

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES CHADAM and JENNIFER CHADAM,
individually and on behalf of
their minor children A.C. and
C.C.,

Plaintiffs,

v.

PALO ALTO UNIFIED SCHOOL
DISTRICT, a governmental entity
created and existing under the
laws of the State of California,

Defendant.

No. C 13-4129 CW

ORDER GRANTING
DEFENDANT'S MOTION
TO DISMISS SECOND
AMENDED COMPLAINT
(Docket No. 43)

Defendant Palo Alto Unified School District (PAUSD) moves to dismiss Plaintiffs' second amended complaint (2AC). Plaintiffs James Chadam and Jennifer Chadam, individually and on behalf of their minor children A.C. and C.C., oppose the motion. Jennifer Chadam was appointed guardian ad litem. Plaintiffs have filed an opposition, and PAUSD has filed a reply. Having considered the papers, the Court GRANTS PAUSD's motion to dismiss.

FACTUAL BACKGROUND

The following facts are alleged in the complaint and taken as true for the purposes of this motion.

James and Jennifer Chadam (the Chadams or Plaintiffs) reside in Palo Alto, California with A.C. and C.C., their minor children. 2AC ¶ 1. As a newborn, C.C. underwent genetic screening following cardiac surgery. 2AC ¶ 5. The screening indicated that C.C. had genetic markers for cystic fibrosis (CF), but further testing revealed he did not have CF. 2AC ¶ 5.

1 On July 22, 2012, Jennifer Chadam enrolled her sons A.C. and
2 C.C. in a middle school owned and operated by PAUSD. Id. ¶ 11.
3 On August 1, 2012, Jennifer Chadam completed and returned several
4 forms for enrollment, including a "Report of Health Examination
5 for School Entry" regarding C.C. Id. ¶ 12. This form included
6 "private, personal and privileged medical information." Id.
7 PAUSD assigned both children to attend Jordan Middle School. Id.
8 ¶ 13. Between August 2, 2012, and August 16, 2012, the Chadams
9 provided additional medical information regarding C.C. Id. ¶ 14.
10 On August 16, 2012, A.C. and C.C. began attending their assigned
11 middle school. Id. ¶ 15.

12 On August 22, one of C.C.'s teachers contacted the Chadams
13 regarding C.C.'s medical condition. Id. ¶ 16. On or about
14 September 11, 2012, during a parent-teacher conference, one of
15 C.C.'s teachers disclosed C.C.'s private medical information to
16 parents of another student attending the middle school (Mr. and
17 Mrs. X). Id. ¶ 17. Specifically, the teacher told Mr. and Mrs. X
18 that C.C. had CF. Id. ¶ 17. The teacher did so with no prior
19 permission or notice from the Chadams. Id.

20 On September 11, 2012, PAUSD arranged for the Chadams to
21 attend a meeting with Gregory Barnes, the middle school's
22 principal, along with Linda Lenoir, PAUSD Nurse, and Grant
23 Althouse, the Vice Principal and Administrator of sixth grade.
24 Id. ¶ 18. At the meeting, the Chadams were told that the children
25 of Mr. and Mrs. X had active CF and that Mr. and Mrs. X had
26 "discovered C.C.'s condition." Id. ¶ 19. At that time, the
27 Chadams informed those in attendance at the meeting that C.C. did
28 not, in fact, have cystic fibrosis. Id. ¶ 20.

1 On or about September 13, 2012, Dr. Carlos Milla sent a
2 letter to PAUSD regarding the medical issues raised by C.C.'s
3 presence at Jordan Middle School. Id. ¶ 23. Dr. Milla's letter
4 recommended that C.C. be removed from Jordan Middle School for the
5 safety of Mr. and Mrs. X's children. Id. Details about Dr.
6 Milla's identity and connection to the case are not disclosed.

7 On September 14, Jennifer Chadam informed Mr. Barnes that she
8 did not want C.C. to be transferred out of Jordan Middle School.
9 Id. ¶ 25. Mr. Barnes informed Jennifer Chadam that Mr. and Mrs. X
10 had decided to remove their children from the school, so there was
11 no need "to make any changes" at that time. Id.

12 On September 16, 2012, Mrs. X sent a letter to Ms. Lenoir
13 requesting that C.C. be removed from Jordan Middle School so that
14 her children could return to school. Id. ¶ 28. On September 17,
15 2012, Dr. Milla sent another letter, this time recommending that
16 children with CF must not be in the same school together. Id.
17 ¶ 29.

18 On September 17, 2012, the Chadams received a call from Mr.
19 Barnes informing them that, based on Mr. and Mrs. X's demands, and
20 based on C.C.'s private medical information, PAUSD intended to
21 prohibit C.C. from attending Jordan Middle School and to transfer
22 him to another PAUSD middle school. Id. ¶ 30. That same day, the
23 Chadams emailed Assistant Superintendent Charles Young, demanding
24 that he provide the documentation upon which the district relied
25 to transfer C.C. out of Jordan Middle School. Id. ¶ 31. The next
26 day, the Chadams made the same demand to Mr. Young, this time in
27 person. Id.

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1 On September 20, the Chadams provided a letter from Dr. John
2 Morton, explaining that C.C. did not have any signs of CF. Id.
3 ¶ 32. In this letter, Dr. Morton stated that he did not think
4 that "this boy is any risk whatsoever to other children with
5 [cystic fibrosis] even if they were using the same classroom."
6 Id. Also on September 20, the Chadams met with Mr. Young and Ms.
7 Lenoir. Id. ¶ 33. At this meeting, the Chadams reiterated that
8 C.C. did not have, nor had he ever had, CF. Id. The Chadams
9 allege that Mr. Young informed them that the decision to remove
10 C.C. from Jordan Middle School was based on a letter from a
11 Stanford doctor. Id.

12 On September 24, 2012, Jennifer Chadam offered to provide Mr.
13 Young more medical evidence that C.C. was not a risk to any other
14 child. Id. ¶ 34. On September 28, Mr. Young informed the
15 Chadams, by telephone and in writing, that C.C. was going to be
16 transferred out of Jordan Middle School. Id. ¶¶ 35-36.

17 On October 10, C.C. was removed from his classroom at Jordan
18 Middle School and told it was his last day at the school. Id.
19 ¶ 37. C.C. did not attend school for approximately two weeks. On
20 October 12, 2012, the Chadams brought suit in a California state
21 court seeking to enjoin PAUSD from transferring C.C. to another
22 middle school. Id. ¶ 38. Prior to a hearing on the merits of the
23 case, the parties "settled the matter" and C.C. was permitted to
24 stay at Jordan Middle School. Id.

25 On September 6, 2013, the Chadams brought this suit in
26 federal court, alleging (1) violation of Title II of the Americans
27 with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., through 42
28 U.S.C. § 1983; (2) violation of the Rehabilitation Act of 1972 (RA

1 or § 504), 29 U.S.C. § 794 et seq., through 42 U.S.C. § 1983; and
2 (3) violation of the federal right to privacy conferred by the
3 First Amendment. PAUSD filed a motion to dismiss the complaint,
4 which this Court granted with leave to amend. Chadam v. Palo Alto
5 Unified Sch. Dist., Docket No. 32, Order Granting Mot. Dismiss
6 First Am. Compl., Jan. 29, 2014.

7 The Chadams' second amended complaint alleges four causes of
8 action: (1) violation of the ADA; (2) violation of § 504;
9 (3) violation of the First Amendment; and (4) negligence.

10 LEGAL STANDARDS

11 A complaint must contain a "short and plain statement of the
12 claim showing that the pleader is entitled to relief." Fed. R.
13 Civ. P. 8(a). The plaintiff must proffer "enough facts to state a
14 claim to relief that is plausible on its face." Ashcroft v.
15 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v.
16 Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible
17 "when the plaintiff pleads factual content that allows the court
18 to draw the reasonable inference that the defendant is liable for
19 the misconduct alleged." Id.

20 In considering whether the complaint is sufficient to state a
21 claim, the court will take all material allegations as true and
22 construe them in the light most favorable to the plaintiff.
23 Metzler Inv. GMBH v. Corinthian Colls., Inc., 540 F.3d 1049, 1061
24 (9th Cir. 2008). The court's review is limited to the face of the
25 complaint, materials incorporated into the complaint by reference,
26 and facts of which the court may take judicial notice. Id. at
27 1061. However, the court need not accept legal conclusions,
28 including "threadbare recitals of the elements of a cause of

1 action, supported by mere conclusory statements." Iqbal, 556 U.S.
2 at 678 (citing Twombly, 550 U.S. at 555).

3 When granting a motion to dismiss, the court is generally
4 required to grant the plaintiff leave to amend, even if no request
5 to amend the pleading was made, unless amendment would be futile.
6 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
7 F.2d 242, 246-47 (9th Cir. 1990). In determining whether
8 amendment would be futile, the court examines whether the
9 complaint could be amended to cure the defect requiring dismissal
10 "without contradicting any of the allegations of [the] original
11 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th
12 Cir. 1990). However, where a court has previously granted a
13 plaintiff an opportunity to amend its complaint after a motion to
14 dismiss, and the amended complaint still fails to state claims
15 with the required particularity, the court may grant a motion to
16 dismiss without granting the plaintiff leave to amend. Arroyo v.
17 Chattem, Inc., 926 F. Supp. 2d 1070, 1081 (N.D. Cal. 2012).

18 DISCUSSION

19 I. Status of State Court Litigation

20 In its previous order, this Court required that, in any
21 amended complaint, the Chadams were to "provide the status of the
22 state court action involving the same events and explain why this
23 action is not barred by the state court action due to either res
24 judicata or release of claims." Order Grant. Mot. Dismiss 17:20-
25 23. PAUSD argues that because the dispute regarding C.C.'s
26 continued attendance at Jordan Middle School was settled, the
27 Chadams' current claims are barred by res judicata.

1 The doctrine of res judicata, or claim preclusion, prohibits
2 the re-litigation of any claims that were raised or could have
3 been raised in a prior action. Tahoe-Sierra Pres. Council v.
4 Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003).
5 The purpose of the doctrine is to "relieve parties of the cost and
6 vexation of multiple lawsuits, conserve judicial resources, and,
7 by preventing inconsistent decisions, encourage reliance on
8 adjudication." Marin v. HEW, Health Care Fin. Agency, 769 F.2d
9 590, 594 (9th Cir. 1985) (quoting Allen v. McCurry, 449 U.S. 90,
10 94 (1980)). Res judicata may be raised on a motion to dismiss
11 when doing so does not raise any disputed issues of fact. Scott
12 v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984). Three elements
13 must be present in order for res judicata to apply: (1) an
14 identity of claims; (2) a final judgment on the merits; and
15 (3) the same parties or their privies. Allen, 449 U.S. at 94.

16 The Chadams allege that, prior to a state court hearing on
17 the merits, the "parties settled the matter and C.C. has continued
18 to attend Jordan Middle School." 2AC ¶ 38. The Chadams' counsel
19 has filed a Request For Judicial Notice (RFJN) which states that
20 on March 27, 2014, he filed a request to have the state court
21 action dismissed without prejudice. RFJN, Ex. A. There is no
22 indication that the Superior Court has granted the request.

23 In any case, the Chadams allege that the state court suit has
24 not been tried on its merits, and PAUSD does not dispute that
25 allegation. PAUSD has failed to show that there has been a final
26 judgment in the state court suit, or a dismissal with prejudice.
27 As a result, PAUSD has not shown that res judicata applies. PAUSD
28 does not move to dismiss because it obtained a release in the

1 settlement of the state court case. Accordingly, the Court
2 declines to dismiss the complaint on the basis of res judicata or
3 a release of claims. However, the case must be dismissed for
4 other reasons.

5 II. First Cause of Action: Violation of Title II of the Americans
6 with Disabilities Act

7 The Chadams allege that PAUSD violated Title II of the ADA by
8 depriving C.C. of certain alleged rights on the basis of a
9 perceived disability. PAUSD argues that this cause of action
10 fails for several reasons. As a threshold matter, it argues that
11 the Chadams' claim is barred by Eleventh Amendment immunity.
12 Second, it argues that C.C. is not disabled or perceived as
13 disabled under the ADA, nor was he denied the benefit of a public
14 program or deprived of any other rights. Third, it argues that
15 its alleged conduct is expressly permitted by law, and hence "non-
16 actionable." Fourth, it argues that because the Chadams do not
17 allege intent to discriminate on the basis of a disability or
18 perceived disability, they are not entitled to seek monetary
19 damages, which is all they seek in the complaint. Lastly, it
20 argues that Plaintiffs James Chadam, Jennifer Chadam and A.C. do
21 not have standing to bring individual claims.
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23
24 A. Eleventh Amendment Immunity

25 PAUSD argues that it is shielded from ADA Title II liability
26 by the Eleventh Amendment. In the January 29, 2014 Order Granting
27 Defendant's Motion to Dismiss the First Amended Complaint, this
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1 Court suggested that in order to bring a proper Title II claim
2 that is not barred by PAUSD's Eleventh Amendment immunity, the
3 Chadams would have to allege that PAUSD's Title II violation
4 deprived C.C. of a fundamental right.

5 After examining the history of disability discrimination in
6 the provision of public services such as education,
7 transportation, health services and voting, the Supreme Court
8 concluded that Congress acted within its [Fourteenth
9 Amendment section five] powers in abrogating state immunity
10 for ADA Title II, at least regarding the protection of
11 certain fundamental rights guaranteed by the Due Process
12 Clause, such as access to the courts. . . . Although the
13 Ninth Circuit has not ruled on this particular issue, the
14 district courts and other circuit courts have interpreted
15 Tennessee v. Lane, 541 U.S. 509 (2004), to mean that courts
16 must engage in a case-by-case analysis of whether an ADA
17 Title II case involves "fundamental rights" to determine
18 whether Congress rightfully abrogated state immunity with
19 respect to it.

20 Order Grant. Mot. Dismiss 10:7-11:2.

21 While the Chadams' privacy claim arguably implicates a
22 fundamental right, the Chadams have not alleged any authority for
23 the proposition that school choice or freedom from being
24 stigmatized is a fundamental right. However, because this cause
25 of action fails for other reasons as described below, the Court
26 need not decide whether PAUSD would enjoy Eleventh Amendment
27 immunity for their ADA Title II claims in this case.

28 B. Sufficiency of ADA Cause of Action

Title II applies to all "public entities," including schools.
42 U.S.C. § 12131; see also Lane, 541 U.S. at 525. "To prove that
a public program or service violated Title II of the ADA, a
plaintiff must show: (1) he is a 'qualified individual with a
disability'; (2) he was either excluded from participation in or

1 denied the benefits of a public entity's services, programs, or
2 activities, or was otherwise discriminated against by the public
3 entity; and (3) such exclusion, denial of benefits, or
4 discrimination was by reason of his disability." Duvall v. Cnty.
5 of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001) (citation omitted);
6 see also 42 U.S.C. § 12132 ("no qualified individual with a
7 disability shall, by reason of such disability, be excluded from
8 participation in or be denied the benefits of the services,
9 programs, or activities of a public entity, or be subjected to
10 discrimination by any such entity.")

12 PAUSD argues that, even if the Chadams' Title II claim did
13 not fail due to Eleventh Amendment immunity, it fails because they
14 do not state facts sufficient to support a cause of action for a
15 violation of the ADA. Specifically, it argues that C.C. is
16 neither disabled nor perceived as having a disability, nor was he
17 denied the benefit of a public program. It also argues that the
18 Chadams have failed to allege "that defendant took improper action
19 by reason of the plaintiff's disability." Docket No. 43 at 18.
20 Lastly, it argues that the Chadams have failed to allege the
21 discriminatory intent required to state a claim for monetary
22 damages.
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1 1. "Regarded as" disabled

2 To be considered disabled under Title II, a plaintiff must
3 show: (1) a physical or mental impairment¹ that substantially
4 limits one or more of his or her major life activities; (2) a
5 record of such an impairment; or (3) that he or she is regarded as
6 having such an impairment. Bragdon v. Abbott, 524 U.S. 624, 630
7 (1998). For claims arising after the ADA Amendments Act of 2009,
8 the "regarded as" prong provides that "[a]n individual meets the
9 requirement of 'being regarded as having such an impairment' if
10 the individual establishes that he or she has been subjected to an
11 action prohibited under this chapter because of an actual or
12 perceived physical or mental impairment whether or not the
13 impairment limits or is perceived to limit a major life activity."
14 42 U.S.C. § 12102. "The phrase 'is regarded as having an
15 impairment' means -- (1) Has a physical or mental impairment that
16 does not substantially limit major life activities but that is
17 treated by a public entity as constituting such a limitation;
18 (2) Has a physical or mental impairment that substantially limits
19 major life activities only as a result of the attitudes of others
20 toward such impairment; or (3) Has none of the impairments defined
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24 ¹ "The phrase physical or mental impairment includes, but is
25 not limited to, such contagious and noncontagious diseases and
26 conditions as orthopedic, visual, speech and hearing impairments,
27 cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis,
28 cancer, heart disease, diabetes, mental retardation, emotional
illness, specific learning disabilities, HIV disease (whether
symptomatic or asymptomatic), tuberculosis, drug addiction, and
alcoholism." 28 C.F.R. § 35.104.

1 in paragraph (1) of this definition but is treated by a public
2 entity as having such an impairment."² Id.

3 While the Ninth Circuit has not specifically designated
4 cystic fibrosis as a disability under the ADA, other district
5 courts have. See, e.g., Save Our Summers v. Wash. State Dep't of
6 Ecology, 132 F. Supp. 2d 896, 907 (E.D. Wash. 1999).³

7
8 However, the Chadams allege that PAUSD knew C.C. did not
9 actually have cystic fibrosis but only had a genetic marker for
10 the disease. The question is whether PAUSD treated C.C. as if he
11 had a physical impairment.

12 The Chadams allege that, as a result of PAUSD's mistaken
13 belief about the danger C.C. posed to other students, PAUSD
14 disclosed his personal information to another family, attempted to
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16 ² This definition represents a change from the previous
17 standard. Under that standard, the Ninth Circuit "required that a
18 plaintiff alleging a 'regarded as' claim [under Title I, with
19 regards to employment] 'provide evidence of the employer's
20 misperception, or subjective belief that the plaintiff is
21 substantially impaired.' A plaintiff who does not have direct
22 evidence of the employer's subjective belief that the plaintiff is
23 substantially limited in a major life activity must provide
24 evidence that the impairment imputed to the plaintiff is,
25 objectively, a substantially limiting impairment." Scott v.
26 Napolitano, 717 F. Supp. 2d 1071, 1086-87 (S.D. Cal. 2010)
27 (citations omitted).

28 ³ Cystic fibrosis is "a hereditary disease . . . that appears
usually in early childhood, is inherited as an autosomal recessive
monogenic trait, involves functional disorder of the exocrine
glands, and is marked especially by faulty digestion due to a
deficiency of pancreatic enzymes, by difficulty in breathing due
to mucus accumulation in airways, and by excessive loss of salt in
the sweat." Cystic Fibrosis, MedlinePlus: Merriam-Webster,
<http://www.merriam-webster.com/medlineplus/cystic%20fibrosis> (last
visited Oct. 22, 2014).

1 transfer C.C. out of his assigned middle school and subjected him
2 to ridicule and humiliation. The Chadams have alleged sufficient
3 facts to support the inference that PAUSD acted on the basis of a
4 mistaken belief about C.C.'s status as a genetic carrier for CF
5 and, hence, regarded him as disabled.

6 2. Service, program or activity

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8 In determining what constitutes a service, program or
9 activity, the Ninth Circuit "construe[s] 'the ADA's broad language
10 as bringing within its scope anything a public entity does.'"
11 Cal. Council of the Blind v. Cnty. of Alameda, 985 F. Supp. 2d
12 1229, 1235 (N.D. Cal. 2013) (citation omitted). "The legislative
13 history of the ADA . . . supports construing the language
14 generously, providing that Title II . . . 'simply extends the
15 anti-discrimination prohibition embodied in section 504 to all
16 actions of state and local governments.'" Barden v. City of
17 Sacramento, 292 F.3d 1073, 1077 (9th Cir. 2002).

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19 The Chadams allege that, because it regarded C.C. as a person
20 with a disability, PAUSD deprived him of "fundamental and
21 substantial rights under the law" including the right to attend
22 the school closest to his home, to have his medical information
23 remain confidential, and not to be subjected to ridicule and
24 harassment. As stated above, while his privacy claim arguably
25 implicates a fundamental right, the Chadams do not provide
26 authority for the proposition that any of the rights or benefits
27 denied to C.C., including privacy, are either "fundamental" or
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1 "substantial." They may, however, state facts sufficient to
2 support the inference that attendance at the school closest to
3 one's home, the confidentiality of medical information, or freedom
4 from ridicule and embarrassment are services, programs or
5 activities encompassed under the definition stated in Cal. Council
6 of the Blind and Barton. Be that as it may, because this claim
7 must be dismissed on other grounds, the Court need not decide if
8 C.C. was deprived of services, programs and activities within the
9 meaning of the ADA.
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11 3. Exclusion from or denial of a service, program or
12 activity

13 PAUSD argues that none of the rights deprivations the Chadams
14 cite in their complaint rises to the level of a denial of a
15 service, program or activity because its conduct is expressly
16 permitted by statute.

17 Title II does

18 not require a public entity to permit an individual to
19 participate in or benefit from the services, programs, or
20 activities of that public entity when that individual poses a
21 direct threat to the health or safety of others. . . . In
22 determining whether an individual poses a direct threat to
23 the health or safety of others, a public entity must make an
24 individualized assessment, based on reasonable judgment that
25 relies on current medical knowledge or on the best available
26 objective evidence, to ascertain: the nature, duration, and
27 severity of the risk; the probability that the potential
28 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. Further, a public entity "may impose
legitimate safety requirements necessary for the safe operation of
its services, programs, or activities. However, the public entity

1 must ensure that its safety requirements are based on actual
2 risks, not on mere speculation, stereotypes, or generalizations
3 about individuals with disabilities." Id. at § 35.130.

4 The Ninth Circuit has held that "it is clear that ultimately
5 the entity asserting a 'direct threat' as a basis for excluding an
6 individual bears a heavy burden of demonstrating that the
7 individual poses a significant risk to the health and safety of
8 others." Lockett v. Catalina Channel Exp., Inc., 496 F.3d 1061,
9 1066 (9th Cir. 2007). On the other hand, one-time exclusion based
10 on a reasonable judgment of the risks involved may be acceptable.
11 Id. (holding that a ferry operator's one-time exclusion of a
12 service animal from a lounge where another passenger purportedly
13 had an animal dander allergy was a reasonable judgment under 28
14 C.F.R. § 36.208). However, an ongoing policy of exclusion may
15 well violate the ADA even when a one-time exclusion does not. Id.

16 The Chadams have not alleged any facts to support the
17 inference that PAUSD did not act in an effort to preserve the safe
18 operation of the school. Nor have they alleged any facts to
19 support the inference that PAUSD's brief exclusion of C.C. from
20 the school closest to his home, in light of the risk involved, was
21 not reasonable given the information PAUSD had. In fact, they
22 allege that PAUSD told them it was basing its decision on medical
23 evidence provided both by Dr. Milla and a "top Stanford doctor."
24 They state that PAUSD made its decisions on the basis of its
25 belief that C.C.'s presence in the school was a serious threat to
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1 other students. Furthermore, C.C. was allowed, within two weeks,
2 to return to the school closest to his home, indicating that PAUSD
3 had changed its policy with regard to C.C.

4 In short, the Chadams admit that PAUSD believed the risk to
5 other children was real and based on medical evidence.

6 Accordingly, the Court GRANTS PAUSD's motion to dismiss the
7 Chadams' Title II cause of action.

8 4. Compliance with the Family Educational Rights and
9 Privacy Act (FERPA) and the California Education
10 Code

11 PAUSD argues that, even if the Chadams' Title II cause of
12 action did not fail for the reasons stated above, its compliance
13 with both the California Education Code and the Family Educational
14 Rights and Privacy Act (FERPA) shields it from ADA liability.
15 PAUSD argues that California Education Code section 49451 obliges
16 it to "exclude students for which the school has good reason to
17 believe have an infectious disease." Docket No. 43 at 16-17. If
18 that is true, then C.C. likely did not have a right to attend a
19 school with another child with cystic fibrosis during the time
20 period PAUSD needed to ascertain whether or not C.C. posed a risk
21 to another child. However, because the Court finds that Title II
22 itself provides for a defense based on the safe operations of a
23 public entity's programs, it need not decide whether adherence to
24 the California Education Code is a defense to an ADA Title II
25 claim.
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1 PAUSD also argues that, under FERPA and the California
2 Education Code, it is allowed to disclose student information
3 without consent "to protect the health/safety of students."
4 Docket No. 43 at 17. It argues that when FERPA and the California
5 Education Code expressly allow for the "disclosure of information
6 to protect the health and safety of students," the information
7 disclosed is "rendered not confidential." Docket No. 49 at 6.
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9 Because this cause of action must be dismissed for other
10 reasons, the Court need not decide whether compliance with FERPA
11 and the Education Code is a defense to the Chadams' Title II
12 claim.

13 C. Monetary Damages

14 Lastly, PAUSD argues that, even if the Chadams' Title II
15 cause of action did not fail for the reasons discussed above,
16 their claims, which are for money damages, would fail because they
17 have not alleged the requisite intent.
18

19 In Ferguson v. City of Phoenix, 157 F.3d 668 (9th Cir. 1998),
20 the Ninth Circuit considered the circumstances under which
21 compensatory damages are available for violations of Title II and
22 § 504. "By statute, the remedies for violations of the ADA and
23 the Rehabilitation Act are co-extensive with each other, . . . and
24 are linked to Title VI of the Civil Rights Act of 1964. . . .
25 These statutes require that ADA and Rehabilitation Act remedies be
26 construed the same as remedies under Title VI." Id. at 673
27 (citations omitted). Under Title VI, "compensatory damages are
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1 not available . . . absent a showing of discriminatory intent."
2 Id. at 674.

3 While the Chadams accuse PAUSD of conduct that was "intended
4 to cause harm and injury to plaintiffs," they do not allege any
5 facts to support that accusation. Even if this claim were not
6 dismissed for other reasons, it would not support a request for
7 monetary damages. The Chadams admit that PAUSD's actions resulted
8 from its belief that student safety was at risk. Money damages
9 are the only relief the Chadams seek; they did not seek injunctive
10 relief, which would be moot in any event, because C.C. is
11 currently attending the school closest to his home.
12

13 D. Plaintiffs James Chadam, Jennifer Chadam, and A.C. cannot
14 assert individual claims under the ADA and Section 504

15 In its previous order, the Court stated:

16 While parents may assert ADA and § 504 claims on behalf of
17 their child, they may not assert claims based on their own
18 injury arising from violations of their child's rights under
19 those laws. C.C.'s parents are only proper plaintiffs
20 "insofar as [they are] asserting and enforcing the rights of
21 [their] son and incurring expenses for his benefit." This
22 does not include their own "severe past, present and future
23 emotional distress," "humiliation," "embarrassment,"
24 "disruption in family life," or other damages if they
25 themselves were not denied benefits due to disability.
26 Plaintiffs James Chadam, Jennifer Chadam, and A.C. plead no
27 additional facts or legal authority that would enable them to
28 recover. Accordingly, their individual claims for relief
must fail.

Order Granting Mot. Dismiss 16:26-17:15. (citations omitted).

24 In their 2AC, the Chadams and A.C. have not alleged any
25 additional facts to support their individual claims. Accordingly,
26 these individual claims must fail.

1 E. ADA Title II Cause of Action: Conclusion

2 The Chadams have not alleged facts sufficient to support
3 their claim for a violation of Title II of the ADA. Specifically,
4 they have not alleged facts sufficient to support the accusation
5 that PAUSD excluded C.C. from, or denied him access to, any
6 service, program or activity because it regarded him as disabled,
7 rather than because it believed, based on medical evidence, that
8 his condition imposed a health risk to other students. Nor do
9 they allege facts sufficient to support the accusation that PAUSD
10 acted with the intent to discriminate or with the deliberate
11 indifference that would entitle them to monetary damages.
12 Accordingly, the Court GRANTS PAUSD's motion to dismiss this cause
13 of action. Because the Chadams have already been granted an
14 opportunity to amend this claim, it is now dismissed with
15 prejudice.
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18 II. Second Cause of Action: Violation of the Rehabilitation Act
19 of 1973

20 The Chadams' cause of action for a violation of the
21 Rehabilitation Act (§ 504) is based on the same allegations as
22 their ADA Title II cause of action. PAUSD raises the same
23 arguments in its motion to dismiss this cause of action.

24 A. Eleventh Amendment Immunity

25 As it argued with regard to the ADA cause of action, PAUSD
26 argues that, pursuant to the Eleventh Amendment, it is immune from
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1 causes of actions brought under § 504. As explained in the
2 Court's previous order, however,

3 The Ninth Circuit ruled that California waived state immunity
4 under the Rehabilitation Act. The . . . Rehabilitation Act's
5 statutory language manifests "a clear intention to condition
6 participation in the programs funded under the Act on a
7 State's consent to waive its constitutional immunity." By
8 accepting federal funds under the Act, California waived its
9 state immunity regarding the Act and consented to be sued.
10 The Eleventh Amendment therefore will not bar a direct
11 Rehabilitation Act claim by Plaintiffs against PAUSD.

12 Order Granting Mot. Dismiss 12:3-14 (citations omitted).

13 Accordingly, the Court declines to dismiss this cause of action on
14 the basis of Eleventh Amendment immunity.

15 B. Sufficiency of § 504 Cause of Action

16 PAUSD argues that even if the Chadams' § 504 claim does not
17 fail due to Eleventh Amendment immunity, it fails because they do
18 not state facts sufficient to support a cause of action for a
19 violation of § 504. PAUSD relies on the same arguments presented
20 in opposition to the Chadams' Title II claim.

21 The only difference between an ADA Title II cause of action
22 and a cause of action pursuant to § 504 is that a plaintiff must
23 allege that the benefits program receives federal financial
24 assistance. Duvall, 260 F.3d at 1135. That element is not
25 disputed by the parties. Nonetheless, the Chadams' cause of
26 action under § 504 fails for the same reasons their Title II cause
27 of action fails. Accordingly, the Court GRANTS PAUSD's motion to
28 dismiss this cause of action. Because the Chadams have already

1 been granted an opportunity to amend this claim, it is now
2 dismissed with prejudice.

3 III. Third Cause of Action: Violation of the Federal
4 Constitutional Right to Privacy

5 The Chadams allege that, through the unauthorized disclosure
6 of C.C.'s medical information, PAUSD violated "C.C.'s
7 constitutional right to privacy conferred upon him by the First
8 Amendment of the Constitution of the United States." 2AC ¶ 50.

9 "Technically, the First Amendment only restricts actions by
10 the federal government. First Amendment rights against state
11 actors derive from the Fourteenth Amendment and must be brought
12 under 42 U.S.C. § 1983." Qualls v. Regents, Univ. of Cal., 2013
13 WL 3341039, at *8 (E.D. Cal.).

14 In its previous order, the Court stated, "As a California
15 school district, PAUSD is a state agency equivalent to the state
16 itself. PAUSD therefore is not a 'person' within the meaning of
17 § 1983, and so Plaintiffs' [claim for a First Amendment violation
18 of privacy] is barred." Order Granting Mot. Dismiss 7:23-26. The
19 Court went on to note that the Chadams could bring a cause of
20 action against individual state officials in their personal
21 capacity. Id., fn.1. The Chadams have not done so in their 2AC.

22 Accordingly, the Court GRANTS PAUSD's motion to dismiss this
23 cause of action. Because the Chadams have already been granted an
24 opportunity to amend this claim, it is now dismissed with
25 prejudice.

26 IV. Fourth Cause of Action: Negligence

27 The Chadams allege that PAUSD "owed [them] a duty of care
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1 . . . not to allow the unlawful and improper disclosure of
2 personal, confidential, private medical information." 2AC ¶ 53.
3 They allege that PAUSD breached its duty of care by "allowing one
4 of its teachers to disclose" C.C.'s medical information to Mr. and
5 Mrs. X. Id. They further allege that PAUSD's conduct was
6 "willful, deliberate and intended to cause harm and injury." Id.
7 PAUSD argues that the Chadams' negligence claim fails to comply
8 with the California Tort Claims Act and to include a statutory
9 basis.

10 A. California Tort Claims Act, California Government Code
11 section 810 et seq.

12 "Under the Tort Claims Act, a plaintiff may not maintain an
13 action for money or damages against a public entity unless first a
14 written claim has been presented to the public entity and rejected
15 in whole or in part. Failure to timely present a claim for money
16 or damages to a public entity bars a plaintiff from filing a
17 lawsuit against that entity. Before a cause of action may be
18 stated, a plaintiff must allege either compliance with this
19 procedure or circumstances excusing compliance." Connelly v.
20 Cnty. of Fresno, 146 Cal. App. 4th 29, 36-37 (2006) (citations
21 omitted). "[I]n considering whether a claim substantially
22 complies with the Government Tort Claims Act, the claim should be
23 viewed in its entirety and a determination made as to whether the
24 claim is susceptible to an interpretation that reasonably enables
25 the public entity to make an adequate investigation and settle the
26 claim." Id. at 40. "Timely claim presentation is not merely a
27 procedural requirement, but rather, a condition precedent to a
28 plaintiff's maintaining an action against a defendant, and thus,

1 an element of the plaintiff's cause of action." Belinda K. v.
2 Cnty. of Alameda, 2011 WL 2690356, at *11 (N.D. Cal.). "Failure
3 to allege facts in a complaint demonstrating or excusing
4 compliance with the Tort Claims Act subjects the complaint to a
5 motion to dismiss for failure to state a cause of action." Id.

6 Plaintiffs allege that they substantially complied with the
7 TCA through the "pleadings, allegations, documents, declarations
8 and exhibits filed in the now dismissed state court injunctive
9 relief action." Docket No. 47 at 18. However, the TCA requires a
10 "written claim [to be] presented to the public entity and rejected
11 in whole or in part." The Chadams do not allege that they
12 submitted a written claim for money damages to PAUSD, nor do they
13 allege that the claim was rejected, either in whole or in part.
14 They have not complied with the Tort Claims Act because they did
15 not give to PAUSD, prior to filing this lawsuit, written notice of
16 their allegations, causes of action, and claim for damages.
17 Without such notice, they are barred from bringing this state law
18 cause of action against PAUSD.

19 Accordingly, the Court GRANTS PAUSD's motion to dismiss this
20 cause of action for failure to comply with the Tort Claims Act.
21 The dismissal is without prejudice to Plaintiffs re-filing the
22 claim in state court if they can remedy this deficiency. Because
23 all federal claims are dismissed, this Court will not retain
24 supplemental jurisdiction over the state claim.

25 B. Failure to Allege Statutory Basis for Negligence

26 Notwithstanding the Tort Claims Act issue, PAUSD argues that
27 the Chadams' negligence claim also fails because they do not state
28 a statutory basis for the claim.

1 California Government Code section 815.2 provides:

2 (a) A public entity is liable for injury proximately caused
3 by an act or omission of an employee of the public entity
4 within the scope of his employment if the act or omission
5 would, apart from this section, have given rise to a cause of
6 action against that employee or his personal representative.

7 (b) Except as otherwise provided by statute, a public entity
8 is not liable for an injury resulting from an act or omission
9 of an employee of the public entity where the employee is
10 immune from liability.

11 Furthermore, "[e]xcept as otherwise provided by statute, a public
12 employee is not liable for an injury resulting from his act or
13 omission where the act or omission was the result of the exercise
14 of the discretion vested in him, whether or not such discretion be
15 abused." Cal. Gov't Code § 820.2. "Nevertheless, [t]he fact that
16 a [public] employee normally engages in discretionary activity is
17 irrelevant if, in a given case, the employee did not [actually]
18 render a considered decision." Walsh v. Tehachapi Unified Sch.
19 Dist., 827 F. Supp. 2d 1107, 1122 (E.D. Cal. 2011) (citations
20 omitted).

21 Therefore, to bring an action for negligence against PAUSD,
22 the Chadams would need to allege that the teacher who disclosed
23 C.C.'s medical information without consent is also liable
24 personally. If they cannot do so, then they must allege a
25 statutory exception by which PAUSD can be found liable for actions
26 for which the employee is immune. The Chadams can allege that the
27 teacher is personally liable only by claiming that the teacher's
28 conduct was not the result of the discretion vested in his or her
authority.

The Chadams have not made any allegations to support any of
these theories upon which a negligence claim against PAUSD could

1 rest. Accordingly, the Court GRANTS PAUSD's motion to dismiss the
2 claim for this reason as well. As discussed above, this claim is
3 dismissed without prejudice to filing in state court if its
4 deficiencies can be remedied.

5 CONCLUSION

6 For the reasons set forth above, the Court GRANTS PAUSD's
7 motion to dismiss (Docket No. 43). The Chadams' federal claims
8 are dismissed with prejudice; their state claims are dismissed
9 without prejudice to re-filing in state court.

10 IT IS SO ORDERED.

11 Dated: November 4, 2014


12 CLAUDIA WILKEN
13 United States District Judge
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