

Understanding the Laws

SUPPORTING INCLUSION



Understanding the Laws Supporting Inclusion

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Understanding the Laws Supporting Inclusion

This booklet will give you an overview of the laws pertaining to inclusion and how they relate to your child care or youth program. You can use this information to ensure your program complies with federal laws protecting children and youth with disabilities.



After reading this booklet, you will be able to:

Consider how the Section 504 and Americans with Disabilities Act (ADA) of the Rehabilitation Act apply to your program setting.

Determine whether the information you gather from families during enrollment is adequate to make case-by-case assessments of children's needs.

Recognize your legal responsibilities to include children with disabilities.

Section 504

Children with disabilities have the right to participate in programs that serve youth in their communities.

Federal laws protect families who have children with disabilities from exclusion and segregation. As a program serving children in child care and youth development, there are two federal laws that may apply to your setting: Section 504 of the Rehabilitation Act (**Section 504**) and the Americans with Disabilities Act (**ADA**).

The type of funding your program receives determines which laws apply to your setting.

Section 504

Section 504 prohibits discrimination on the basis of disability in programs that receive federal funding.

Typically, this includes public schools, government agencies, and extra-curricular or religious programs that receive federal funding. Section 504 is an anti-discrimination, civil rights law that requires the needs of children with disabilities to be met as adequately as the needs of children without disabilities.

Under Section 504, a program **cannot**:

- Deny a qualified youth the opportunity to participate
- Provide a child with a disability an opportunity to participate that is not equal to the opportunity of others
- Provide different or separate programs to children with disabilities
- Otherwise limit a child in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other children

Americans with Disabilities Act (ADA)

Under the Americans with Disabilities Act (ADA), a program **cannot**

- Deny program acceptance or enrollment to a qualified youth
- Make assumptions about whether a child can participate based on his/her disability or condition
- Use admissions policies that exclude children with different abilities
- Require children with disabilities and their families to accept accommodations they do not want



The ADA applies to all programs that provide services to the public, regardless of the type of funding or program operations. This includes schools, recreation centers, and child care facilities.

Similar to Section 504, the ADA is a piece of civil rights legislation that prohibits discrimination on the basis of disability. The ADA requires programs to make reasonable accommodations to policies, practices and procedures in order to include children with disabilities.

Who Qualifies for Protection Under These Laws?

Individuals with disabilities and their families qualify for protection under the Americans with Disabilities Act (ADA) and Section 504. The ADA defines a person with a disability as someone who:

- Has a physical or mental impairment that substantially limits one or more major life activities
- Has a record of having such impairment
- Is regarded as having such impairment

The ADA does not have listings of conditions or specific levels of severity for particular conditions that an individual must meet.



Instead, the definition of disability is broad and includes all types of conditions, challenges and needs, including:

- Behavioral
- Communication
- Developmental
- Health
- Learning
- Sensory
- Social emotional

The key issue is whether the individual has an impairment that results in a limitation to a major life activity. Major life activities include things like breathing, eating, walking, talking, and learning. As children get older, major life activities include going to school, caring for oneself, and working.

Consider how the definition of disability applies to a child care or youth development program. In these settings, major life activities also include following directions, solving problems, playing and making friends.

How Do the Laws Apply to a Program?

The Americans with Disabilities Act (ADA) and Section 504 require child care and youth development programs to offer services to all children that meet the basic age and eligibility requirements. This means that a child may not be turned away based on the fact that they have a disability or other condition. The next page outlines three requirements of these laws that programs need to be aware of. The following pages go into more detail for each requirement.



1

Case-by-Case Assessments:

Programs must complete a case-by-case assessment of what each child needs in order to participate in the program.

2

Reasonable Accommodations:

Programs must make reasonable accommodations to their policies, practices and procedures to support the participation of qualified youth with disabilities.

3

Communication Access:

Programs must take steps to ensure that communication with children and adults with disabilities is as effective as communication with others.

Case-by-Case Assessments

When a child or youth with a disability enrolls in your program, work with the family to complete an assessment of what the individual needs in order to participate in your program.

Explain the process as a way to learn more about the child and what can help them be successful.

Ask questions that will give you information about the child's unique strengths and challenges, such as, "What does your child like to do?" and "What are some things that are hard for your child?"

Focus on support and the things you can do to maximize the child's participation.



Tips for Accommodations

- Use a team approach that includes the family to develop accommodations.
- Remain flexible and “go with the flow” so you can adapt things more easily.
- Design accommodations that are natural and “doable” with the resources you have available.

**Find our Case-by-Case Assessment Checklist
online at KITonline.org/checklist**

Communication Access

Children, adults, and staff need to be able to communicate effectively in order to benefit from your program.

They both need to understand information and be able to share information with each other. In a child care or youth development program, ensuring people have access to communication means providing what the law refers to as “auxiliary aids and services.”

These are supports and accommodations that focus on communication and include things like:

- Accessible signage
- Large print materials
- Sign language interpreters
- Picture or symbol communication systems
- Materials in audio or visual formats

Tips for Communication Supports and Services

Use available technology like tablets and other touch screen devices that youth can use to communicate with others.



Get permission from the family to **work with the child's school** and share communication supports the child uses during the school day.

Reach out to your community to find additional resources that may be available through disability-specific agencies like your local chapter of the State Department on Developmental Disabilities.



When are Accommodations Unreasonable?

The majority of the accommodations requested are reasonable and within the scope of a child care or youth development program. Accommodations are mostly adaptations or changes that do not result in what is referred to as a “fundamental alteration” or an “undue burden.”

Although rare, there are instances where a program is not required to include an individual.



There are three specific instances outlined in the laws discussed in this booklet.

1

When the individual poses an actual health or safety threat

2

When the needed accommodations would result in a fundamental alteration to the program

3

When the needed accommodations would be an undue burden (significant difficulty or expense)

Actual Health or Safety Threat

Programs are not required to include an individual who poses an actual health or safety threat to themselves or others. An actual threat must be identified by **specific, objective criteria** and a realistic evaluation of the situation. Programs must also document that the threat could not be minimized by reasonable accommodations to policies, practices or procedures.

Programs should make every effort to address the health or safety concern and support the child's needs before determining that they cannot safely include the child.

Fundamental Alteration

A fundamental alteration is something that changes the nature of the program. **Programs are not required to provide specialized services outside of their focus or area of expertise.** For example, programs are not required to provide skilled nursing or therapeutic

intervention services if they are not otherwise provided in the program.

Programs should consider possibilities for partnering with other agencies to provide services as a reasonable accommodation. For example, a program might allow a therapist to work with a child in a program facility during program hours.

Undue Burden

An undue burden is an accommodation that would create significant difficulty or expense to the program. In order for a child care or youth development program to claim that an accommodation would be an undue burden, there must be an individualized determination, on a case-by-by basis, that examines:

- The nature and cost of accommodations
- The type of program
- Overall financial resources of the organization or agency



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Resources

There are resources available for programs to understand and comply with the Americans with Disabilities Act (ADA):

The ADA Homepage is the official US Department of Justice website for information and technical assistance on the ADA.

Website: ada.gov

The ADA Information Line is a toll-free line that provides information and free publications about the requirements of the ADA including the ADA Standards for Accessible Design.

800-514-0301 (voice) or 800-514-0383 (TTY)

The ADA National Network provides information, guidance and training on the ADA. It consists of ten Regional Centers located throughout the United States to provide local assistance. **Website: adata.org**

The Department of Justice ADA Technical Assistance Program provides free information and technical assistance directly to businesses, non-profit service providers, state and local governments, people with disabilities, and the general public.

Website: ada.gov/taprog

The Child Care Law Center is a non-profit organization devoted exclusively to the complex legal issues that affect child care. Download printable resources and FAQs about the ADA and other laws from the CCLC website.

Website: childcarelaw.org

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