

# MLPP News

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*Medical-Legal Partnership Project News*

## FOCUS

### ***Discrimination in the Child Care Setting:***

### ***Access for Disabled Children Under the Americans with Disabilities Act***

**By Jay Sicklick, MLPP Director**

*This month's focus examines the legal issues presented when a disabled child seeks access to childcare. While most pediatric practitioners understand the public school's obligation to provide educational opportunity under the Individuals with Disabilities in Education Act, few clinicians are well-versed in the subtleties of disability rights and access to programs and services under the Americans With Disabilities Act (ADA). This column seeks to outline a disabled child's right to access childcare services under the ADA, as well as after-school and summer programs that cater to non-disabled children.*

**A three year old with a diagnosis of insulin dependent juvenile diabetes** enrolls in a privately owned and operated neighborhood preschool. The day before the child is scheduled to begin her preschool experience, the school's director calls the child's mother and informs her that the child will not be allowed entry because the preschool staff is not comfortable with dealing with diabetic children and therefore they do not want to assume the responsibility for any potential emergencies. When the mother explains that the staff can easily be trained to administer and interpret blood glucose sticks, the director kindly informs the mother that such tasks are "above and beyond" what is required for childcare staff to perform, and that

the child will have to enroll in an "appropriately equipped" childcare center.

#### ***Are childcare centers mandated to accept "disabled" children?***

Simply put, yes. Excluding children from childcare because of their disabilities is illegal. Under the ADA, the comprehensive anti-disability discrimination legislation signed into law in 1990, childcare centers must admit most children with disabilities, as long as the child's needs are "reasonable."

#### ***How does the ADA work in the childcare setting?***

First, the child must have a "disability" as defined under the ADA. Disability may be either a "physical" or "mental" impairment that limits a child's ability to engage in a "major life activity," such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning in an age-appropriate manner. Specific disabilities may include mental retardation, sickle cell anemia, orthopedic impairments, or diabetes.

Second, the childcare provider may only deny access to services if there are no reasonable means to accommodate the child **and** one of these five circumstances applies:

- Safety mandates certain eligibility criteria for activities such as mountain climbing, or swimming;
- Enrolling the child would "fundamentally alter" the childcare program;

- Adding "auxiliary aids and services" that would accommodate the child's needs would pose an "undue burden" on the program;
- Accommodating the child would require architectural changes that are not feasible; or,
- The child's condition poses a "direct threat" to the health and safety of other children or staff.

#### ***What are "reasonable" accommodations?***

While each case must be dealt with individually, childcare centers are required to adopt new or modify existing practices to accommodate a disabled child's needs. This includes incorporating auxiliary aids and services, such as installing a wheelchair ramp, or utilizing telecommunications equipment for a deaf child.

#### ***When do these accommodations become "unduly burdensome?"***

The ADA traditionally defines "undue burden" in financial terms, including the nature and the cost of the proposed accommodation, the program's financial resources, the number of program employees, safety requirements at the site, etc. For example, the installation of a wheelchair ramp might be considered an appropriate accommodation for most childcare centers, but the hiring of a one-to-one aide to assist a severely impaired child would most likely constitute an undue burden.

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**Are all privately owned and operated childcare centers covered by the ADA?**

Childcare facilities that are open to public enrollment, including family childcare, are “public accommodations” as defined under title III of the ADA.

**What about after school programs or summer camps?**

If these programs are not included as part of a child’s special education program (or IEP), access to enrollment and participation is governed by the ADA. Discrimination in the form of denial of access to after school programs, or summer camps, is illegal, as long as the program or camp is not based on certain criteria for enrollment (e.g. specialized mountain bike program, or rock-climbing).

**If my patient has been discriminated against in the childcare setting, what can they do?**

Parents may be referred to private legal organizations, such as the MLPP (860-570-5327), the statewide legal services network (800-453-3320), or the state Office of Protection and Advocacy for Persons with Disabilities (800-742-7303).

**Where can I learn more about the ADA in the childcare context?**

The United States Department of Justice provides a plethora of information on their website at [www.usdoj.org](http://www.usdoj.org); or log on to the Center for Children’s Advocacy’s website at [www.kidscounsel.org](http://www.kidscounsel.org) and click on the MLPP link. This link will provide several websites devoted to disability rights and the ADA.

**To learn more about special education advocacy**, please contact MLPP Staff Attorney Gladys Nieves at Connecticut Children’s Medical Center (860-545-8581), or call the MLPP Project Director Jay Sicklick at the Center for Children’s Advocacy (860-570-5327).

**We Want to Hear from You!** Submit questions for the next edition of the MLPP newsletter to [jsicklic@law.uconn.edu](mailto:jsicklic@law.uconn.edu) or, call Jay Sicklick at 860-570-5327. For information about the Medical-Legal Partnership Project, please check the MLPP website at [www.ccmckids.org/mlpp](http://www.ccmckids.org/mlpp) or, check the CCA website at [www.kidscounsel.org](http://www.kidscounsel.org)

**MLPP Case Spotlight**

**Unemployment Insurance: Caring for the Severely Disabled Child**

**Background**

Clarissa G. is a severely impaired eleven year old girl diagnosed with cerebral palsy, hydrocephalus status-post vp shunt, seizure disorder, cortical blindness, hearing impairment, profound developmental delay, strabismus, sleep disorder, and feeding difficulties. Her mother, Nancy G., worked as a job coach with a mid-size employer in New Britain for over two years until this past spring. The employer hired Nancy with full knowledge of her daughter’s disability.

In April 2004, Nancy G. left work early to arrange for leg brace fitting. At that point, her supervisor proclaimed she was “leaving early too much” and asked her to “go home and not come back.” Appalled at the thought of being discharged to care for her daughter, Nancy submitted a letter of resignation immediately. When she filed to collect unemployment benefits, the Department of Labor (DOL) ruled her ineligible because she had voluntarily quit her job without notice. Nancy appealed the initial determination to the DOL’s Employment Security Appeals Division.

**MLPP Intervention**

A Connecticut Children’s pediatric nurse practitioner working with Clarissa referred Nancy directly to the MLPP for immediate legal intervention. Working with Clarissa’s clinicians, the MLPP intervened to challenge the initial denial at an administrative hearing. In August 2004, the Appeals Division reversed the denial and awarded Nancy unemployment benefits retroactive to April 2004. The hearing officer determined that the employer not only had the burden of proving the nature of the separation, but also had the burden to show willful misconduct, if any had occurred. Due to Nancy’s testimony and legal documentation secured from Clarissa’s clinicians by the MLPP, the hearing officer ruled the termination a “discharge” and reversed the benefits denial.

Nancy is now receiving unemployment benefits as she searches for a new position that will be able to accommodate her daughter’s special needs.

If you would like more information about this issue or the MLPP’s work on behalf of special needs children, please call Gladys Nieves, MLPP Staff Attorney, at (860) 545-8581.

**New Resource Code Card Available**

The Center for Children’s Advocacy is pleased to announce that the second edition of our Resource Code Card, a practice tool for pediatric clinicians, is now available at no charge to pediatric practitioners. The card is intended to provide direct resource and advocacy information to pediatric practitioners who can use the information to assist their patients’ families to access benefits and services for which they are eligible.

Clinicians, social workers and family advocates may obtain these 8x14 laminated cards free of charge, by calling the Center for Children’s Advocacy at 860-570-5327. The cards may be accessed on-line by going to the Center’s website at [www.kidscounsel.org](http://www.kidscounsel.org).

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