

Tip Sheets

What is the Americans with Disabilities Act (ADA)?

The Americans with Disabilities Act (ADA) is a federal law passed in 1990. It protects the civil rights of persons with disabilities. Federally, it is enforced by the U.S. Department of Justice and the State Attorney General's office. The ADA is important to early care and education because it applies to children with disabilities and their early care and education needs.

ADA Titles

The Americans with Disabilities Act is divided into five areas or "titles." Early Care and Education falls under Title III: Public Accommodations. Early care and education programs are expected not to discriminate against children with disabilities under the ADA.

What are Public Accommodations?

- Restaurants, hotels and motels
- Sports stadiums, concert halls and theatres
- Early care and education programs (center-based programs, family child care programs, preschools, etc.)
- Amusement parks, zoos, parks
- Gyms, golf courses, spas, etc.

ADA Definitions of Disability

With substantial limitation in one or more life activities such as:

- Working
- Taking care of self
- Hearing
- Walking
- Learning

- Breathing
- Speaking
- Seeing

Or

- Record of such an impairment.
- Regarded as a person with such an impairment.

Examples of Physical Impairment "Substantial Limitation"

- Cerebral palsy
- Cancer
- Muscular dystrophy
- Heart disease
- HIV
- Deafness
- Diabetes
- Epilepsy

Examples of History or Misclassification of Impairment "Record of Impairment"

- A child had leukemia but the disease has been in remission for several years.
- A child was born with a cleft palate which has been surgically repaired.
- A child was mistakenly diagnosed as having an intellectual disability.

Examples of Mental Impairment "Substantial Limitation"

- Intellectual disabilities
- Emotional or mental illness
- Specific learning disabilities
- Behavior disorders

Examples of Perception of Impairment “Regarded”

- A child with mild diabetes controlled by medication is not allowed to participate in summer camp because of the disease.
- A child with a facial disfiguration is refused enrollment because staff are afraid the child’s appearance will upset the other children.
- A child is excluded from an early care and education program because the director has heard rumors that the child is infected with HIV.
- A child with behavior issues is excluded from playing in areas on the early care and education program for fear of fighting or aggression.

Four Reasons a Provider Might Deny Care

1. If there is a direct threat which cannot be eliminated by reasonable accommodation.
2. If it would mean fundamental alterations to the nature of services provided.
3. If there was an “undue burden.”
4. If the accommodation would not be “readily achievable.”

Common Questions and Answers

Q: Our center has a policy that we will not give medication to any child. Can we refuse to give medication to a child with a disability?

A: No. In some circumstances it may be necessary to give medication to a child with a disability in order to make a program accessible to that child. Generally speaking, as long as reasonable care is used in following the doctor’s/guardian’s written instructions about administering medication, centers and family child care should not be held liable for any resulting problems.

Q: Can we exclude children with HIV and AIDS from our program to protect other children and employees?

A: No. Programs cannot exclude a child solely because he/she has HIV or AIDS. According to the vast weight of scientific authority, HIV/AIDS cannot be easily transmitted during the types of incidental contact that takes place in early care and education programs. Children with HIV/AIDS generally can be safely integrated into all activities of the program. Universal precautions should be used whenever caregivers come into contact with children’s blood or bodily fluids.

Q: What about children who have severe, sometimes life-threatening allergies to bee stings or certain foods? Do we have to take them?

A: Generally, yes. Children cannot be excluded on the sole basis that they have been identified as having severe allergies to bee stings or certain foods. An early care and education program needs to be prepared to take appropriate steps in the event of an allergic reaction, such as administering epinephrine that will be provided in advance by the child’s parents or guardians.

For more information on disability law, visit <http://www.inclusivechildcare.org/>.

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Information in this tip sheet has been modified from multiple sources.

Funding provided by the Minnesota Department of Human Services.