

AGREEMENT BETWEEN
UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,
AND
MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES

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I. BACKGROUND

A. Introduction

1. This Agreement is entered by and between the U.S. Department of Justice (“DOJ”) and the U.S. Department of Health and Human Services (“HHS”) (collectively, the “Departments”) and the Massachusetts Department of Children and Families (“DCF”) to resolve the Departments’ findings that DCF discriminated by reason of disability in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended, 29 U.S.C. § 794, and its implementing regulation, 45 C.F.R. Part 84. DOJ, HHS, and DCF are referred to collectively in this Agreement as the “Parties.”

B. Federal Investigation & Letter of Findings

2. Following an investigation of DCF (DJ # 204-36-216 and HHS # 14-182176), DOJ and HHS issued a joint Letter of Findings to DCF on January 29, 2015. As stated therein, DOJ and HHS determined that DCF discriminated against a mother with a developmental disability in violation of Title II of the ADA and Section 504. *See* Joint Letter of Findings, https://www.ada.gov/ma_docf_lof.doc. DCF disputes these findings and denies any and all allegations of discrimination and any and all allegations that DCF violated the law.
3. DOJ thereafter substantiated the allegations in numerous additional complaints from parents with physical, hearing, developmental, and other disabilities alleging that DCF failed to provide them with needed reasonable modifications, effective communication, and an equal opportunity to benefit from DCF’s programs and services. DOJ further substantiated allegations that DCF’s methods of administering its programs and services have the effect of subjecting parents with disabilities to discrimination, and of defeating or substantially impairing accomplishment of the objectives of DCF’s programs with respect to parents with disabilities. DCF denies DOJ’s allegations of discrimination and any and all allegations that DCF violated the law.
4. This Agreement does not amount to any admission of wrongdoing by DCF. This Agreement does not affect DCF’s continuing responsibility to comply with the ADA and Section 504. This Agreement does not constitute a finding by the Departments about whether DCF is in full compliance with the ADA or Section 504.
5. Subject to the provisions set forth herein, this Agreement resolves the Departments’ findings in their joint Letter of Findings dated January 29, 2015, as well as all Disability-Related Complaints against DCF received by the Departments up to and including the Effective Date of this Agreement, except as set forth in Part VI of this Agreement.

C. Parties & Jurisdiction

6. DOJ is responsible for administering and enforcing Title II of the ADA and its implementing regulation. DOJ is authorized, under 28 C.F.R. Part 35, Subpart F, to investigate alleged violations of Title II of the ADA, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements or take other enforcement actions authorized by law.
7. HHS is authorized under 28 C.F.R. Part 35, Subpart G, to conduct compliance reviews and investigate alleged violations of Title II of the ADA by a public entity relating to the provision of health care and social services. HHS is also responsible for investigating complaints and conducting compliance reviews to determine if recipients of HHS funding operate their programs and activities in compliance with Section 504, and, where appropriate, take enforcement actions authorized by law.
8. DCF is an agency of the Commonwealth of Massachusetts, under the authority of the Executive Office of Health and Human Services, that administers and provides, through its Central, Regional, and Area Offices, *inter alia*, a child welfare program for children and families in the Commonwealth.
9. DCF is a “public entity” within the meaning of Title II of the ADA. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104.
10. DCF is a recipient of financial assistance from HHS, including grants under Titles IV-B and IV-E of the Social Security Act, within the meaning of Section 504, 29 U.S.C. § 794 and 45 C.F.R. § 84.3, and is therefore subject to the requirements of Section 504.
11. DCF provides services, programs, and activities within, *inter alia*, the meaning of Title II of the ADA and Section 504, including assessment and action/service planning, family support services, parent aides, in-home parenting supports, providing parent-child visitation, and other contact with children placed in substitute care. *See* 29 U.S.C. § 794; 42 U.S.C. § 12132; 28 C.F.R. § 35.130; 45 C.F.R. § 84.3.

D. Definitions

12. “Action Plan” (formerly referred to in DCF policies as “Service Plan”) is a written document describing the goals and objectives that DCF-involved parents must meet, the tasks that must be undertaken by DCF-involved parents, and the services to be provided to achieve the goal of strengthening and preserving the family unit, reunifying a family unit for a child who has been removed, or providing an alternative permanent home for a child who has been removed from his or her home. An Action Plan, to the maximum extent possible, is jointly developed between DCF and the family receiving services from DCF. An Action Plan is reviewed during each case review or every six (6) months. For purposes of this Agreement, the term “Action Plan” also encompasses “Action Planning.”

13. “Auxiliary Aids and Services” are defined in the regulation implementing Title II of the ADA, 28 C.F.R. § 35.104.
14. “Disability” is defined pursuant to Title II of the ADA, 42 U.S.C. § 12102, and its implementing regulation, 28 C.F.R. § 35.108.
15. “Disability discrimination,” as used in this Agreement, refers to violations of Title II of the ADA and Section 504 and their implementing regulations.
16. “Disability-Related Complaints,” as used in this Agreement, refers to both complaints of disability discrimination as defined herein, as well as violations of DCF’s Parents with Disabilities Policy established pursuant to Part IV.B and Appendix A *infra*. This includes any and all complaints subject to Part VI *infra*.
17. “Offices,” as used in this Agreement, refer to the current organizational structure of DCF, which includes one “Central Office” in Boston, five “Regional Offices,” and twenty-nine “Area Offices” across the Commonwealth, as well as any future office-based child welfare services provided by DCF that are organized by geographic regions and areas consistent with those established by the Massachusetts Secretary of Health and Human Services under section 16 of chapter 6A of the General Laws of Massachusetts.
18. “DCF-Involved Parent,” for purposes of this Agreement, means a child’s mother, father, or legal guardian who is being investigated by DCF or who has an open clinical case with DCF, regardless of whether the case is opened due to court involvement or receiving in-home services.
19. For purposes of this Agreement, the term “reasonable modification” from the Title II regulation, 28 C.F.R. § 35.130(b)(7), is used interchangeably with the term “reasonable accommodation” under Section 504. The term “reasonable accommodation,” for purposes of this Agreement, reflects its meaning under Section 504 and does not reflect the meaning of this term under Title I of the ADA.
20. “Regional Disability Liaison” is defined *infra* in Part III.B.
21. The Parties agree that it is in their mutual interest and the public interest to resolve this matter on mutually agreeable terms and without litigation. Accordingly, the Parties have voluntarily entered into this Agreement, as follows:

II. GENERAL NONDISCRIMINATION PROVISIONS

22. With respect to a DCF-involved parent with a disability, DCF agrees to comply, and through the Commonwealth of Massachusetts’ standard terms and conditions for contracts requires signatories thereto to comply, with Title II of the ADA, Section 504, and their implementing regulations, including the following requirements:

- a. DCF will not exclude from or otherwise deny the benefits of its services, programs, or activities to a DCF-involved parent with a disability on the basis of disability. DCF will also not exclude or otherwise deny equal services, programs, or activities to a parent or other individual because of their relationship or association with a DCF-involved parent with a disability. *See* 42 U.S.C. § 12132; 29 U.S.C. § 794(a); 28 C.F.R. § 35.130(a), (g); 45 C.F.R. §§ 84.4(a), 84.52(a).
- b. DCF will ensure that DCF-involved parents with disabilities are afforded an opportunity to preserve their families that is equal to the opportunity that DCF offers to individuals without disabilities. 28 C.F.R. § 35.130(b) & (g); 45 C.F.R. §§ 84.4(b)(1)(ii), 84.52(a)(2).
- c. DCF may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. DCF will ensure that its safety requirements are based on actual risks that pertain to the individual parent and child(ren) and not on mere speculation, generalizations, or stereotypes about individuals with disabilities. *See* 28 C.F.R. § 35.130(h); 45 C.F.R. §§ 84.4(b), 84.52(a)(2)-(a)(5).
- d. DCF will make reasonable modifications in policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless DCF can demonstrate that making a modification would fundamentally alter the nature of the service, program, or activity or be an undue financial or administrative burden. Reasonable modifications should be appropriately tailored to the needs of the DCF-involved parent with a disability. *See* 28 C.F.R. § 35.130(b)(7); 45 C.F.R. § 84.4(a), (b)(vii).
- e. DCF will take appropriate steps to ensure that communications with DCF-involved parents with disabilities and their companions are as effective as communications with others and that DCF-involved parents with disabilities receive appropriate auxiliary aids and services when necessary to afford them an equal opportunity to participate in and enjoy the benefits of DCF's services, programs, and activities, unless DCF can demonstrate that doing so would result in a fundamental alteration in the nature of the service program or activity or in an undue financial and administrative burden. 28 C.F.R. §§ 35.160(a)-(b), 35.164; 45 C.F.R. § 84.52(d).
- f. DCF will adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging disability discrimination, and will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the ADA and Section 504, including investigation of any complaint alleging disability discrimination. 28 C.F.R. § 35.107; 45 C.F.R. § 84.7.
- g. DCF will ensure that no surcharge will be placed on a particular DCF-involved parent with a disability or any group of DCF-involved parents with disabilities to

cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required for DCF to provide such parent(s) with nondiscriminatory treatment. 28 C.F.R. § 35.130(f); 45 C.F.R. §§ 84.4(a), 84.52(d).

- h. DCF also will not utilize criteria or methods of administration that have the effect of discriminating on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(3); 45 C.F.R. § 84.4(b)(4); *see also* 28 C.F.R. pt. 35, App. B (discussing 28 C.F.R. § 35.130(b)(3)).
23. Nothing in this agreement prohibits DCF from removing, or initiating or implementing actions to remove, a child from a parent with a disability if DCF determines that the child is at imminent risk of abuse and/or neglect. However, DCF will not base decisions about removal of a child on stereotypes or generalizations about persons with disabilities, or on a parent's disability, diagnosis, or intelligence measures (e.g., IQ scores) alone. Rather, DCF will base such decisions on an individualized assessment of the parent with a disability and objective facts. Even if DCF determines that a child must be removed from the home, DCF may be required to permit the parent to participate in and benefit from DCF's services, programs, and activities, unless the parent poses a direct threat to the health or safety of others when participating in such services, programs, and activities. In determining whether an individual poses a direct threat to the health or safety of others, DCF must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 28 C.F.R. § 35.139; 45 C.F.R. §§ 84.4(a), (b)(1), (b)(4).
24. DCF will not coerce, intimidate, threaten, interfere, or engage in other discriminatory or retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA and Section 504, including making a request for reasonable accommodations or auxiliary aids and services or filing a disability discrimination complaint with DCF, DOJ, or HHS. *See* 42 U.S.C. § 12203; 45 C.F.R. § 80.7(e).

III. DISABILITY COORDINATOR AND REGIONAL DISABILITY LIAISONS

25. Within one (1) month of the Effective Date of this Agreement, DCF will appoint or otherwise designate a Statewide Disability Coordinator ("Disability Coordinator") to carry out the day-to-day responsibility for compliance with Title II of the ADA and Section 504, their implementing regulations, and the provisions of this Agreement, and will notify the Departments when they have done so. The Disability Coordinator will

have professional experience with Title II of the ADA and Section 504 and their implementing regulations.

26. Within one (1) month of the Effective Date of this Agreement, DCF will appoint or otherwise designate at least one DCF Deputy Regional Counsel as a Regional Disability Liaison for each of its Regional Offices, and will notify the Departments when they have done so. DCF reserves the right to change who fills each Regional Disability Liaison position if necessary, depending, for example, on the volume of cases under review by the Regional Disability Liaison or if DCF determines over time that the role would be better served by a member of the clinical staff. DCF will promptly notify the Departments by e-mail of any change to who fills each Regional Disability Liaison position during the term of this Agreement.
27. The Disability Coordinator and Regional Disability Liaisons will be responsible for the following, and for reporting such information to DCF's policy and training units and General Counsel's Office on a regular basis:
 - a. Reviewing DCF's policies, practices, procedures, and regulations pursuant to Part IV *infra*;
 - b. Identifying emerging and best practices in assisting DCF-involved parents with disabilities involved with child welfare programs;
 - c. Identifying and, where possible, fostering the development of disability resources and supports;
 - d. Meeting on a regular basis with individuals, agencies, and organizations external to DCF that are involved with the Massachusetts child welfare program and/or have expertise working with DCF-involved parents with disabilities; and
 - e. Providing input to DCF on the development of training and professional development opportunities for investigators, social workers, supervisors, and other DCF staff.
28. The Disability Coordinator will work with the Regional Disability Liaisons to review, resolve, and record Disability-Related Complaints, as defined herein.
29. The Disability Coordinator and Regional Disability Liaisons will be responsible for reviewing, resolving, and recording requests for reasonable accommodations and auxiliary aids and services; assisting Area Office staff, as needed, regarding the handling of such requests; and for ensuring that, when necessary to avoid discrimination on the basis of disability, any reasonable accommodations or auxiliary aids and services requested are provided in an appropriate and timely manner in accordance with the ADA, Section 504, and the Parents with Disabilities Policy, established pursuant to Part IV.B and Appendix A *infra*.

30. The Disability Coordinator will be responsible for maintaining a centralized, electronic, searchable database or log that tracks the information required in Part VII *infra*, and reporting it to the Departments.
31. The mailing address, email address, and telephone number (including TTY number and toll-free number) for the Disability Coordinator will be posted prominently on the homepage of DCF's website, currently located at <http://www.mass.gov/eohhs/gov/departments/DCF/>.
32. Within two (2) months of the Effective Date of this Agreement, DCF will provide notice to all DCF staff and administrators regarding the appointment of the Disability Coordinator and Regional Disability Liaisons, which will include a description of the positions' responsibilities contained in this Part. DCF will provide a copy of the notice to the Departments upon completion.

IV. WRITTEN POLICIES, PRACTICES, AND PROCEDURES

A. Review and Revise DCF Policies

33. Within three (3) months of the Effective Date of this Agreement, the Departments will review and propose amendments to, as necessary, DCF's Permanency Planning Policy # 2013-01 (effective 7/1/2013), Protective Intake Policy # 86-015 (revised 6/22/2020), Family Assessment & Action Planning Policy # 2017-01 (effective 2/6/2017), Family Resource Policy # 2006-01 (revised 7/8/2008), and any other DCF policies (including appendices and implementation tools and protocols) that cite disability or any specific disability, impairment, medical condition, intelligence measure (e.g., IQ score), or diagnosis to remove the mere fact of such disability, impairment, condition, intelligence measure, or diagnosis as a basis for removal of custody (legal, physical, or otherwise) and to reflect the requirements under the ADA and Section 504 that individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence, and may not be treated on the basis of generalizations or stereotypes. For example, prohibited treatment would include the removal of a child from a parent with a developmental or intellectual disability based on the stereotypical belief, unsupported by individual facts and objective evidence, that people with developmental or intellectual disabilities (or with an IQ score below a certain number) are unable to safely parent their children.
34. Within three (3) months of receiving proposed revisions from the Departments, DCF will make good faith efforts, including working with the relevant Unions, to implement the revised policies and will distribute them to all employees and contractors. If DCF disagrees with any of the Departments' comments, the Parties will work together, within that three-month period, to discuss DCF's concerns and to try to reach agreement on the proposed revisions. If the Parties cannot agree on the revisions, then the Parties may utilize the dispute resolution procedure set out in paragraph 58. If DCF is unable to implement within three (3) months, DCF will provide a detailed monthly progress report until implementation has been accomplished. Implementation will be

accomplished no later than nine (9) months after the Departments have provided proposed revisions. Any further extensions may be requested pursuant to the process set forth in Paragraph 66.

35. DCF will ensure that all new and existing DCF policies, regulations, and procedures are fully compliant with the requirements of this Agreement and the Parents with Disabilities Policy, as described below.

B. Parents with Disabilities Policy

36. Within eight (8) months of the Effective Date of this Agreement DCF will develop and provide to the Departments a draft “Parents with Disabilities Policy” to ensure that DCF-involved parents with disabilities are provided an equal opportunity to benefit from and participate in DCF’s services, programs, and activities consistent with the requirements of the ADA, Section 504, and their implementing regulations. This policy must address and comply with all of the requirements of Appendix A to this Agreement, including development and implementation of a Disability-Related Complaints Process.
37. Upon receipt of the draft Parents with Disabilities Policy from DCF, the Departments may review and provide DCF with comments and suggestions to ensure compliance with this Agreement, Title II of the ADA, and Section 504, which DCF will incorporate. Within three (3) months of receiving any revisions from the Departments, DCF will make good faith efforts, including working with the relevant Unions, to implement the revised Parents with Disabilities Policy and will distribute it to all employees and contractors, and, when implemented, will maintain its implementation for, at minimum, the term of this Agreement. If DCF disagrees with any of the Departments’ comments, the Parties will work together, within that three-month period, to discuss DCF’s concerns and to try to reach agreement on the proposed revisions. If the Parties cannot agree on the revisions, then the Parties may utilize the dispute resolution procedure set out in paragraph 58. If DCF is unable to implement within three (3) months, DCF will provide a detailed monthly progress report until implementation has been accomplished. Implementation will be accomplished no later than nine (9) months after the Departments have provided comments. Any further extensions may be requested pursuant to the process set forth in Paragraph 66.
38. Any proposed revisions to the policy during the term of the Agreement may be timely reviewed and commented upon by the Departments before being implemented by DCF. Once any revisions to the policy are implemented, DCF will update its training materials for the trainings required by Part V *infra* to reflect the revised policy and highlight substantive changes to the policy in any subsequent trainings.

C. Notice of Parents with Disabilities Policy

39. Within two (2) months of DCF’s issuance of the Parents with Disabilities Policy under Subsection B of this Part, DCF will develop a short, plain language document (at an

appropriate literacy level) to notify individuals involved with the Massachusetts child welfare program (including DCF-involved parents, foster parents, pre-adoptive parents, advocates, and attorneys) of DCF's Parents with Disabilities Policy, including the process to make a request for reasonable accommodations and auxiliary aids and services and the process to initiate Disability-Related Complaints, including disability discrimination complaints ("Nondiscrimination Notice"). The Nondiscrimination Notice must prominently display the contact information (including a mailing address, email address, phone number, TTY number, and toll-free number) for the Disability Coordinator.

40. DCF will share the Nondiscrimination Notice with the Departments within one (1) month of its development for the Departments' comments and suggestions. Within one (1) month of receiving the Departments' comments and suggestions, and upon agreement by the Parties on the suggested revisions, DCF will incorporate those comments and make the Nondiscrimination Notice publicly available.
41. DCF will provide the Nondiscrimination Notice to every DCF-involved parent during the term of this Agreement. DCF will post the approved Nondiscrimination Notice in an accessible manner (*e.g.*, conforming to the voluntary Web Content Accessibility Guidelines (WCAG) 2.0 AA standards) and in a conspicuous location on its homepage, currently located at <http://www.mass.gov/eohhs/gov/departments/dcf/>.

D. Accessible Format

42. DCF will take appropriate steps to ensure that all policies, practices, and procedures, as well as the Nondiscrimination Notice, are provided in appropriate alternate formats, as determined by DCF, to ensure effective communication with individuals with disabilities.

V. TRAINING

43. DCF agrees to provide annually at least two hours of interactive training(s) for the (a) General Counsel, (b) Disability Coordinator, (c) Regional Disability Liaisons, (d) social workers, (e) investigators, (f) family resource workers, and (g) supervisors. This training will cover the Parents with Disabilities Policy upon implementation (including all content listed in Appendix A) and the application of Title II of the ADA and Section 504 to child welfare, including the requirements of Part II of this Agreement. The first annual training will be completed within eleven (11) months of the Effective Date of this Agreement, and subsequent trainings conducted every twelve (12) months thereafter.
44. DCF also specifically agrees to the following:
 - a. The General Counsel, Disability Coordinator, Regional Disability Liaisons, and all DCF attorneys will be required to receive training addressing the requirements of this Agreement and the application of Title II of the ADA and Section 504 to

child welfare, within six (6) months of the Effective Date of this Agreement. The General Counsel, Disability Coordinator, and Regional Disability Liaisons will also be required to receive training on the Parents with Disability Policy within two (2) months of implementation.

- b. DCF will include at least one hour of training on the subject matter listed in paragraph 43 in its mandatory new employee training.
 - c. DCF will provide training on the subject matter listed in paragraph 43 annually at an area manager meeting that all Area Clinical Managers and Area Program Managers are required to attend, barring extenuating circumstances.
 - d. Pursuant to DCF's standard practice, upon issuance of the Parents with Disabilities Policy, DCF will notify all DCF staff and administrators of the Policy and provide at least one hour of training on the requirements of the Policy, including the subject matter listed in Appendix A, to all DCF staff and administrators.
 - e. In addition to the above, DCF will strongly encourage all staff to attend the trainings made available to them pursuant to this Part. DCF will also include a training module relating to reasonable accommodation requests in the annual trainings required by this Part to assist staff in meeting annual professional development requirements and will ensure other trainings required by this Part similarly satisfy staff professional development requirements whenever possible.
45. The trainer(s) must have proficiency with the application of the ADA and Section 504 to the child welfare context.
46. DCF will take appropriate steps to ensure that the training curricula, written materials, and format for the trainings required by this Part are provided in appropriate alternate formats if needed to ensure effective communication with individuals with disabilities.
47. Upon request from DCF, the Departments will provide technical assistance to DCF concerning the development and implementation of the trainings required by this Part. DCF may also consult with the Disability Coordinator, Regional Disability Liaisons, DCF social workers, outside experts on conducting parental capacity evaluations and assessments of DCF-involved parents with disabilities, and representatives of non-profit or private organizations that provide services to DCF-involved parents.
48. During the term of the Agreement, the Departments may attend any of the trainings required by this Part and may provide comments and suggestions on the training to DCF, which DCF will consider for future trainings.
49. DCF will obtain from the trainer(s) attendance lists for all attendees at any of the trainings conducted pursuant to this Part. These attendance lists will be forwarded to the Departments upon request.

VI. DISABILITY-RELATED COMPLAINTS FILED WITH DOJ & HHS

50. Pursuant to Part IV.B and Appendix A of this Agreement, DCF has established a Disability-Related Complaints Process (“Complaints Process”). That process, which must comply with the requirements of Appendix A, is outlined in the flowchart in Appendix B. DCF will submit any Disability-Related Complaints (as defined herein) received from the Departments, DCF-involved parents, or their representatives to that process. As provided by Appendix B, this process will include:
- a. Within two (2) weeks of receipt of any complaint subject to paragraph 51, the Disability Coordinator and the relevant Regional Disability Liaison, as well as other relevant DCF staff, will evaluate the complaint and determine whether it falls within the definition of Disability-Related Complaint in this Agreement.
 - b. Where DCF determines that a complaint falls outside the definition of Disability-Related Complaint herein, DCF will provide written notice to the parent(s) of the decision and underlying reasoning within one (1) week of the decision.
 - c. Where DCF determines a complaint falls within the definition of Disability-Related Complaint herein, the complaint will be referred to an ADA Meeting to be held within three (3) weeks of DCF’s initial review of the complaint.
 - d. Within one (1) week of the ADA Meeting being held, DCF will provide written notice to regional staff and the parent(s) of what was agreed upon, including when and how remedial measures will be implemented.
 - e. If a complaint is not fully resolved at the ADA Meeting, the Disability Coordinator and relevant Regional Disability Liaison will review any outstanding issues and reach a final determination regarding resolution of the complaint within two (2) weeks of the ADA Meeting being held. Within one (1) week thereafter, DCF will notify the parents in writing of DCF’s final decision. Where remedial measures are required, DCF will also notify regional staff and provide instructions for when and how such measures will be implemented. Where DCF determines that no remedial measures are warranted, DCF’s notice to the parents will explain the reasons for the determination and how the parent can appeal the decision.
 - f. In all instances where a complaint originated from DOJ or HHS, notices required by this Part will also be provided to the Departments.
51. Any Disability-Related Complaint within the scope of this Agreement that is pending with or received by the Departments during the term of this Agreement will either be submitted to DCF for processing and resolution through the above processes, or be closed by the Departments at their discretion. If, at any time, the Departments are unsatisfied with how a Disability-Related Complaint has been handled or resolved by

DCF, the Departments will utilize the dispute resolution processes described in paragraph 58 *infra*.

VII. DCF REPORTING

52. Every six (6) months, DCF will provide the Departments with the contents of the database(s) or log(s) maintained by the Disability Coordinator (in a readily searchable format), which shall include, consistent with Parts III and IV and Appendix A, the following:
- a. all requests for reasonable accommodations and auxiliary aids and services for DCF-involved parents with disabilities and the status of those requests;
 - b. all Disability-Related Complaints by or on behalf of a DCF-involved parent with a disability, including complaints of disability discrimination;
 - c. the status and progress of all such requests and complaints;
 - d. the resolution of all such requests and complaints, including DCF decisions by the Area, Regional, and Central Offices;
 - e. the reasons for full and partial denials of requests for reasonable accommodations and auxiliary aids and services; and
 - f. the Area and/or Regional Office(s) handling the DCF-involved parent's case.

In sharing this information with the Departments, DCF will take all steps required by law to protect the confidentiality and privacy of all individuals involved.

53. Following each production under the preceding paragraph, at least one representative for each of the Parties will make themselves available to meet in person or by phone if needed to discuss DCF's performance under the Agreement.
54. DCF will provide additional information pertaining to its performance under this Agreement upon the Departments' reasonable request as allowed by law.
55. If either DOJ or HHS requests information or makes an inquiry related to DCF's compliance with this Agreement, DCF will respond and will provide the information reasonably requested by the relevant agency in a timely manner and otherwise cooperate in good faith with the request or inquiry. DCF will make a good faith effort to comply with the timeframes requested by the Departments, will communicate in good faith with the Departments, and will not obstruct an inquiry by either DOJ or HHS into DCF's compliance with this Agreement.
56. All materials to be submitted to the Departments will be sent by email to Megan.Schuller@usdoj.gov and Susan.Rhodes@hhs.gov. For hard copy documents, all materials will be sent by courier service (such as UPS or FedEx) to Megan E.

Schuller, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street NE, 9th Floor, Washington, DC 20002, with a reference to DJ # 204-36-216.

VIII. ENFORCEMENT AND OTHER PROVISIONS

57. In consideration for this Agreement, except as provided in the subsequent paragraph, the Departments will not institute any civil action alleging discrimination under the ADA or Section 504 or recommend any other enforcement action authorized by law based on the Departments' findings in their joint Letter of Findings dated January 29, 2015, or based on Disability-Related Complaints received by the Departments up to and including the Effective Date of this Agreement, except as set forth in Part VI of this Agreement and the subsequent paragraph. In consideration for this Agreement, the Departments will also close their respective investigations of DJ # 204-36-216 and HHS # 14-182176, as well as any Disability-Related Complaints that have been satisfactorily resolved through the processes established in Part VI and/or through the dispute resolution process in the subsequent paragraph. Nothing in this Agreement limits or modifies the investigative or enforcement authority of DOJ or HHS with respect to any other complaints of discrimination under the ADA, Section 504, or any other law.
58. The Departments may review DCF's compliance with this Agreement, Title II of the ADA, Section 504, or their implementing regulations at any time. If any Party believes that this Agreement or any portion of it has been violated, that Party will give notice (including reasonable particulars) of the alleged violation(s) to all other Parties. The noticed Party must respond to the notice as soon as practicable but no later than twenty-one (21) calendar days thereafter. The Parties will negotiate in good faith in an attempt to resolve any dispute. If DOJ or HHS believes after thirty (30) calendar days of negotiations that resolution cannot be achieved, it shall promptly notify the other Parties in writing and shall specify its final position with regard to the dispute. Thereafter, DOJ may institute a civil action against DCF in the appropriate United States District Court to enforce this Agreement, Title II of the ADA, Section 504, and their implementing regulations. HHS also may take any other enforcement action authorized by law, which may include initiation of administrative proceedings to suspend, terminate, or refuse to grant or continue HHS financial assistance.
59. The Effective Date of this Agreement is the date of the last signature below.
60. This Agreement shall terminate in three (3) years from the Effective Date.
61. Notwithstanding paragraph 60, this Agreement will terminate earlier than three (3) years from the Effective Date if the Departments determine that DCF has demonstrated compliance with Title II of the ADA, Section 504, and their implementing regulations with respect to parents with disabilities and their participation in and benefit from DCF's services, programs, and activities and maintained that compliance for one year.

62. Notwithstanding paragraph 61, if the Departments determine that DCF has demonstrated compliance with a Part of the Agreement, maintained that compliance for one year, and that Part is sufficiently severable from the other requirements of the Agreement, the Parties agree to terminate that Part of the Agreement. In determining whether DCF has demonstrated compliance with a Part of the Agreement, the Departments may assess collectively all the requirements of the Agreement to determine whether the intended outcome of the Part has been achieved.
63. This Agreement is without prejudice to any private right of action provided by law. This Agreement is also without prejudice to any person's rights under any other settlement agreements, consent decrees, court orders, or laws, and is not intended to supersede any other agreements, decrees, orders, or laws.
64. This Agreement and its appendices contain the entire agreement of the Departments and DCF concerning the subject matter described herein, and no other prior or contemporaneous statement, promise, or agreement, either written or oral, made by any Party or agents of any Party, that is not contained in this Agreement, including its appendices, will be enforceable. Any modification to this Agreement or its appendices requires the written consent of all Parties.
65. This Agreement is binding on the Parties.
66. Any time limits for performance imposed by this Agreement may be extended by the mutual written consent of the Parties. With regard to any of the deadlines specified in this Agreement, DCF shall notify the Departments as soon as practicable, and if possible at least ten (10) business days, before the deadline of an anticipated inability to meet the deadline and the reason(s) why, and shall request an extension of time to a specific date. The Departments shall not unreasonably withhold consent to a request for an extension of time made in good faith.
67. Failure by the Departments to enforce this Agreement, or any part of it, pursuant to its terms with respect to any instance or provision will not be construed as a waiver to enforce the Agreement with regard to any instance or provision.
68. Should any provision of this Agreement be declared or determined by any court to be illegal, invalid, or unenforceable, the remaining parts, terms, or provisions will not be affected. The Parties will not, individually or in combination with one another, seek to have any court declare or determine that any portion of this Agreement is invalid, illegal, or unenforceable.
69. This Agreement does not supersede the rights, obligations, and responsibilities of the Parties under any laws, court orders, or other settlements involving compliance with civil rights statutes.
70. DCF will provide a copy of this Agreement to any person upon request.

71. The signatories represent that they have the authority to bind the respective Parties identified below to the terms of this Agreement.
72. This Agreement may be executed in counterparts.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:

ANDREW E. LELLING
United States Attorney
District of Massachusetts

JENNIFER A. SERAFYN
Chief
Civil Rights Unit

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division

CYNTHIA McKNIGHT
Deputy Assistant Attorney General
Civil Rights Division

REBECCA B. BOND
Chief

ANNE S. RAISH
Principal Deputy Chief
KATHLEEN P. WOLFE
Special Litigation Counsel
AMANDA MAISELS
Deputy Chief
Disability Rights Section
Civil Rights Division



MICHELLE LEUNG
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U.S. Attorney's Office
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CHERYL ROST
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Megan.Schuller@usdoj.gov

Dated: November 17, 2020

Dated: November 19, 2020

FOR THE UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES:



Roger Severino
Director
Office for Civil Rights
U.S. Department of Health and Human
Services

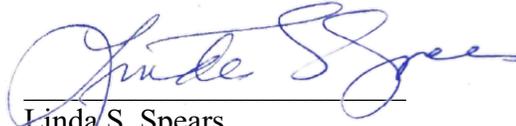
Dated: 11/17/2020 _____



Susan Pezzullo Rhodes
Regional Manager
Office for Civil Rights, New England Region
U.S. Department of Health and Human
Services

Dated: 11/17/2020 _____

FOR THE MASSACHUSETTS DEPARTMENT OF CHILDREN & FAMILIES:



Linda S. Spears
Commissioner
Massachusetts Department of Children & Families
600 Washington Street
Boston, MA 02111

Dated: 11/18/2020 _____

APPENDIX A

Parents with Disabilities Policy

The Parents with Disabilities Policy shall include, at minimum:

- General Requirements:
 - The obligations listed in Part II of the Parties' Agreement, and how those requirements apply in the child welfare context, including examples:
 - regarding reasonable accommodations for DCF-involved parents with disabilities, and
 - regarding how DCF's decisions about child safety and whether a DCF-involved parent with a disability represents a direct threat to the safety of the child must be based on an individualized assessment and objective facts and may not be based on stereotypes or generalizations about persons with disabilities; and how such decisions will also take into account whether reasonable accommodations or the provision of auxiliary aids and services will mitigate the risk;
 - The role and responsibilities of investigators, social workers, and family resource workers in implementing the Parents with Disabilities Policy, as well as the role and responsibilities of their direct supervisors; and
 - The contact information, role, and responsibilities of the Disability Coordinator and Regional Disability Liaisons.
- Process to Request Reasonable Accommodations & Auxiliary Aids & Services:¹
 - A process for individuals with disabilities and their representatives to request reasonable accommodations and auxiliary aids and services within DCF, including from a social worker or the applicable Regional Disability Liaison. The policy must make clear that an individual does not need to reference the ADA,

¹ Any requests for reasonable accommodations and auxiliary aids and services that are resolved through this process do not need to be submitted to the Disability-Related Complaints Process. Whether or not an accommodation is reasonable is a fact- and case-specific inquiry. Examples of reasonable accommodations in the child welfare context may include, where reasonable: changes in frequency, duration, or location of parent-child visitation; hands-on training during a child's medical and early intervention services appointments; plain language training materials at appropriate literacy levels; adaptations in the manner in which specific training is conducted; more frequent support from a social worker; modified action planning; assessment by an expert on working with parents with disabilities; and other modified family preservation and reunification services.

Section 504, their implementing regulations, or any provisions therein, or use any terms of art, such as “reasonable accommodation,” to make such a request;

- A process for DCF to address such requests for reasonable accommodations and auxiliary aids and services for DCF-involved parents with disabilities in a timely manner, and pursuant to the specified timeframes below. The policy also must make clear that requests subject to this policy must be resolved at the earliest point of contact possible;
- A process for DCF to take all necessary and appropriate steps to ensure appropriate auxiliary aids and services are provided where necessary to ensure effective communication with DCF-involved parents with disabilities, including, if necessary, a process for DCF to work with the Massachusetts Commission for the Deaf and Hard of Hearing to timely provide interpreters and other auxiliary aids and services for DCF-involved parents who are deaf or hard of hearing. The policy also must make clear how DCF will determine what types of auxiliary aids and services are necessary to ensure effective communication, which shall be consistent with all the requirements of the Title II regulation at 28 C.F.R. § 35.160 and the Section 504 regulation at 45 C.F.R. § 84.52;
- A process for informing service providers for a DCF-involved parent with a disability, including contractors, vendors, and other state agencies, when a reasonable modification or auxiliary aid or service may be necessary for a DCF-involved parent with a disability in such a way as to protect the privacy of the DCF-involved parent with a disability;
- A process for reviewing what reasonable accommodations and auxiliary aids and services have been requested and/or provided to date, and whether they are still adequate and appropriate, at action planning meetings with the family. The policy will make clear that action planning should be a collaborative, interactive process with the family, and may state that DCF’s decisions throughout the process will be made in the best interests of the child;
- A process for referring requests for reasonable accommodations and auxiliary aids and services that have not been resolved by DCF in thirty (30) calendar days to the Disability Coordinator and/or Regional Disability Liaisons for consideration and resolution in a reasonable amount of time in light of the facts and circumstances, and generally within fifteen (15) calendar days barring extenuating circumstances, for a total of forty-five (45) calendar days from DCF’s receipt of the request; and
- A process for notifying the requester of the outcome of his or her request in writing. The notice must include, at minimum, any actions taken by DCF in response to the request, the decision made by DCF, and an explanation of next steps (including timing of the same). DCF will take appropriate steps to ensure

that the notice is provided in understandable and appropriate alternate formats to ensure effective communication with individuals with disabilities.

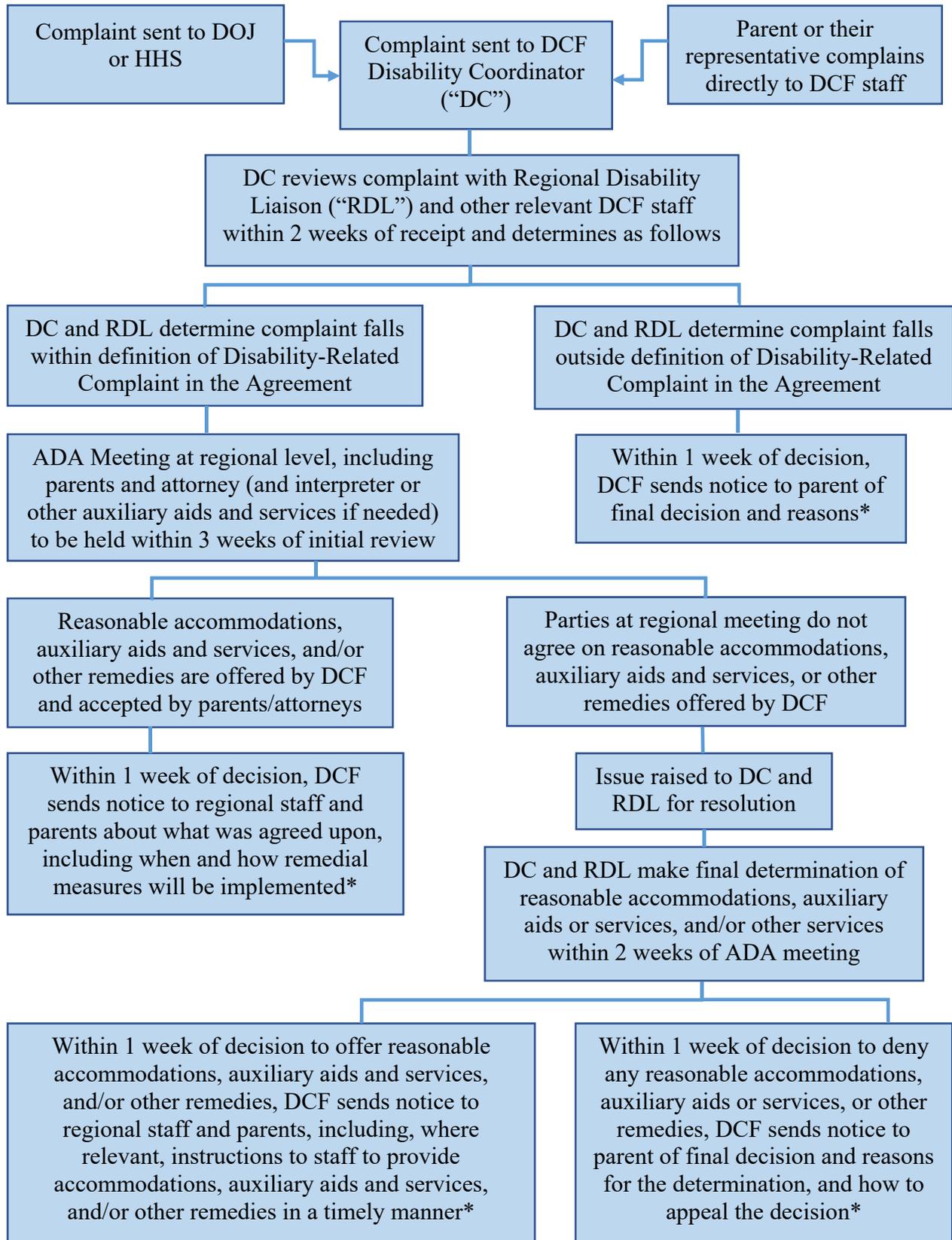
- The Parents with Disabilities Policy shall also make clear that clinical case records for DCF-involved parents with disabilities must identify the reasonable accommodations and auxiliary aids and services DCF will provide, is providing, or will work to arrange for.
- Disability-Related Complaints Process:
 - A process for DCF-involved parents and their representatives to make a Disability-Related Complaint (including a complaint of disability discrimination) to DCF, including to the Regional Disability Liaisons, Disability Coordinator, and General Counsel's Office. This process must make clear that Disability-Related Complaints should be resolved at the earliest point of contact, if possible;
 - A process for DCF to review, investigate, and respond to Disability-Related Complaints in a timely manner and pursuant to the timeframes in Appendix B. The review and investigation must include review of the complaint, relevant documents and testimony if needed, and any evidence submitted by the DCF-involved parent and his or her representatives;
 - A process for DCF to take all necessary and appropriate steps to arrange for appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in DCF's Disability-Related Complaint Process; and
 - A process for notifying the DCF-involved parent or representative of the outcome of the complaint in writing. The notice must include, at minimum, an explanation of the outcome, any actions taken by DCF in response to the complaint, the decision made by DCF, and an explanation of next steps (including timing of the same). DCF will take appropriate steps to ensure that the notice is provided in appropriate alternate formats to ensure effective communication with individuals with disabilities.
- Reporting & Confidentiality:
 - Subject to appropriation and systems capacity, a process for ensuring that all relevant case record documents and systems (such as iFamilyNet) reflect: (i) all requests for reasonable accommodations and auxiliary aids and services for a DCF-involved parent with a disability that are denied in full or in part; (ii) all reasonable accommodations and auxiliary aids and services that DCF is providing on a repeated or on-going basis for a DCF-involved parent with a disability; (iii) all Disability-Related Complaints filed with DCF by or on behalf of a DCF-involved parent with a disability (including disability discrimination complaints); (iv) the status and progress of all such requests and complaints; (v) the resolution

of all such requests and complaints, including DCF decisions by the Area, Regional, and Central Offices; and (vi) the reasons for full and partial denials of requests for reasonable accommodations and auxiliary aids and services; and

- A process for safeguarding the confidentiality of any medical records provided in support of a complaint or request for reasonable accommodations or auxiliary aids or services pursuant to this policy, except that the Departments and DCF employees and contractors may be informed regarding necessary accommodations and auxiliary aids and services to the extent permitted by law.

APPENDIX B

Complaint Process



*In all instances where a complaint originated from DOJ or HHS, notice will also be provided to the Departments. Notice to the parent will be provided in writing and in an accessible format in all cases.