, and take steps reasonably consistent with the Diabetes Management Plan.

2. Training

If a child with diabetes applies for any session or program, the Town will arrange for a qualified healthcare professional to provide training that enables the Town to provide all care required to comply with applicable law to any staff who may be responsible for or may be working directly with a camper with diabetes.. The training will include an overview of diabetes, general information on how to recognize signs and symptoms of hypoglycemia and hyperglycemia, how to get help quickly, and diabetic care practices related to glucose monitoring and regulating glucagon and insulin administration, including by insulin pump.

In addition, the Town, at the request of the parent or guardian of a child with diabetes and with their input, will arrange for training of appropriate staff regarding the particular needs of the child as identified in the child's Diabetes Management Plan. This child-specific training may be given by the parent or guardian, or by a qualified person agreed upon by the parents.

B. Parent's/Guardian's Responsibilities:

Within twenty (20) business days prior to the beginning of any session or program, the parent/guardian of a child with diabetes will provide the Director of Culture, Park and Recreation the following:

(1) a completed Diabetes Management Form, legible and in easy to understand terms, detailing any and all care necessary for the child's management, which is signed by the child's health care provider and signed by the child's parent/guardian to permit the Town to undertake steps indicated on the Diabetes Management Form (Appendix A),

(2) a completed Physical Exam Form and any other health-related documents deemed relevant by the child's medical provider (Appendix B), and

(3) a signed general release, if applicable.

For children currently attending a camp program who would require diabetes management for the first time during any session, the parent/guardian must immediately submit the completed Diabetes Management Plan as set forth above, and comply with the remaining aspects of this Policy with sufficient time to allow the Town to make good faith efforts for continuation of the camp program consistent with this Policy.

The parents/guardian will be available at the request of the Town to attend and participate on the first day of a camp session with the child and, if deemed necessary by either party, to attend a run-through prior to the first day, and to continue to meet with and advise the staff working with the child about proper diabetes care.

The parent/guardian will be available by phone or have other emergency contacts (which may include the child's health care provider) available by phone each day that the child is participating in a camp session to answer questions regarding the child's management of diabetes care and to approve particular actions related to proper care, when necessary.

The parent/guardian will provide specific information and training about the child's diabetes and particular needs related to diabetes care to the Town, and will permit the child's personal health care providers to share information with staff and other health care personnel when necessary to assure the child's safety and compliance with the child's Diabetes Management Plan.

The parent/guardian will promptly inform the Town of relevant changes in the child's health status.

The parent/guardian will provide, along with instructions about proper maintenance or use of all items, all supplies and equipment necessary for the child's safe participation in all activities. The parent/guardian will provide and properly maintain all supplies and equipment for the child's diabetes and assist with proper disposal of equipment and supplies. Children may carry their own medical supplies and snacks in a safe fashion that meets local code or safety standards for the care and disposal of medical supplies so that these supplies are in close proximity to the child. When the child cannot hold these supplies, the supplies will be held at the administrative office or health office, or by a staff member.

As applicable, the parent/guardian will furnish all appropriate meals and snacks that are not regularly provided by the Town and that are necessary to meet the child's needs. The

parent/guardian will also ensure that the carbohydrate content falls within the proper amounts set forth in the Diabetes Management Plan so that the totals will be predetermined and calculated by the parent/guardian. Carbohydrate values will be calculated and provided on labels on each food item provided by the parent/guardian so that the staff or qualified health care professional may monitor the appropriate use of insulin and insulin pumps or other equipment to administer insulin.

The parent/guardian will check the child's blood sugar levels each morning before the child arrives at camp to ensure they are within the established "target range" in the child's Diabetes Management Plan.

If you have any questions about this Policy, please contact the Gerry Toner Director of Culture, Parks and Recreation at _____.

ATTACHMENT A

DIABETES MANAGEMENT PLAN

[Description of Town of Simsbury Camp Activities, hours, etc.]

This plan should be completed by both the child's health care provider (*diabetes nurse educator, endocrinologist, or primary care provider/physician*) and the child's parent/guardian.

It should be immediately updated with any new information, as necessary.

Effective Dates: _____

Child's Name: _____

Date of Birth: _____

Physical Condition (Identify and Explain): _____

Date of Diagnosis: _____

Grade: _____

Contact Information: *Circle the primary contact person and phone number*

Parent/Guardian: _____

Home Address: _____

Employer: _____

Employer's Address: _____

Telephone: Home _____ Work: _____ Cell: _____

Parent/Guardian (2): _____

Home Address: _____

Employer: _____

Employer's Address: _____

Telephone: Home _____ Work: _____ Cell: _____

Who has custody of the child? _____

Child's Health Care Provider:

Name _____

Address _____

Telephone: _____

Emergency Number: _____

Other Emergency Contacts:

Names: _____

Relationship: _____

Telephone: Home _____ Work: _____ Cell: _____

Notify parent/guardian or emergency contact in the following situations: _____

Recommended Monitoring of Child: _____

Specify any medical time requirements: _____

Can child perform own monitoring? Yes No

Exceptions: _____

Identify the type of any meter, monitor, nebulizer, applicator, needle, pump, or any other devices necessary for the child's Diabetes Management Plan (include model and instruction booklet):

What signs does the child demonstrate when child is symptomatic?

Foods to avoid, if any _____

Instructions for when food is provided to the child (e.g., as part of a party or food sampling event): _____

Exercise and Sports Limitations

List, identify, and explain any restrictions to exercise, sports, or any other activities:

Treatment Supplies to be kept at the School site and provided by parent/guardian are as follows (please provide specific instructions regarding the storage and treatment of all

supplies): _____

For children with medical concerns, please complete the supplemental form.

This Diabetes Management Plan has been approved by:

Child's Physician/Health Care Provider

Date

I give permission to the Town to perform and carry out the care tasks as outlined in the Diabetes Management Plan. I also consent to the release of the information contained in this Diabetes Management Plan to all staff members and other adults who have custodial care of my child, such as those persons on the emergency list and who may need to know this information to maintain my child's health and safety. A written revocation or amendment to this document must be delivered to the school director by the child's Parent/Guardian in order to effectuate a revocation of the same.

The Town reserves the right to request additional documentation after review of the information contained in the document.

Acknowledged and received by:

Child's Parent/Guardian

Date

Child's Parent/Guardian

Date

ATTACHMENT B
PHYSICAL EXAM FORM

[to be completed by Parent/Guardian and Child's Health Care Provider.]

To Parent/Guardian: Please complete the information in the box BEFORE submitting to your child's health care provider.

Name of applicant _____
Gender (circle one) M F
Date of Birth ____/____/____
Address: _____

To Child's Health Care Provider: This form should be completed and approved by the child's diabetes nurse educator, endocrinologist, or primary care provider/physician. Your cooperation in supplying the following information about an applicant for the Town of Simsbury Day Camp is greatly appreciated. The child will not be accepted without your approval on this form.

Date of most recent exam: _____

I have read the Diabetes Management Plan, attached to this form, and certify that it provides a complete regime of care for this child's safety during summer camp. I recognize that the child will be active at this camp and represent that this plan accounts for applicable varying activity levels. Any restrictions are noted below.

Have any complications of health been detected? Yes/No (circle one)

If yes, please specify:

Is the child emotionally and physically mature or responsible enough to independently manage his/her health concerns? Yes____; No____. If not, please explain the minimum level of medical licensure or training required for the child's safety (unless fully described in the Medical Management Plan): _____

Do you have any specific concerns regarding the management of this child's safety or health at camp not fully described in the Medical Management Plan? Yes____, No____.

If yes, please explain: _____

Do you recommend any limitation on child's activity while at camp beyond those described in

the Medical Management Plan? Yes _____ No _____ If yes, please describe: _____

I certify that the information above is correct to the best of my knowledge and agree to answer questions and provide management guidance to the Town's summer camp program as requested at the sole cost and expense of the parent/legal guardian of the child.

Primary Health Care Provider's Name (typed or printed)

Address: _____

Phone: (____) _____

Health Care Provider Signature:

Parents/Guardians name (typed or printed)

Address: _____

Phone: (____) _____

Parents/Guardian Signature:
