

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CTL, a minor, by his Guardian ad Litem,  
CHRIS J. TREBATOSKI, ERIC LINDMAN  
AND NICHOLE LINDMAN,

Plaintiffs,

v.

OPINION AND ORDER

10-cv-300-wmc

ASHLAND SCHOOL DISTRICT,

Defendant.

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A diabetic student and his parents brought this action against his school district alleging violations of Title II of the ADA and the Rehabilitation Act. Defendant Ashland School District has moved for summary judgment. (Dkt. #19.) Because the undisputed facts do not support plaintiffs' claims for relief, the court will grant defendant's motion.

UNDISPUTED FACTS<sup>1</sup>

**A. Background**

Plaintiff CTL (who will be called Charlie both to personalize him and avoid yet another set of initials in a case with far too many already) was born in June 2002. Charlie is the oldest child of plaintiffs Eric and Nichole Lindman. In November 2006, when he was four years old, Charlie was diagnosed with Type I diabetes.

Charlie uses an insulin pump, a personal diabetes manager ("PDM"), and a continuous glucose monitor ("CGM") to monitor and manage his blood-glucose levels.

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<sup>1</sup> The court finds the following facts taken from the parties proposed findings of fact to be material and undisputed.

The pump is filled with insulin, and Charlie wears it directly on his body. The pump delivers a steady, pre-programmed basal insulin dose to Charlie on a constant basis. The pump also is capable of delivering a “bolus” (a larger dose of insulin) as communicated to the pump through the PDM. The CGM measures the glucose in Charlie’s interstitial fluid every five minutes and transmits the reading to a monitor that Charlie wears on the waistband of his pants. The monitor sets off an alarm if Charlie’s readings are either too low or too high. Because the CGM is not intended to be a diagnostic (as opposed to a warning) device, a blood-glucose test may also need to be administered when an alarm activates, depending on the circumstances. Absent intervention by Charlie’s parents or other individuals with appropriate training, the PDM calculates the size of the dose and the pump administers that amount if Charlie requires a bolus.

## **B. Development of 504 Plan**

During the summer before Charlie’s enrollment in kindergarten for the 2008-2009 school year, the Lindmans and the District developed a 504 plan, including (1) a medical plan for managing Charlie’s diabetes on a daily basis and (2) a quick-reference emergency plan for dealing with emergency situations. This plan was based on a form that Nichole found on the internet and later modified. Charlie’s doctor was involved in the process of formulating the diabetes medical management plan. The District’s Director of Pupil Services also consulted a doctor about the plan, who worked on a *pro bono* basis.

By the time Charlie entered kindergarten, the 504 plan was in place. In relevant part, it provided:

6. [Charlie] will be permitted to participate in all field trips and extracurricular activities (such as sports, clubs and enrichment programs) without restriction and with all of the accommodations and modifications set out in this plan.

...

10. At least three (3) adult staff members will be trained as Trained Diabetes Personnel (TDP). Either a school nurse or TDP must be present at all times during school hours, during extracurricular activities, and on school-sponsored field trips to provide diabetes care in accordance with this Plan and as directed in the attached Diabetes Management Plan (DMMP) and Quick Reference Emergency Plan. TDPs shall be trained to perform or oversee administration of insulin (which includes programming and troubleshooting [Charlie]'s insulin pump and site changes), monitor [Charlie]'s Continuous Glucose Monitor (CGM) and respond to its alarms (which includes calibrating and troubleshooting), monitor blood glucose, check ketones, and respond to hyperglycemia and hypoglycemia including administering glucagon.

11. Any staff member who is not a TDP and who has primary care for [Charlie] at any time during school hours, extracurricular activities, or during field trips shall receive training that includes a general review of diabetes and typical healthcare needs of a student with diabetes, recognition of high and low blood glucose levels, how and when to contact either TDP or [Charlie's] parents, communication between trained professional, when and how to complete log books and documentation of activities. In addition, there will be appropriate training specific to [Charlie's] individual needs.

12. Any bus driver who transports [Charlie] shall receive training to recognize the symptoms of high or low blood glucose levels and appropriate responses for those situations.

(Affidavit of Jeffrey A Schmeckpeper ("Schmeckpeper Aff."), Ex. I (dkt. #22-9) at 2-3.)

In addition, the 504 plan included a Diabetes Medical Management Plan, which provided information about Charlie's diabetes devices and specifically described guidelines for insulin dosage:

**Usual Lunchtime Dose**

Base does of Novolog insulin at lunch is flexible dosing using 1 unit/ 23 grams carbohydrate.

\*Use PDM Bolus Calculator for all insulin dosing.

**Insulin Correction Doses**

Parental authorization should be obtained before administering a correction dose for high blood glucose levels.  
No

Use PDM Bolus Calculator to compute correction bolus.

...

\*[Charlie]'s parents are authorized to adjust the insulin dosage at any time.

(Affidavit of Chris J. Trebatoski ("Trebatoski Aff."), Ex. E (dkt. #31-5) 4-5.)

At the Lindmans' insistence, the District also hired a licensed professional nurse, Barbara Vincent, in anticipation of Charlie's enrollment. Nurse Vincent, who had experience treating pediatric diabetes, was assigned to students from kindergarten through second grade and was therefore responsible for monitoring Charlie on a day-to-day basis. Faye Nyara, a licensed practical nurse, was also on the District's staff and assigned to the third through fifth graders in Charlie's school. Nyara had over 30 years of nursing experience and also worked with a number of diabetic children in the past.

About two weeks before school began, the District provided training sessions on diabetes care to persons who would be in contact with Charlie. Between ten and fifteen

individuals -- including teachers, health assistants, administrators, and bus drivers -- attended a training session.<sup>2</sup> The District also provided a training session on Charlie's devices. Most of the individuals who attended the diabetes care training also attended the training on Charlie's devices, though plaintiffs contend that not all individuals who might have been required to work with the devices attended the training.

### C. Charlie's Kindergarten School Year

Charlie began kindergarten in September 2008. His CGM monitor was turned on during the school day.<sup>3</sup> Charlie was checked each time an alarm went off, which on some days would require over twenty visits from the school nurse to his classroom.<sup>4</sup> This

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<sup>2</sup> The parties dispute whether certain individuals attended the training, including one of Charlie's classroom teachers, recess assistants, the physical education teacher, and Nurse Nyara. (Def.'s Reply to Def.'s PFOFs (dkt. #34) ¶ 25). Principal Christopher Graff testified at his deposition that the assistants supervising the lunchroom and the playground were in attendance. (Supplemental Affidavit of Jeffrey A. Schmeckpeper ("Supp. Schmeckpeper Aff."), Ex. D-Supp. (dkt. #37-4) 19.) The District also contends that Nyara attended the training, but the pages of her deposition cited in support -- pages 22 and 23 of her deposition -- were not included in the excerpted pages of Nyara's deposition testimony provided to the court. Moreover, Nichole Lindman states in an affidavit that she attended the training and that "one of Charlie's classroom teachers, some specialty teachers, for example physical education teacher were not present, and the recess aides[.] In addition, Faye Nyara was not present at the training." (Affidavit of Nichole Lindman (dkt. #25) ¶ 4.)

<sup>3</sup> The manufacturers of Charlie's medical devices and Charlie's doctor had recommended that the alarms on Charlie's CGM be turned off during the school day, but Nichole Lindman wanted the alarms to remain activated, and the 504 plan required that the alarms on Charlie's CGM be turned on during the school day.

<sup>4</sup> During the 2008-2009 and 2009-2010 school years, District staff tracked when and why an alarm went off, as well as tracked when and what Charlie ate. The plan was modified by doctor's order in February 2010 allowing the low predictive alarm to be turned off.

information was initially provided to Nichole in daily e-mails and later the information was provided on a printed form. District staff also called Nichole if Charlie experienced anything unusual.

Although plaintiffs dispute the accuracy of the information relayed and whether calls were made as required by the 504 plan, the Lindmans were generally pleased with the care provided to Charlie during his kindergarten year. Except for some concerns about the frequency of the alarms and the amount of time spent in caring for Charlie, the District believed that Charlie was performing well academically and that his diabetes did not prevent him from attending classes.

#### **D. Charlie's First Grade School Year**

At least from the Lindmans' point of view, things changed for the worse in the fall of 2009 when Charlie entered first grade. For the 2009-2010 school year, the District hired a registered nurse, Pamela Webber, to supervise its healthcare administration. Webber had prior experience supervising nurses at a hospital and had specific experience dealing with diabetes, albeit not in a school setting. At the time she was hired, Webber received pediatric-specific diabetes training from a local pediatric nurse and also received training by representatives from the manufacturers of Charlie's medical devices.

When Webber discovered that Vincent was not consistently providing Charlie with the dose of insulin calculated by his PDM in October 2009, a conflict arose. In their personal care of Charlie, the Lindmans did not always administer the bolus dose of insulin calculated by the PDM, even though that had not been discussed with Charlie's

physician and the device manufacturers did not recommend such deviations. Consistent with the Lindmans' approach, Nurse Vincent would also alter the dosages of insulin from that indicated by the PDM. Nichole was aware of this and approved of it.

Webber had a concern about this approach. Under the Wisconsin Administrative Code, she believed that nurses were only to follow instructions from doctors, not parents. Webber also consulted with the school-nurse consultant at the Wisconsin Department of Public Instruction, Rachel Gallagher, and the State Board of Nursing about her concern.<sup>5</sup> Gallagher told Webber that if she was concerned that Charlie's plan did not allow for adjustments to the insulin dosages, she should contact Charlie's diabetes medical team for clarification. Gallagher specifically suggested that Webber request a doctor's order outlining a range of permissible insulin doses given various circumstances.

Around this same time, Vincent received a reprimand. The District contends that it was unrelated to the conflict between Vincent and Webber. Plaintiffs contend, however, that the reprimand was due to Vincent's complaint that she was unable to complete both secretarial tasks and her health care duties, including caring for two students with diabetes. Vincent resigned shortly thereafter on November 5, 2009.

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<sup>5</sup> Part of the District's summary judgment submission includes an affidavit from Gallagher to this effect. The District also submits a contemporary email from Gallagher to Nichole and her attorney Jeffrey Perzan in which she quoted language from the Wisconsin Board of Nursing on the subject of delegation in schools: "No, a parent may not delegate to a nurse. Nurses are mandated by the Standards of Practice to accept delegation from medical providers (Wis. Admin. Code sec. N 6.03(2)(a))." (Schmeckpeper Aff., Ex. I (dkt. #22-9) at 57-58; *see also id.*, Ex. A (dkt. #22-1) 87:21-88:24.)

Due to Vincent's resignation, the District assigned Nurse Nyara to cover kindergarten through second grade. Nyara was responsible for Charlie's daily care until January 18, 2010, when the District hired two registered nurses, Michelle Crowell and Laura Novascone, to fill Vincent's position. Crowell had been a registered nurse for over twenty years and had worked in thirteen school districts over the years and with many children with Type 1 diabetes. Novascone had been a registered nurse for over a decade and also had experience caring for individuals with Type 1 diabetes. Both new nurses received training from a local pediatric nurse and from the manufacturers of Charlie's devices.

Shortly after Crowell and Novascone started, Nichole became dissatisfied with the care they were providing Charlie. In January 2010, the Lindmans decided they wanted Charlie to begin self-treating his diabetes by eating fast-acting glucose he had in his possession pursuant to a doctor's order when he felt like he had low blood sugar levels. Webber and Crowell felt that the plan did not authorize this self-treatment. On January 29, 2010, they asked the Lindmans to submit a doctor's order indicating that Charlie could self-treat.

After waiting for almost two weeks, Crowell and Webber followed up with the Lindmans and Charlie's doctor's office regarding the requested order on February 11, 2010. The next day, a Friday, Charlie's doctor faxed an order which provided in pertinent part:

4. In the event of a sensor low alarm, [Charlie] will eat 15 grams of carbohydrates that he will have with him and he will shut the alarm off. He does not need to report this to the school nurse, UNLESS he feels low.

5. [Charlie's] physicians, along with his parents, will re-evaluate this treatment plan, (to see if this approach is causing unnecessary high alarms and the subsequent need for a correction bolus) in 1 to 2 months;

6. [Charlie] may push the buttons on the PDM for an insulin bolus, IF it is under the supervision of an adult.

(Schmeckpeper Aff., Ex. I (dkt. #22-9) 66.)<sup>6</sup>

Charlie did not attend school on February 17 or 18.<sup>7</sup> Following a meeting with the school nurses, the Lindmans withdrew Charlie from the district on February 18, 2010. The Lindmans concede that Charlie was performing well academically during his first-grade year, that he regularly attended school, and that he did not experience any adverse health consequences that required medical treatment during the school year.

Charlie now attends Our Lady of the Lake Catholic School. Our Lady has no nurses, no contract with any organization to provide nursing services, and no one on staff with formal health training. The school has no formal plan on how to handle Charlie's diabetes.

#### **E. Administrative Action**

In October 2009, early in Charlie's first-grade year, the Lindmans filed a complaint against the District with the United States Department of Education, Office

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<sup>6</sup> Plaintiffs represent that the order was faxed to the school the week of February 1, 2010, but there is nothing in the record to suggest that the school's health office received it at that time.

<sup>7</sup> Although the record is unclear, there was presumably no school on President's Day, February 15, 2010, and Charlie attended school on Tuesday, February 16, without incident.

for Civil Rights (“OCR”). The focus of that complaint was the District’s alleged failure to have three people trained on Charlie’s diabetes devices.

The 504 requires that there be 3 trained people on our child’s equipment. If anyone is sick, busy with another student (etc.), our child would still be able to receive care. The school has only ever had 1 person trained and as of 11-04-09, that 1 person resigned her position effective immediately.

(Compl., Ex. C (dkt. #1-5) 3.) The Lindmans requested “firm commitments on who will be the 3 individuals designated for medical care for our child.” (*Id.* at 5.)

The Lindmans and the District resolved this first complaint by entering into an Early Complaint Resolution Agreement on January 29, 2010. (Schmeckpeper Aff., Ex. I (dkt. #22-9) 60.) With respect to the Lindmans’ concerns about the lack of sufficient trained personnel, as well as a related issue with respect to the involvement of Charlie’s doctor, the Resolution Agreement provided in relevant part:

By February 28, 2010, the Recipient shall conduct training for its “Trained Diabetes Personnel” (TDP), including but not limited to Ms. Fay Nyara, Ms. Pam Webber and Ms. Michelle Crowell. The purpose of the training will be to promote competency relating to medical equipment and devices, as well as the procedures relating to the Complainant’s son’s (Student A) 504 Plan.

...

Upon the full execution of the Agreement, if the Recipient deems it necessary to seek guidance or other information from Student A’s medical team (i.e., his physician) regarding Student A’s 504 Plan or other medical issues requiring physician involvement, the District Nurse will submit a written list of questions/areas of inquiry to the physician and the Complainant. . . .

(*Id.*) The Resolution Agreement also provided:

The Parties stipulate that the Agreement resolves the complaint. The Parties understand that OCR will close the complaint and if the Agreement is breached, the Complainant has a right to file another complaint with OCR. If the Complainant files a new complaint, OCR will address the original complaint allegations and not the alleged breach of the Agreement. To be considered timely, the Complainant must file the new complaint either within 180 days of the date of the original discrimination or within 60 days of the date the Complainant obtains the information that a breach of the Agreement occurred, whichever is later.

*(Id.* at 61.)

The Lindmans allege that the District violated the Resolution Agreement because: (1) its nurses failed to use the designated form for reporting the information they tracked while monitoring Charlie, and failed to e-mail the form to them; and (2) Webber contacted Charlie's doctors without providing a list of areas of inquiry or written questions to them containing the information she sought from the doctors. The form the nurses used provided more information than the form designated in the Resolution Agreement. The District offered to use the designated form, but the Lindmans declined the offer because they found the form being used acceptable. The nurses sent the form home to the Lindmans in Charlie's backpack each day. The District was also in the process of implementing scanning capability to e-mail the form to the Lindmans at the time Charlie was withdrawn from the District.

## OPINION

Plaintiffs allege violations of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*

(Compl. (dkt. #1) ¶¶ 22-23.)<sup>8</sup> Both acts prohibit discrimination against qualified persons with disabilities.

Section 504(a) of the Rehabilitation Act provides: “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .” 29 U.S.C. § 794(a). While the statute itself does not contain a general accommodation requirement, the United States Supreme Court has held that it requires meaningful access to state benefits and, therefore, that “reasonable accommodations in the grantee’s program or benefit may have to be made.” *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

Title II provides: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 12132. The Rehabilitation Act provides that the ADA standards are to be applied to determine whether the Rehabilitation Act has been violated. 29 U.S.C. § 794(d); *see also Washington v. Ind. High Sch. Athletic Ass’n, Inc.*, 181 F.3d 840, 845 n.6 (7th Cir. 1999) (“We have held previously

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<sup>8</sup> Plaintiffs also allege a breach of the Early Complaint Resolution Agreement. (Compl. (dkt. #1) ¶ 21.) The District moved for summary judgment on this claim as well, arguing persuasively (1) that the facts do not support any finding of a breach, and (2) even if there were a breach, the proper remedy is at the administrative level, not through a breach of contract action. (Def.’s Opening Br. (dkt. #20) 13.) Plaintiffs failed to respond to these arguments, or otherwise oppose summary judgment as to this particular claim. Accordingly, the court will grant defendant summary judgment on plaintiffs’ breach of contract claim as well.

that the standards applicable to one act are applicable to the other.”). Therefore, the court will consider plaintiffs Title II and § 504(a) claims together.

Title II requires plaintiffs to prove that (1) Charlie is a “qualified individual with a disability,” (2) who was “excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or [was] subjected to discrimination,” and (3) the deprivation was “by reason of” his disability. 42 U.S.C. § 12132. The second element “may be established by evidence that (1) the defendant intentionally acted on the basis of the disability, (2) the defendant refused to provide a reasonable modification, or (3) the defendant’s rule disproportionately impacts disabled people.” *Ind. High Sch. Athletic Ass’n*, 181 F.3d at 847.

Plaintiffs claim the District refused to provide a reasonable accommodation by (1) failing to provide an adequate number of trained diabetes personnel (“TDPs”), and (2) requiring a doctor’s authorization for changes in Charlie’s treatment, including any self-treatment. Plaintiffs also appear to argue that Webber’s actions, which plaintiffs characterize as “callous, indifferent and dangerous,” support a finding that the District “intentionally acted on the basis of the disability.” (Pls.’ Opp’n (dkt. #24) 7.) The court disagrees.

### **I. Number of TDPs**

With respect to the lack of three TDPs, the undisputed facts show the District was in compliance with the plain terms of the § 504 Plan. While the parties dispute whether some specific individuals received general diabetes training and the more specialized

training on Charlie's medical devices, the District's undisputed evidence at summary judgment establish that *more* than three people attended both trainings, seemingly qualifying those individuals as TDPs. Plaintiffs contend that during CTL's kindergarten year, Vincent was the only TDP (Pls.' Opp'n (dkt. #24) 4-5), but provide no basis for that conclusion. In other words, plaintiffs do not explain how the training requirements detailed in the § 504 plan are not sufficient to qualify an individual as a TDP.

In any event, the Plan only requires that “[e]ither a school nurse *or* TDP must be present.” (Schmeckpeper Aff., Ex. I (dkt. #22-9) 2 (emphasis added).) At least at the time the Lindmans withdrew Charlie from the District, there is also no dispute that a nurse was present during required times. Plaintiffs’ real argument seems to be that the District failed to provide sufficient training on Charlie’s particular medical needs. In light of the presence of trained nurse and the Early Resolution Agreement, in which the parties agreed to additional training by February 28, 2010 (10 days *after* Charlie’s parents withdrew him from the District), insufficient training is not enough for a reasonable factfinder to find that the District “refused to provide a reasonable modification.”

Moreover, if the District were out of in compliance with the terms of the § 504 Plan, it would not, in and of itself, be enough to find the District liable. “The ADA is concerned with the differential treatment between the disabled and the nondisabled, not with the general provision of services to the disabled.” *Brown v. District 299 -- Chi. Public Schs.*, No. 09 C 4316, 2010 WL 5439711, at \*6 (N.D. Ill Dec. 27, 2010) (citing *Timms ex rel. Timms v. Metro. Sch. Dist.*, 722 F.2d 1310, 1317-18 (7th Cir. 1983)). As such, the relevant inquiry is not whether the District denied certain services under the Plan, but

rather whether “the denial of that service affected [Charlie’s] access to education in relation to nondisabled students.” *Id.* at \*7.

The closest plaintiffs come to alleging an issue with Charlie’s education was an almost-missed field trip. This is not sufficient to support a finding that Charlie’s education was impacted because of the District’s alleged failure to comply with the Plan. Moreover, it is undisputed that (1) Charlie was performing well academically during his first-grade year; (2) he regularly attended school; and (3) he did not experience any adverse health consequences that required medical treatment during the school year. In light of these admissions, a reasonable fact finder could not find any lack of compliance with the § 504 Plan impacted Charlie’s access to education.

## **II. Treatment Conflict**

Similarly, the Lindmans’ conflict with Webber and the other new nurses about Charlie’s treatment does not constitute a failure by the District to provide reasonable accommodations. First, the plain language of the § 504 Plan requires following PDM calculations in determining the bolus dose. Plaintiffs focus on the language in the Plan authorizing Charlie’s parents “to adjust the insulin dosage at any time,” but this language does not appear to grant parental discretion in determining *discrete* bolus calculations. Even if this was the parties’ intent, this parental discretion language is asterisked next to and appears to only apply to Charlie’s “usual lunchtime dose,” not to compute correction bolus doses that were at the heart of the Lindmans’ treatment dispute with the District. Since the Plan states that parental authorization for giving an insulin correction dose is

not required and that the “PDM Bolus Calculator” is to be used “to compute correction bolus,” the Plan, at least as written, grants no discretion on dosages. (Trebatoski Aff., Ex. E (dkt. #31-5) 4-5.) Second, the Plan contains *no* provision for self-treatment. Plaintiffs contend that the District failed to provide reasonable accommodations because the District failed to follow the parents’ directions. The District was understandably concerned about the parent’s directing care of Charlie, rather than a doctor’s order as required by law. Third, even if the request *was* reasonable, the District had no opportunity to respond to it given Charlie’s parents’ decision to withdraw him almost immediately from the school. Even though there is no exhaustion requirement under the Rehabilitation Act and Title II, and plaintiffs were no doubt acting in what they sincerely believed were Charlie’s best interests, plaintiffs’ claims regarding adjustments in bolus correction doses seem premature at best.

Plaintiffs also appear to argue that Webber intentionally discriminated against Charlie based on his diabetes. The Lindmans contend that “Webber’s rigid and confrontational style created problems almost immediately.” (Pls.’ Opp’n (dkt. #24) 6.) Indeed, much of the Lindmans’ complaint boils down to an obvious and unfortunate personality conflict with Webber and her administrative style, perhaps a bad match for plaintiffs’ similar, aggressive advocacy for their child. This is not enough, however, to state a claim for discrimination under Title II or § 504(a). Notwithstanding plaintiffs’ characterization of Weber’s actions, plaintiffs simply point to her “rigid interpretation” of the Plan and, specifically, her refusal to allow Charlie’s parents to vary insulin doses and Charlie to self-dose absent a doctor’s order. However rigid this was or was not, a

reasonable jury could not find that Webber intentionally discriminated against Charlie on the basis of his diabetes by adopting this position.

The record demonstrates that Charlie's parents, in particular his mother, were zealous advocates for their son, something all parents should aspire to be. Their advocacy resulted in the District's adoption of an extensive plan, training of numerous staff members on diabetes management, and hiring of a registered nurse. While disappointed with the implementation of the Plan, and in particular the District's nurses' unwillingness to deviate from it to allow parent-directed or child-directed care, these concerns do not give rise to a cause of action under the Rehabilitation Act or Title II of the ADA. Accordingly, the court will grant summary judgment to the District.

#### ORDER

IT IS ORDERED that:

- 1) defendant Ashland School District's motion for summary judgment (dkt. #19) is GRANTED; and
- 2) the clerk of the court is directed to enter judgment for defendant and close this case.

Entered this 12th day of March, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge