

Youth Programs and the Americans with Disabilities Act

An overview of landmark legislation that gives children and adults with disabilities the right to play, work, and live in the community with the same opportunities as people without disabilities.

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The essence of the Americans with Disabilities Act is to have a more inclusive society and to remove stereotypes that may get in the way of people who have disabilities as they participate in the daily life of our communities.

If you are a person who works with youth, you have or will have the opportunity to work with youth who have disabilities. Safeguards such as the Americans With Disabilities Act and Section 504 of the Rehabilitation Act guarantee youth with disabilities the right to participate in youth programs. Enacted in 1990, the Americans with Disabilities Act (ADA) is a powerful civil rights law that applies to most programs serving youth. This publication provides an overview of how the ADA applies to youth programs. Employment practices of youth programs are covered by the ADA, but these issues are not addressed in this publication.

The most important aspect of working within the framework of the ADA is a clear demonstration by youth workers of their willingness to try to accommodate the needs of youth with disabilities. It is the effort and the positive attitudes toward inclusion that characterize individuals who are in compliance with the ADA. The spirit of the ADA requires that program administrators and staff work together with youth with disabilities and their families to make youth programs inclusive. In a very few instances, these efforts might not succeed. Most of the time, however, working together with youth with disabilities and their families will result in successful inclusion.

As each problem or challenge is encountered, an attitude of positive problem-solving will usually result in a workable solution that is acceptable to the youth and to the program. If the first solution does not work, be creative and try something else. Youth workers are not expected to be disability experts. Youth workers *are* expected to give their best effort to work with others, including youth with disabilities and their families, to figure out ways of making inclusion work. The best way to think about the ADA is as a strong statement that youth with disabilities have the right to be included in programs and activities enjoyed by youth without disabilities. Inclusion benefits youth with and without disabilities.

WHAT IS THE ADA?

The Americans with Disabilities Act is a civil rights law that gives children and adults with disabilities the right to play, work, and live in the community with the same opportunities as people without disabilities. The essence of the ADA is to have a more inclusive society and to remove stereotypes that may get in the way of people who have disabilities as they participate in the daily life of our communities.

WHAT IS A DISABILITY?

The ADA defines disability in three ways. The first defines a person with a disability as an individual having a physical or mental impairment that substantially limits one or more major life activities. Major life activities include walking, seeing, talking, and taking care of oneself, among others.

The second definition is a person who has a record or history of a disability, for example, a youth whose condition is currently in remission, like cancer.

The third definition is a person regarded as having a disability, for example, a youth with a severe burn scar.

WHAT DOES THE ADA COVER?

The Americans with Disabilities Act protects people with disabilities in employment, public accommodations, transportation, state and federal government services, and telecommunications. If your organization is publicly or privately operated you have obligations under the ADA. Examples of publicly supported agencies/organizations would be the Office of Adolescent Health and Youth Development, the Department of Juvenile Justice, and the public school system. Examples of privately funded agencies/organizations would be the YMCA, YWCA, and most Boys and Girls Clubs.

Programs that are *controlled* by religious organizations are exempt from the ADA. Programs that use space provided by a religious organization, but are not administered by a religious organization, must comply with the ADA. Similarly, organizations that are religious in nature but are not directly administered by a religious organization are covered by the ADA.

To ensure nondiscrimination, your program or organization needs to have these standards in place:

Equal Opportunity

The ADA prohibits discrimination. Youth with disabilities must not be denied equal opportunity to participate and benefit from programs, activities, goods, and services.

Eligibility Criteria

Eligibility criteria that tend to screen out youth with disabilities may not be used unless necessary for the provision of services and activities. For example, a director of a youth program could not deny participation by youth who use wheelchairs, or youth with mental retardation, because he or she believes these youth could not participate in program activities.

Integration

Integration is *central* to the purpose of the ADA. Youth with disabilities must be integrated into your program to the maximum extent appropriate. Separate programs are permitted when necessary to ensure equal opportunity. But this does not mean that youth with disabilities can be excluded from regular programs if they choose to participate in them.

Reasonable Modifications

When necessary to ensure equal opportunity, reasonable modifications must be made to policies, practices, and procedures. For example, a local youth recreation area does not allow animals on their grounds but must allow a service dog or guide dog to accompany a youth with a disability. If the program can demonstrate that a modification would fundamentally alter the nature of the goods or services it provides, it is not required to make the modification.

Surcharges and Costs

Extra charges cannot be imposed on youth with disabilities or their families. For example, a youth program gives out copies of a pamphlet describing its many activities throughout the year. A youth who is blind requests the information on cassette tape. The youth program cannot charge her for the tape. The program can charge a small fee to *everyone* who requests the pamphlet to cover the combined cost of the print pamphlet and the cassette tape.

Additional Requirements

Additional requirements may not be imposed on people with disabilities that are not imposed on others. For example, a city recreation program can't require that a youth with mental retardation be accompanied by an assistant or a parent.

QUESTIONS AND ANSWERS

The following are a series of questions that youth workers might have about including youth with disabilities in their programs.

No one working in our program has any training related to working with youth with disabilities. We are not qualified to serve these youth. Are we required to do this even if we aren't trained?

While training related to serving youth with disabilities is important, the lack of such training is not a sufficient reason to deny services to them. It is discriminatory under the ADA to deny participation to a youth simply because he or she has a disability. Determining whether or not your agency can meet the needs of youth with disabilities is a relatively straightforward process, and generally programs find that making the accommodations needed to serve youth with disabilities are simple in nature and involve no costs or very small costs.

To better understand the needs of the youth and whether or not your program can accommodate those needs, begin by talking with the young person and his or her family. Youth and their families are not required to disclose information about the youth's disability. If the youth needs an accommodation to participate in your program, most likely the youth or his/her family will volunteer any information that will help the youth to participate. It is not the program's responsibility to know what accommodations are needed, but the program should be willing to sit down with the youth and the family to brainstorm possibilities that may work. You may find that many youth with disabilities require very little to accommodate their needs. But every youth is different and every disability is different. Each youth with a disability needs to be evaluated individually.

Our program involves frequent field trips and other outings. We don't have an accessible van, so we are not able to serve youth who use wheelchairs in our program.

Lack of an accessible van does not exempt programs from their responsibility to include youth with disabilities. The requirements for state-

administered programs are stronger than for privately-sponsored programs. If your program is a state program, you need to make sure that your program is not denying participation of youth with disabilities, including youth who use wheelchairs. If outings and field trips are an important part of your program and services, then you need to make sure these parts of the program are accessible. Some suggestions for making your trips accessible are: renting an accessible van, borrowing an accessible van from another youth program, or finding other means for transportation for participants with disabilities. Alternative means must not result in segregation or exclusion of these youth. It should be noted that when programs contract with the state to provide services, the state must ensure that the program is operated consistent with Title II requirements for public entities.

Privately run programs (called public accommodations under Title III of the ADA) must remove barriers to participation *to the extent that is readily achievable*. Just as with state run programs, private programs must include youth with disabilities in all aspects of the services and programs offered. The ADA is specific with regard to transportation barriers for public accommodations. The ADA regulation states that the installation of hydraulic lifts in existing vehicles is not required, but when purchasing a new van, if the capacity for seating is more than 16, then the vehicles must meet the “readily accessible and usable” standards.

Our youth program is administered by our church. Is our program covered under ADA?

No, your program is not covered. If a religious organization hires staff, administers, and provides the program, it is exempt from the ADA.

Our youth program meets in a church building. Our program is not directly administered by the church, but we use a religious-based curriculum. Is our program covered by the ADA?

Yes, the program is covered under ADA because it is not directly administered by a religious organization, even though the program uses a religious-based curriculum and meets in the church building. The church is not covered by the ADA, but your program is.

We have free meeting space on the second floor of an old building in town. There are no ramps or elevators. Unfortunately, youth who are not able to climb the stairs can't participate in our program.

Buildings that were built before 1990 are not required to be accessible unless any renovation has been done since 1990. If your program is private, you need to think about ways you can include youth with disabilities into your program. By being in a building that everyone cannot get to you are discriminating against people who can't climb stairs. Moving your program to a more accessible location is a reasonable modification.

If your program is state run, your program has a greater responsibility to become accessible. ADA defined this as “program accessibility.” This means that not every building has to be accessible but every program needs to be located where all youth with disabilities can participate. In Title II of the ADA, which addresses State and Local Government, “a public entity may not, in determining the site or location of a facility, make selections that have

the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination.” DO, 28CFR Part 35, Subpart B, 35.130 (4), (I)

A youth who is blind wants to attend our program. We know nothing about what her needs might be. What accommodations do we need to make under the ADA?

When a youth with a known disability such as blindness wants to participate in your program, it is very likely that the youth and his or her family will volunteer information that will better help the youth to participate fully in the program. It is not the responsibility of the youth program to find the proper accommodation, but the program should be willing to sit down with the youth and his or her family to brainstorm around ideas.

Some suggestions of accommodations that may be helpful for a youth who is blind or who has a visual impairment would be: making sure that documents that are handed out to all youth are available in an alternate format (for example, Braille, large print, on computer disk, or on cassette tape), leaving furniture in the same place in the room, and making sure that she receives the support needed to participate fully in activities that rely on vision. Talk with the youth about the best way to provide materials and supports for her. Youth with visual disabilities differ in their desired accommodations. The best way to learn what is appropriate is to ask the youth. The youth can explain how best to support her in getting around in unfamiliar surroundings (perhaps by letting her hold on to the arm of another youth), how to tell her about items/materials that she may want to access (for example, the location of her plate and glass when seated at lunch, what is on her plate, the location of the food items on her plate), and how to verbally describe things to her so that she can “see” events, items of interest, or new surroundings. She can also explain the use of any accommodations that she brings with her (a cane, a service dog, a small computer).

We need to purchase special equipment to serve a young person with disabilities who wants to participate in our program. We hardly have enough money to run our program without the added expense. Can we charge an extra fee to this youth to help pay for the specialized equipment?

Charging a fee to a young person with a disability for specialized equipment is discriminatory under the ADA. If your program finds that the equipment is too expensive to purchase, the program could raise fees for everyone in order to pay for the equipment or look into a service that could loan the equipment. If the equipment cannot be obtained, the program should look into alternate ways to accommodate this young person. Many times there are accommodations that are less expensive that work just as well. Often the best way to address this problem is to meet with the youth, his/her family, and interested others and brainstorm about possible low-cost modifications that could support the youth’s participation.

Our program serves a teenager with mental retardation. We assigned him to be with a group of younger children, since his skills are really more similar to those of younger children. When he is with youth his

own age, he can't keep up. Isn't this the best accommodation for him?

Even though the teenager with mental retardation has skills similar to those of younger children, the group is not age appropriate. The youth is a teenager and needs to be with youth his own age – not with younger children. The ADA mandates that a person with a disability be integrated into a setting that is appropriate to the needs of the individual. In order for this teenager with mental retardation to participate with his own age group, he may need an accommodation. Depending on his abilities, he may need the support of a staff person or another teenager to be a buddy in activities that may be difficult. As you get to know the youth with mental retardation, you will learn about his strong points and his weaknesses. This will help determine other accommodations that can be useful so that this teenager can participate in a group with his same-age peers.

If we have to build a ramp for a youth with a disability, who pays for that?

When altering your facility to make it more accessible to people with disabilities, your center is responsible for paying for these services if doing so is readily achievable. Your center cannot charge the youth with the disability or his/her family for building the ramp because the ramp enables youth with disabilities to have an equal opportunity to participate in your program.

If you are funded by a contract or grant, it is sometimes possible to include the cost of accommodations as an addition to your budget. Civic and service organizations often will assist with building a ramp, and businesses that sell lumber and building supplies will donate the needed supplies to build a ramp. The youth in your program may want to take on ramp-building as a service project, providing the labor for accomplishing this task. Family members or friends of your program may also be willing to help if asked.

If your program qualifies, there are tax credits and deductions available for making your program more accessible. Eligible businesses may claim an annual tax credit equal to 50% of annual "eligible access expenditures" between \$250 and \$10,250 to cover expenses incurred in making facilities and programs accessible to individuals with disabilities. The maximum credit for any one year is \$5,000. It does not apply to cost for new construction. Tax deductions are available to businesses regardless of size. The IRS offers a \$15,000 tax deduction for expenses incurred from making a center accessible. These are just a few examples of deductible expenses: installing a ramp, modifying the bathroom, and making doors/doorways wider.

None of our staff knows sign language, so trying to include a youth who is deaf in our program would not work for us. Paying a sign language interpreter is too expensive for our program. We just don't have the money. We wouldn't be forced to do this, would we?

Assuming that a person who is deaf or has a hearing loss uses sign language is a common misconception. Of people who are deaf and hard of hearing, less than 5% use sign language. If a youth does use sign language, he or she may also use another form of communication, such as lip reading or writing short notes.

Denying program access to a youth who is deaf because of his or her disability is not acceptable under the ADA. You and your staff need to work with the youth to find alternatives to meet his or her communication needs.

We had a youth with multiple disabilities apply to our program. We met with her for a few minutes, and it was immediately obvious that we do not have the skills or equipment needed for her to participate in our program. What should we do?

Decisions about whether your program can include a participant cannot be made on the basis of a single observation or on assumptions about the youth's disability. To fully evaluate a youth with multiple disabilities and to understand what the youth can and cannot do takes more than a few minutes. Often when we meet youth with substantial disabilities, we react from fear or from a lack of comfort or experience with people with similar disabilities. It is important not to allow these reactions to create a climate of rejection or discrimination. Spend time with the youth and get to know her. Talk to her family. Find out about the types of supports that the youth would need to be included in your program. Be creative. Approach the situation with a true desire to figure out how to include the youth in your program. Give your best effort in working with others to try to find a way to accommodate the youth's needs. Determining reasonable accommodations is an ongoing process and can only be achieved on an individual basis.

In a very few circumstances, after the evaluation process is completed and *all* options have been explored, you may find that you are unable to accommodate the needs of a particular youth. After all other options have been exhausted, programs can legally deny participation under the following circumstances: including the youth with the disability would fundamentally alter the nature of the program, would be an undue financial burden, or would pose a direct threat to the health and safety of others. The case for denying service for any of these reasons would require a substantial burden of proof. Denying service cannot be based on generalizations or stereotypes. You cannot deny service because of your beliefs about the capabilities of the youth, attitudes toward the youth, lack of staff training, or because of a personal preference not to work with youth with substantial disabilities. Participation can be denied only after you have tried, and no alternatives could be found to accommodate the youth. In most instances, after you get to know the youth and spend time together, you will find ways of including her in your program. You will find that creative solutions to inclusion are possible, even after your first reaction to the youth is that you could not possibly serve this individual because of the severity of her disability.

There are youth programs that are specially designed for youth with disabilities. Staff in these programs have the training and the facilities to provide quality services. We do not. Why should we include these youth in our programs when they receive much better services in specialized disability programs?

There are specialized programs designed to accommodate youth with disabilities. The ADA permits these programs to exist and to accommodate youth with disabilities who prefer a specialized program. These specialized programs segregate youth with disabilities. Many youth with disabilities do

not want to be segregated from their friends and agemates. They want to get to know other youth their age and make new friends. The guiding concept of the ADA is to include individuals with disabilities into regular programs. Even when specialized youth programs exist, the adolescent with a disability must have the choice of participating in a regular youth program instead of the specialized program.

We do not accept youth who are HIV positive into our program. Parents of the other youth would get upset, and the risk is just too high. Do we have to accept these youth?

Your program cannot exclude youth who are HIV positive. In fact, asking the youth or his or her family for information about HIV status would be inappropriate and illegal unless your program is specifically focusing on the youth's health and medical needs. To guard against all infectious diseases, your program staff routinely need to take universal precautions such as using latex gloves when coming in contact with blood or bodily fluids. To better help your community understand the myths and facts about AIDS and HIV, your program may want to sponsor an educational program around this topic.

Our program is very small, and we have very limited funds. We only have one staff member and a volunteer assistant. How can we be expected to include youth with disabilities when we don't have the needed staff?

It is really not possible to think about "youth with disabilities" as a group. Each youth has different support needs. Many youth with disabilities will need little or no extra staff support to be included in youth programs. When a youth with a disability expresses interest in your program, talk with the youth and his/her family to learn about what supports may be needed. If only a little support is required, another youth may be asked to be a buddy in an activity or game. Even small programs will find that serving youth with disabilities is usually relatively inexpensive and achievable. Approach the situation with a positive attitude. Be sure you fully understand the youth's support needs. Be honest with the youth and his or her family about the resources available to your program. Try to work out a solution that will allow the youth to participate. Try different possible solutions to see if they work. Make modifications and try again. Continue to problem-solve as new challenges arise. Pull in others in the community to help find solutions and build additional resources.

What if the youth poses a danger to others in our program?

A youth with a disability may be excluded from a program if he or she poses a direct threat to the health or safety of others. *The program must determine that there is a significant risk to others that cannot be eliminated or reduced to an acceptable level by reasonable modifications to the program's policies, practices, or procedures or by the provision of appropriate auxiliary aids or services.* The determination that a youth poses a direct threat to the health and safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. The assessment of risk must be based on objective evidence. Direct threat must be determined on a case by case basis. Some factors to consider when determining direct

threat are: the nature of the condition posing the risk, the duration of this condition, the severity of the risk, and the probability of actual harm.

None of our written materials are available in Braille or other alternate formats. Are there resources available to help us convert our materials to alternate formats? How would we go about doing that?

Most documents are created on the computer. Therefore, the computer file may be used to recreate the document in an alternate format. The most common alternate formats are large print, computer disk, cassette tape, and Braille.

Large print. Use a serif font (such as Times Roman) in 18 pt and print out the document from the computer. Or print out the file in a common size font (12 pt) and use a copier to enlarge the document by 130% on legal size paper.

Computer disk. Many people who are blind or have low vision prefer documents on a computer disk. Youth or their families take the computer disks home and are able to listen to the content of the computer text file. A computer with screen reader software (such as JAWS) and a sound card will use a synthesizer voice to read all the copy that is in the file.

Cassette tape. Some people prefer to receive documents read onto a cassette tape. In many communities, volunteer organizations exist that will read written material onto cassette tapes for people with disabilities. If this resource does not exist in your community, you might think about asking other youth in your program to read and record the material, or recruit volunteers.

Braille and scanned copy reading. Braille lettering may be produced from a computer using a Braille writer (such as the Romeo R. B. - 25) or from a personal embosser or Braille note taker. Another method is the scan/reader system (using Kurzweil 1000 software). The print copy of a document is placed on a flatbed scanner and scanned, with scanned copy read aloud by synthesizer voice. Braille or scan/reader equipment is available in many communities. Check with a local public library or disability service provider at a post secondary institution for availability of a Braille writer, screen reader, and ability to record screen-read copy on a cassette tape. Ask the youth or his/her family if they are familiar with a resource in your community where print materials can be converted into Braille or into synthesized speech output.

The information presented in this document, including the above questions and answers, are for general information only and cannot be used as legal advice.

For information about the ADA and Inclusive Youth Programs contact:

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