

The Rights of Children with Disabilities To Receive Services from Daycare Providers

A Self-Advocacy Fact Sheet from the Minnesota Disability Law Center

This fact sheet has information on Federal Law and Minnesota State Law only. The information in this fact sheet is NOT legal advice. Every child is different, and the laws change all the time. Some of the laws may be different in other states.

*Look at the end of this fact sheet for the meaning of words printed in bold and italics, such as *undue burden**

1. What is a disability?

Different laws define “disability” in different ways. The Americans with Disabilities Act (ADA) has one definition. The Minnesota Human Rights Act (MHRA) has another one. And a 1999 U.S. Supreme Court case gives still another one. In Minnesota, a person must fit all three definitions.

To fit all three, a person must have a physical or mental problem that keeps them from doing regular life activities. If the problem can be fixed by wearing glasses or taking medication, then it is not a disability. But if the problem still gets in the way, even with medicine, it is a disability.

For example, medication helps control diabetes. But a person with diabetes might still have to eat at certain times of day or they will go into insulin shock. So the medicine helps, but it doesn't fix the problem. Diabetes still gets in the way of regular activities.

2. Can a day care provider say they won't take a child with a disability?

In general, the law says that private businesses cannot discriminate against people with disabilities. Most day care centers are private businesses. Day care centers run by schools or community organizations also have to follow the law.

3. What if a church runs the day care center?

Some churches rent space for a day care center. If a church rents the space, then it has to work with the day care organization to make the building accessible. If the church itself provides the day care, then it may or may not have to make the program accessible. If this question comes up, call the Minnesota Disability Law Center (MDLC) or another lawyer for help.

4. What if the day care provider says it can't afford services for my child?

A business can refuse services because of *undue burden*. Undue burden means it would be so hard to follow the law, the business would go under. The ADA and the MHRA have different rules for

defining undue burden. They look at the size of the business, the cost of the services, and many other factors.

A small business that spends extra money to serve people with disabilities can often get a tax break. If a day care center says it can't afford to serve your child, tell the owners they can apply for a tax break. The break may offset their costs.

5. Does a day care center have to change the building so my child can go there?

Usually, unless it costs too much (see Question #4) or a church runs the center (see Question #3). If it is a new building (built or remodeled since 1992), then the rules are strict. For older buildings, the rules are more flexible. Again, ask a lawyer to help you if this question comes up.

Any day care center should make small changes like these if your child needs them:

- Install a ramp
- Rearrange chairs and tables
- Put grab bars in the restrooms
- Put in flashing smoke alarms, not just ones that make noise
- Raise the toilet seats
- Remove the carpet.

6. Does the day care center have to provide an interpreter for my deaf child?

Sometimes yes, sometimes no. For every-day activities, you can teach workers some basic signs. They can learn signs for play, bathroom, etc. When reading stories, they can include a deaf child by showing pictures. Parents usually have good ideas about how to include their child in the program. Talk to staff and suggest things they can do.

The day care center should get an interpreter for special activities like field trips or visitors.

7. My child needs more services than the day care center gives to others the same age. Does the center have to give us extra services?

The day care center may not have to provide extra services. Extra services for your child might mean that all the other children get less attention. In that case, the center doesn't have to do it.

For example, if you have a six-year-old child who needs help eating, staff cannot put him/her in the room with the babies. Your child should be with children the same age. But in that room, your child might not get the help s/he needs.

If your child needs services that other children the same age don't need, call your county social service agency. You may be able to get a *personal care assistant* or other services to help with day care.

8. If I get a personal care assistant or someone to help with extra services, does the day care staff still have to work with my child?

Your child should get the same services as every other child in the group whenever possible. If all children get help washing their hands, then your child should get the same help. If the staff helps other children color pictures or play with toys, they should help your child too. The day care staff cannot ignore your child. They can't expect the personal care assistant to do everything.

9. If the day care staff thinks my child is a threat to the safety of other children, can the center turn us away?

If your child is a direct threat to others, the center can refuse to serve you. For example, if your child bites other children, or runs out into the street if s/he isn't watched, that might be a threat to safety. You might need a personal care assistant to give your child the extra services s/he needs to be safe.

If the day care staff changes the way they do things, sometimes the problem goes away. For example, they can change the schedule. Or if a certain game causes trouble, they can play a different game when your child is at day care.

If the center has tried and cannot find any way to keep everyone safe, then it can turn you away.

10. What if only one or two day care centers in my town take children with disabilities, and those places are full?

If a day care center already takes children with disabilities and can't take more, then it can refuse to take your child. For example, if the center already has four children with behavior problems, it isn't discriminating against the disability. The center just can't take another child.

Try to think of ways to work with a day care center. If you can find a way for your child to be in the program without making extra work for the staff, then even a day care center that hasn't had children with disabilities before might take your child.

A personal care assistant for your child might make the difference. You could also give the staff very detailed instructions about food. Or, you could offer to pick your child up early or have them be in special education programs for part of the day. If you and the day care center work together, you may be able to get care for your child without having to get legal help.

11. If I can't find a day care provider for my child, can I get legal help?

Call the Minnesota Disability Law Center. If we can't find an *advocate* for you, we may be able to give you advice and suggest other places to go for help.

***** Definitions *****

Advocate – Someone who is on your side and will help you understand the law and fight for your rights. An advocate can be a lawyer or anyone else who understands your problem and can help you.

PCA – Personal Care Assistant. A person who helps with the activities of daily living, like cooking, cleaning, getting dressed, and bathing.

Reasonable accommodation – Changes to a school, business, or public office so that people with disabilities can use the building or services the same as people who don't have disabilities.

Undue burden – If making accommodations for people with disabilities makes it financially or practically impossible for a business to continue to operate, they can say that it is an undue burden, and they may not have to make the accommodations.

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