

SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
RAINBOW RIVER CHILD DEVELOPMENT CENTER,  
HAWTHORNE, CALIFORNIA  
DJ#: 202-12C-339

I. BACKGROUND AND PARTIES

- A. The parties to this Settlement Agreement (“Agreement”) are the United States of America and Rainbow River Child Development Center (“Rainbow River”), located in Hawthorne, California.
- B. This matter was initiated by a complaint filed with the United States Department of Justice (the “United States”) against Rainbow River, D.J. No. 202-12C-339, alleging violations of title III of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
- C. In the complaint, Chaun and Tanya Ralls, parents of a five-year-old son with Type I diabetes, alleged that Rainbow River refused in 2008 to provide proper diabetes care management after 2 weeks, unless the parents would agree to come at lunch and snack times to give him his insulin via pump and that he would no longer be able to attend any field trips with the other children in his class. Rainbow River provides both preschool and school-age programs, including before and after-school, summer, and holiday child care, and is therefore covered by title III of the ADA as a public accommodation although the space they use is located upon public school property. The Ralls’ son, Brody, was starting kindergarten at the school in the following fall, and the parents needed after school care and intended to continue their son at Rainbow River after-school care program following the summer program, but because of Rainbow River’s allegedly discriminatory acts, the parents were forced to enroll their son in another school.
- D. Rainbow River denies each of the allegations that it violated title III of the ADA that are stated in the preceding paragraph. Furthermore, Rainbow River asserts that at all times it acted consistently with the ADA. Nevertheless, to demonstrate and affirm that Rainbow River is committed to full compliance with the ADA, Rainbow River has established and implemented policies and procedures, set forth below, that are designed to afford children with disabilities a benefit equal to that provided to others, and to make reasonable modifications in policies, practices, and procedures when necessary to provide appropriate supervision or assistance to children with disabilities in order to ensure safe participation in all day care activities.
- E. The United States is authorized to investigate alleged violations of title III of the ADA, and to bring a civil action in federal court if the United States is unable to secure

voluntary compliance in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).

F. Rainbow River is a place of public accommodation covered by title III of the ADA. 42 U.S.C. § 12181(7)(K); 28 C.F.R. § 36.104.

G. The ADA prohibits public accommodations from discriminating against an individual on the basis of disability in the full and equal enjoyment of its goods and services. 42 U.S.C. § 12182(a). Ensuring that private day care centers do not discriminate against persons with diabetes is an issue of general public importance.

H. Rainbow River's participation in this Settlement Agreement shall not constitute or be construed as an admission of liability, nor of the United States' findings or determinations contained in this Settlement Agreement, except in a proceeding to enforce the terms of this Settlement Agreement. Rainbow River agrees to comply with and be bound by the terms of this Settlement Agreement.

I. In consideration of the terms of this Settlement Agreement, and in particular the provisions in Sections II-III, the Attorney General of the United States agrees to refrain from undertaking further action in this case, except as provided in Section III(D).

J. The parties agree to resolve this matter as set forth below.

## II. TERMS OF AGREEMENT

A. Rainbow River agrees not to discriminate against any child on the basis of diabetes; that is, Rainbow River agrees to provide all children with diabetes with an equal opportunity to attend Rainbow River and to participate in all programs, services, or activities provided by Rainbow River. Rainbow River will not refuse to admit any child to any of its sessions or programs because the child has diabetes or requires diabetes care unless Rainbow River concludes that the child poses a "direct threat" as defined by 28 C.F.R. § 36.208, and/or the child's participation would result in a "fundamental alteration" of the program, service or activity as set forth in 28 C.F.R. § 36.302.

B. Rainbow River agrees to evaluate, on a case by case basis, and make reasonable accommodations for children with diabetes pursuant to Federal and California law. Accommodations may include, but are not limited to, supervising and monitoring of children with diabetes while using blood glucose monitoring tests, insulin pumps, syringes, or other diabetes related medical equipment or consumption of food while participating in any program, service, or activity, whether on Rainbow River's premises or elsewhere while participating in Rainbow River's educational programs.

C. Nothing in this Agreement is intended to cause Rainbow River to violate any provision of any state or local law. The parties to this Agreement are aware of state law in

California that prevents Rainbow River from providing medical care and supervision without appropriate authorization. Rainbow River will, upon request by any family, apply within five (5) business days for a special permission to be exempt from California regulatory requirements that may otherwise limit diabetes care, provided that Rainbow River has been provided with all necessary information and documents required by law to make such a request. Should there be any changes in state law and regulations during the period of this Agreement, the parties agree to meet to negotiate terms to address the change. The parties will consult on changes proposed to the policy at least twenty (20) business days before any policy incorporated by reference herein is amended.

D. Rainbow River will take necessary steps to ensure that a child's diabetes care is integrated into the usual daily routine and program at Rainbow River to the greatest extent possible in accordance with the ADA and applicable state and local law.

E. Rainbow River will adopt a diabetes management policy ("Policy"), which will comply with the terms of this agreement. Rainbow River will print and maintain copies of the Policy in a central location, provide the Policy to any interested party requesting it, and will incorporate the Policy into its standard operating policies in accordance with applicable state and local law.

F. Rainbow River will provide training to its staff regarding the terms and conditions of the Policy and to facilitate the implementation of the Policy.

G. When informed that a child who has applied to Rainbow River or its programs has diabetes, Rainbow River will:

1. Advise the child's parents, guardians, or caretakers of the Policy, and advise that Rainbow River will comply with all applicable federal, state, and local laws;

2. If parents/guardians of a child with diabetes would like Rainbow River to administer insulin, glucagon for severe hypoglycemia, or other diabetes care to their child that, under applicable State law, requires special permission, Rainbow River shall do so, provided the parents/guardians provide Rainbow River with the items set forth below, and allow Rainbow River no less than four (4) weeks to perform the applicable state procedures and trainings before providing the accommodation(s) (Note: Rainbow River staff will not perform diabetes care that requires authorization under the State law until the information itemized below, is received and authorization is granted):

- i. A completed Medical Management Plan, an example of which is attached as Appendix A, clearly detailing any and all necessary care for the child's medical management and signed by the child's primary care physician or endocrinologist;

ii. A completed Physical Examination Form, Appendix B attached hereto, and any other clear, typewritten health-related documents deemed relevant by the child's primary care physician or endocrinologist;

iii. Information regarding all equipment, food, and substances to be provided by the child's parents/guardians that are not regularly provided by Rainbow River and that are necessary to meet or comply with the child's Medical Management Plan, the Physical Exam Form, the Policy, and any health-related documents as noted in the preceding subparagraph (ii);

iv. Written permission to undertake steps indicated and requested on the child's Medical Management Plan, and permission to respond to any diabetes-related or other emergency in a manner consistent with those instructions or emergency protocols;

v. An executed general release and waiver of liability for care in a form required of all children as a prerequisite to attendance that is substantially similar to Appendix C, attached hereto. This document shall release Rainbow River and their agents from any and all liability stemming from any action relating to the care of any child;

vi. Information and instructions regarding containers for proper disposal and operation of all materials including, but not limited to, operation of the child's blood glucose meter and insulin pump; and

vii. Availability of parents, guardians or their designees to attend meetings on the first day of a session to the program and to be available to be in compliance with the Policy.

3. Communicate with parents or guardians as set forth in the Policy and Medical Management Plan about the child's diabetes management, diabetes care, or diabetes health-related concerns;

4. Ensure compliance with the Medical Management Plan and Policy, and permit the child to self-manage his or her diabetes consistent with the child's ability, skill, maturity, and development level; and

5. Respect the child's and his or her family members' rights to confidentiality and privacy consistent with all pertinent local, state, or federal laws, regulations, or requirements.

H. Rainbow River will arrange to provide basic training to personnel that may be responsible for children with diabetes at Rainbow River. That basic training will include

a general overview of diabetes and typical health care needs of individuals with diabetes, recognition of common symptoms of hypoglycemia and hyperglycemia, and ways to get help quickly. The parents or guardians of any child with diabetes are responsible for providing, at their cost, all appropriate testing equipment, diabetes supplies, and special food necessary for the needs of their particular child. Rainbow River, at the request of the parents or guardians and with their input, will arrange training for appropriate personnel regarding the needs of a particular child with diabetes. This child-specific training may be given by a parent or guardian, or by a qualified person agreed upon by the parents or guardians. The parents or guardians of a particular child with diabetes should be available to provide assistance to, and respond to inquiries from, Rainbow River personnel about any matter or concern related to the care or treatment for that particular child with diabetes. Rainbow River personnel should be authorized to seek clarifying information from the child's health care team regarding questions about the medical orders.

I. Rainbow River will maintain a record at its office of all admission inquiries on behalf of children with diabetes, including insulin-dependent diabetes, and the disposition of such inquiries for a period of three (3) years from the date of the inquiry.

J. Rainbow River will not retaliate against or coerce in any way any person who is trying to exercise his or her rights under this Agreement or the ADA.

### III. ENFORCEMENT AND IMPLEMENTATION

A. Compliance Reports. Rainbow River will provide written reports to the United States regarding compliance with this Agreement. The first, second, and third reports shall be due six (6), twelve (12), eighteen (18) and thirty (30) months, respectively, from the entry of the Agreement. Each of the reports must state the number of applicants with diabetes who applied to attend any program, the particular diabetes care requested for such applicant, the procedure followed to determine whether to admit such applicant to the program, any reason admission to the program was denied, and if an applicant was admitted, what diabetes care was agreed upon. Rainbow River will maintain records to document all statements in the report. Rainbow River shall also submit detailed information about any complaints to Rainbow River by children with diabetes or their parents or guardians, or actions taken by Rainbow River that involve any child who has diabetes, including any decision to deny a child's request for an accommodation after admission to Rainbow River or any request or other action by Rainbow River that contributes to a child's removal or departure before the end of a session for which the child was enrolled. The parties agree to adhere to all requirements for confidentiality under the ADA.

B. Complaints. During the term of this Agreement, Rainbow River will notify the United States if any individual brings any lawsuit, complaint, charge, or grievance alleging that Rainbow River discriminated against them on the basis of disability. Such notification must be provided in writing via certified mail within fifteen (15) days of when Rainbow

River has received notice of the allegation and will include at a minimum, the nature of the allegation, the name of the individual bringing the allegation, and any documentation possessed by Rainbow River relevant to the allegation.

C. Notices. All notices, reports, or other such documents required by this Agreement shall be sent to the Parties by fax and by delivery via Federal Express to the following addresses or to such other person as the parties may designate in writing in the future:

For notices to the United States:

John L. Wodatch, Chief  
Attention: Robert Mather  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
1425 New York Avenue, NW  
Washington, D.C. 20005  
(202) 307-2236 (telephone)  
(202) 616-6862 (facsimile)

For notices to Rainbow River:

Suzanne Porter  
Board President  
Rainbow River Child Development Corp.  
2154 Monterey Blvd. #B  
Hermosa Beach, California 90254  
(310) 379-4912 (telephone)  
( ) (facsimile)

D. Enforcement of Agreement. The United States may review compliance with this Agreement at any time and may enforce this Agreement if the United States believes that any requirement therein has been violated. If the United States believes that this Agreement or any portion of it has been violated, it will specifically notify Rainbow River' Board President in writing and it will attempt to resolve the issue or issues in good faith. The United States will give Rainbow River thirty (30) days from the date it notifies Rainbow River of any breach of this Agreement to cure that breach, prior to instituting any court action. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to Rainbow River, it may institute a civil action in federal district court to enforce the terms of this Agreement or title III and may, in such action, seek any relief available under the law. Failure by the United States to enforce any provision or deadline of this Agreement will not be construed as a waiver of its right to enforce other provisions or deadlines of this Agreement.

E. Term of the Agreement. The Agreement shall become effective as of the date of the last signature below and shall remain in effect for three (3) years from that date.

F. Entire Agreement. This Agreement, and any appendices attached, constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Agreement or attachments, shall be enforceable regarding the matters raised herein.

G. Copies Available. A copy of this Agreement may be made available by the United States or Rainbow River to any person upon request.

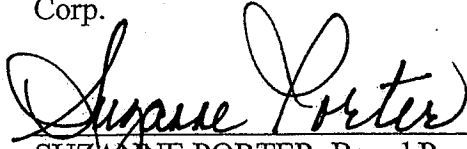
H. Settlement of Claims. This Agreement fully and finally resolves any and all of the allegations of the complainants and the United States in this case. It does not purport to remedy other potential violations of the ADA by Rainbow River.

I. Binding Effect. This Agreement shall be binding on Rainbow River, its agents and employees. In the event Rainbow River seeks to transfer or assign all or part of its interest in any facility covered by this Agreement, and the successor or assign intends on carrying on the same or similar use of the facility, as a condition of sale Rainbow River shall obtain the written accession of the successor or assign to any obligations remaining under this Agreement for the remaining term of this Agreement.

J. Non-waiver. Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision will not be construed as a waiver to such enforcement with regard to other instances or provisions.

K. Signatory. A signatory to this document in a representative capacity for Rainbow River represents that he or she is authorized to bind that party to this Agreement.

For Rainbow River Child Development Corp.



SUZANNE PORTER, Board President  
Rainbow River Child Development Corp.  
2154 Monterey Blvd. #B  
Hermosa Beach, California 90254

Dated: 7/22/10

For the United States of America:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

SAMUEL R. BAGENSTOS  
Principal Deputy Assistant Attorney General

JOHN L. WODATCH, Chief  
PHILIP L. BREEN, Special Legal Counsel  
RENEE M. WOHLLENHAUS, Deputy Chief  
Disability Rights Section  
Civil Rights Division



ROBERT J. MATHER  
Trial Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
Washington, DC 20530  
Telephone: (202) 307-2236  
Fax: (202) 616-6862  
[Robert.mather@usdoj.gov](mailto:Robert.mather@usdoj.gov)

Dated: 8/3/10

Attachments



**APPENDIX A**

**DIABETES MANAGEMENT PLAN**

**Dated:** \_\_\_\_\_

This plan must be completed by the child's personal health provider/physician and parents/guardian and immediately updated by these persons with any new information in the future. All entries must be completed or the plan will be deemed incomplete and unsatisfactory. (Please attach additional pages as needed)

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(This section to be completed by parents/guardian of child)

1. Effective Dates: \_\_\_\_\_

2. Child's Name: \_\_\_\_\_

3. Date of Birth: \_\_\_\_\_

4. Physical Condition (Identify and Explain): \_\_\_\_\_

5. Date of Diagnosis: \_\_\_\_\_

6. Grade: \_\_\_\_\_

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

Mother/Guardian: \_\_\_\_\_

Home Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Telephone: Home \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

Father/Guardian: \_\_\_\_\_

Home Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

8. Who has custody of the child? \_\_\_\_\_

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(This section to be completed by child's doctor/health care provider)

9. Child's Doctor/Health Care Provider:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Emergency Number: \_\_\_\_\_

10. Other Emergency Contacts:

Names: \_\_\_\_\_

Relationship: \_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

11. Notify parents/guardian or emergency contact in the following situations: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12. Recommended monitoring of child: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

13. Specify any medical time requirements: \_\_\_\_\_

\_\_\_\_\_

14. Can child perform own monitoring? Yes No

Exceptions: \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

16. Is the type of blood glucose meter, monitor, nebulizer, or test, necessary for the child's Medical Management Plan approved by the Federal Food and Drug Administration for over-the-counter sale without a prescription.

Yes No Do Not Know

17. What signs does the child demonstrate when child is symptomatic? \_\_\_\_\_  
\_\_\_\_\_
18. Foods to avoid, if any: \_\_\_\_\_
19. Instructions for when food is provided to the child (e.g., as part of a party or food sampling event): \_\_\_\_\_  
\_\_\_\_\_
20. List, identify, and explain any restrictions to exercise, sports, or any other activities:  
\_\_\_\_\_  
\_\_\_\_\_
21. Treatment Supplies to be kept at the child care facility and provided by parent/guardian are as follows (please provide specific instructions regarding the storage and treatment of all supplies): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
22. Provide instructions on the use and handling of monitoring equipment, including lancets, test strips, cotton balls, or other items used while conduction blood glucose tests (must be in accordance with manufacturer's instructions, if applicable):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
23. Provide instructions on how to determine if test results, are within the normal or therapeutic range for the child, and any restrictions on activities or diet: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
24. Provide instructions on how to identify symptoms of hypoglycemia or hyperglycemia: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
25. Provide instructions on what actions to take when results are not within the normal or therapeutic range for the child and any restrictions on activities or diet: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26. Any specific instructions provided by child's physician/health care provider relevant to the child's diabetes care: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*For children with additional medical concerns, please complete supplemental form.*

**This Medical Management Plan has been completed and approved by:**

\_\_\_\_\_  
**Child's Physician/Health Care Provider**  
**(Signature)**

\_\_\_\_\_  
**Date**

I attest that the aforementioned information is true and accurate. I give permission to the Rainbow River Child Development Center to perform and carry out care tasks as outlined in the Medical Management Plan. I also consent to the release of the information contained in this Medical 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 aforementioned child care facility by the child's Parent/Guardian in order to effectuate a revocation of the same. The aforementioned child care facility reserves the right to request additional documentation after review of the within document based on its reasonable discretion, and/or the requirements of California law and the regulations and policies of its state licensing agency, the California Department of Social Services.

**Acknowledged, approved and received by:**

\_\_\_\_\_  
**Child's Parent/Guardian (Signature)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
**Child's Parent/Guardian (Signature)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
Telephone Number

**APPENDIX B**

**PHYSICAL EXAMINATION FORM**

*To be completed and approved by the child's diabetes nurse educator, endocrinologist, or primary care provider/physician. Please attach additional pages as needed.*

Dear Diabetes Team:

Your cooperation in supplying the following information about an applicant for Rainbow River Child Development Center is greatly appreciated. The child will not be accepted without your approval on this form.

To Parent/Guardian: Please complete boxed information BEFORE submitting to Physician.

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

Date of most recent exam: \_\_\_\_\_

I have read the Diabetes Management Plan, attached to this form, and certify that it provides an easy to understand, complete regime of care for this child's safety at Rainbow River Child Development Center, I recognize that the child will be active at this facility and represent that this plan accounts for applicable varying activity levels.

Have any complications of health or disabilities 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 \_\_\_\_\_.

Do you have any specific concerns regarding the management of this child's health or health at school 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 the day care facility beyond those described in the Medical Management Plan? Yes \_\_\_\_\_ No \_\_\_\_\_ If

yes, please describe: \_\_\_\_\_

\_\_\_\_\_

Do you have any other information that is relevant to the care of this child? 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 Rainbow River Child Development Center as requested by the facility at the sole cost and expense of the parent/legal guardian of the child.

Primary Care Physician/Endocrinologist's Name (typed or printed)

\_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

**Primary Care Physician/Endocrinologist's Signature:**

\_\_\_\_\_

Parents/Guardians name (typed or printed)

\_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

**Parents/Guardian Signature:**

**Father:** \_\_\_\_\_

**Mother:** \_\_\_\_\_

**Legal Guardian:** \_\_\_\_\_