

DATA SHARING AND CONFIDENTIALITY AGREEMENT BETWEEN THE UNITED STATES DEPARTMENTS OF JUSTICE AND HEALTH AND HUMAN SERVICES CONCERNING THE INVESTIGATION OF THE REMOVAL OF E.H. FROM T.H. AND SUBSEQUENT PROCEEDINGS BY THE MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES

**Department of Justice No. 204-36-216
Department of Health and Human Services No. 14-182176**

The U.S. Department of Justice ("DOJ") is investigating the removal of minor E.H. from the care and supervision of her biological mother, T.H., in November 2012 and subsequent services by the Massachusetts Department of Children and Families ("Mass. DCF"). DOJ's investigation is being conducted pursuant to Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131-12134, and its implementing regulation, 28 C.F.R. pt. 35. The U.S. Department of Health and Human Services ("HHS"), Office for Civil Rights ("OCR"), Region I, has similarly initiated an investigation of a complaint filed by T.H. alleging discrimination on the basis of her disability in connection with the removal of E.H. and subsequent services by Mass. DCF pursuant to its jurisdiction under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and HHS's implementing regulation, 45 C.F.R. pt. 84. Collectively, the investigations are referred to herein as the "T.H. Investigations."

I. Purpose of the Agreement

DOJ and HHS enter into this Data Sharing and Confidentiality Agreement to maximize and share information and resources, to preserve the confidentiality of information, to streamline the investigative process, and to ensure an appropriate resolution, which may include an enforcement action. *See* 28 C.F.R. § 35.190(a), (b)(3), (d), and (e). This Data Sharing Agreement memorializes the already existing understanding of DOJ and HHS, both agencies of the United States, that representatives of the agencies may conduct joint investigation and may, in accordance with applicable laws and regulations, share information collected or generated, with the expectation that such information will continue to have the same protections from disclosure that such information would have if it were not shared between the two agencies.

II. Data that may be Shared

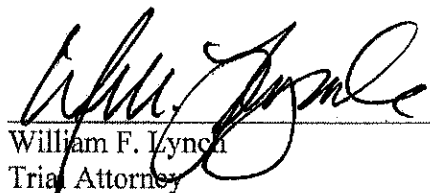
DOJ and HHS may request documents and other records during the T.H. Investigations. DOJ and HHS may freely share with each other documents, drafts, notes, impressions, attorney work product, and privileged materials, without waiving any otherwise applicable legal protections from disclosure.

III. Common Interest between DOJ and HHS

DOJ and HHS agree that they have a common interest in the uniform application of Title II of the ADA and Section 504 of the Rehabilitation Act to the T.H. Investigations and in ensuring that Mass. DCF complies with Title II of the ADA and Section 504 of the Rehabilitation Act. DOJ and HHS agree that they have a common interest in preserving all

applicable privileges and work product protections held by each respective agency, and by any complainants, to the maximum extent permitted by law. DOJ and HHS agree that any discussions between the agencies shall be protected by all relevant protections from disclosure, including the deliberative process privilege, and that DOJ and HHS will freely communicate with each other information and any positions without waiving the privileged or confidential status of any materials. Such communications may be oral or written, including by electronic means. DOJ and HHS further agree to promptly notify each other should any documents subject to this Agreement be subpoenaed or otherwise requested during the investigation and to assert all reasonable objections, upon request of the party that produced the document, in the event that documents are subpoenaed or requested during the investigation. While the DOJ and HHS share a common interest in this matter, DOJ is not representing HHS in this matter, and each agency retains exclusive possession, custody, and control of documents that are not shared with the other agency.

DOJ and HHS represent the authority to enter into this Data Sharing and Confidentiality Agreement as memorialized by the signatures below:



William F. Lynch
Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice

Dated: 10/7/14



Susan M. Pezzullo Rhodes
Regional Manager, Region I
Office of Civil Rights
U.S. Department of Health and Human Services

Dated: 10/3/14