



Protecting Children With Disabilities

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Medical-Legal Partnership

Medical and Legal Professionals working together to improve health care outcomes for children

- Direct representation
- Training
- Systemic Advocacy



Holistic Needs of Child Patient

- Physiological impact of diagnosis
- Social impact of diagnosis
- Is it legal?



Americans with Disabilities Act (ADA)

Title II

No qualified individual shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.

Americans with Disabilities Act (ADA)

Title III

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages of any place of public accommodation by any private entity.

Camps, Child Care and ADA

Title II

Camps and child care centers operated by government agencies

Town camps, summer programs run by schools, etc.

Title III

Camps and child care centers as public accommodations

Operated by private entities

Title II - ADA

State and Local Government Programs

- City, town, and municipal-based programs
- Required to provide persons with disabilities equal opportunity to benefit from programs, services and activities



Title II - ADA

Protecting the Rights of Children

Programs operated by municipality

- Cannot exclude children exclusively because of diagnosis
- Cannot exclude children with diabetes who require insulin
- Cannot exclude children who require medication

Title III - ADA

Protecting the Rights of Children

Programs operated by private entities

- Cannot exclude children because of diagnosis
- Cannot exclude children with diabetes who require insulin
- Cannot exclude children who require medication

Camp for Amy?

- Age 7
- New diagnosis of Type 1 Diabetes
- Requires insulin



After Care for Martin?

- Age 9
- Down Syndrome
- High functioning
- Mainstreamed in school
- Interacts well with peers



Camp for Edward?

- Age 8
- Non-verbal
- Unspecified genetic disorder
- Private therapeutic school
- 1:1 paraprofessional
- Aggressive behaviors



ADA Requirements

Reasonable modification to policies, practices, procedures

Objective

Avoid denial of access to programs and services to children with disabilities

Obligation

Integrate children, parents and guardians with disabilities

Individualized Assessment

Meeting the Inclusion Requirement

- Individualized Assessment
- Input from parents, educators, caregivers



Reasonable Modification

Individualized Assessment

- Disabilities are unique to child
- Impact is unique to child
- Modification based on specific needs of child



Modifications for Children with Disabilities

Attend to medical needs

- Long-standing “reasonable modification”

Directives to camps, child care facilities, sports programs, etc

- Accept child
- Accommodate to medical needs

Accommodations for Children with Diabetes

- Meets the definition of reasonable accommodation
- Includes treating children who are insulin dependent
- On-site nurse not required



Required Accommodations

- Reasonable accommodations
- Medical Plan from health care provider
- Training for Camp/Day Care Staff
(paid by facility, not by parents)
- Guidance from Connecticut Office of Early Childhood

CCA and CT Office of Early Childhood

Protecting Children with Diabetes

A Child Care Provider's Guide to Compliance with Federal Laws

The Americans with Disabilities Act (ADA)

Under the ADA, no child with a diagnosis of diabetes may be excluded from a child care, camp, or after care program because of diabetes.

What types of programs (camps, day care and after care programs) must comply with the ADA?
Most programs must comply with the ADA regardless of whether they are run by a public or private organization.

- **Programs of State and Local Governments:** Title II of the ADA requires that state and local governments provide persons with disabilities equal opportunity to participate in their programs. Therefore, any camp, child care, or after care program run by a city or town must allow children with diabetes to attend the program.
- **Privately-Run Programs:** Title III of the ADA prohibits discrimination against any citizen who wishes to participate in any program. Therefore, privately-run camps, child care centers, and after care programs may not refuse participation in any of their programs because a child is diabetic.

What types of accommodations are appropriate for children with diabetes, under the ADA?

Programs are required to evaluate each child individually and make reasonable accommodations for that child. Reasonable accommodations include:

- Modifications for children with diabetes, including those who need insulin; and
- Training staff to administer daily medicine, including insulin (via pump or injection) and emergency medications.

Can programs require parents to come to the facility to test a child or administer medication?

Parents should not be responsible for overseeing a child's medical treatment while the child is attending the program.

Section 504 - Rehabilitation Act of 1973

Children with diabetes have the right to be educated regardless of disability. No child with a disability may be excluded from participation in a school setting simply because of that disability.

Which children are protected by Section 504?

Section 504 applies to children who:

- Have a physical or mental impairment (walking, seeing, hearing, breathing, etc.)

- Have a record of the medical condition

School districts are required to identify children with disabilities and are required to notify parents and children of their rights.

How does a child with diabetes become eligible to receive services under Section 504?

The school system convenes a "504 Team" meeting to discuss the child's needs. The team consists of people who know the child (parents, teachers, social workers, medical professionals.) The team reviews documentation of medical condition and develops an accommodations plan.

What services are schools required to provide for children with diabetes?

School systems must develop an individualized plan that provides an accommodation to the child's disability. School systems are required to accommodate disabled students so they receive the same educational opportunities and experiences as students without disabilities. Children with diabetes may not be excluded from school activities and trips. If a child's 504 plan requires accommodations, those accommodations must be provided for every trip and activity.



The Financial Cost of Violating the Law

Schools, preschools, camps, child care facilities, and recreational programs must comply with the ADA.

Failure to comply with policies, procedures, and practices of the ADA can lead to:

- Financial penalties
- Attorney fees
- Compensatory damages (payments to claimants)
- Required changes to policies and practices



Case Examples

Violation (Title III)

A network of private preschools, elementary and middle schools engaged in a pattern of excluding and disenrolling children with disabilities including Down Syndrome and autism.

Results

- \$250,000 awarded to families of affected children
- Development and implementation of non-discrimination policy
- Mandatory training of staff

Violation (Title III)

A youth baseball organization refused to provide accommodations to a deaf child.

Results

- \$30,000 awarded to the child's family
- Attorney fees
- Changes in policies and practices of organization

Violation (Title III)

A Connecticut child care center excluded an autistic child from a preschool program.

Results

- \$7,341 in damages awarded to the child's family
- Adoption and enforcement of non-discrimination policy based on disability

Violation (Title III)

A summer camp refused to admit children with diabetes.

Results

- Children to be provided an opportunity to attend
- Integration of diabetes care into daily routine
- Diabetes training for staff.



Accommodations for Children with Developmental and Cognitive Disabilities

Efforts to positively impact behavior

- Modify activities
- Rest periods
- Snacks
- Medications



Cost of Non-Compliance

- Legal action against facilities
- Monetary sanctions
- Press

[Hartford Courant
May 16, 2016](http://www.courant.com/education/hc-children-diabetes-camps-0508-20160516-story.html)

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Hartford Courant.

Some Summer Camps Rejecting Diabetic Children

By Josh Kovner, May 16, 2016

HARTFORD — Caleb was getting sicker and sicker before doctors diagnosed him with diabetes at age 2 and a half. Nearly comatose, the boy spent three days in a pediatric intensive care unit before he began to rebound.

At the first sign of his recovery, Caleb's parents, Laura Hastillo and Carolyn Maloney of Tolland, resolved to work as hard they could to give Caleb, now 8, the same kind of life as any active child. His school has been accommodating, and Caleb has adjusted to wearing a monitor and an insulin pump in an elastic belt around his waist, with a tube leading to a portal under his skin.

Still, the two savvy women — Hastillo works with people with psychiatric and intellectual disabilities, and Maloney is a top executive for a large parking-lot operator — weren't prepared when a summer camp in Tolland balked as the mothers were signing up Caleb.

"They said they would need a nurse, and that they didn't have one and would have to hire one," said Hastillo. "And I thought it was true — that they did need a nurse on staff. I didn't know that was not the case."

The couple didn't push it. They didn't pursue the application and instead cobbled together child-care for Caleb and his younger brother, Levi, for the entire summer of 2015. It was the first summer that Hastillo was returning to work after seven years at home. She rotated with Maloney, and they used a baby sitter (who also had diabetes) and family members.

Children with Diabetes

Hastillo and Maloney aren't alone. Every spring, some families in Connecticut with young, diabetic children encounter resistance from some public and private summer camps and child-care programs. And most parents don't push back, in part because they don't realize that what they are facing is illegal discrimination.

Over the last five years, dozens of camps and programs have rejected children with diabetes even though it's a violation of the Americans With Disabilities Act, according to federal law officers, children's rights lawyers and diabetes educators.

In a number of cases, including those involving town camps in Rocky Hill and Simsbury, and a camp on the grounds of the Hospital of Special Care in New Britain, the U.S. attorney's office in Connecticut concluded that the programs had violated the ADA. In most instances, settlements have been reached that required the camps to establish equal-access policies and accept children with diabetes. The Rocky Hill and Simsbury town camps adopted policies that state that they don't discriminate against children with disabilities, which includes diabetes. The camp on the hospital grounds has closed.

The ADA requires camps to make reasonable accommodations for children with disabilities. In this case, that means that before camp starts, the program hires a nurse to train several staff members to help the child follow the doctor's treatment plan through the camping session. The child and the parents can also participate in training the staff members. The training takes less than two hours.



Photo: An image with young summer camps for their children with diabetes.
Video at courant.com/education/hc-diabetes-and-summer-camp-20160502-premium/video.html

Program Participation and Parental Oversight

Program cannot require parents to provide oversight

- Cannot insist that parents oversee medication
- Cannot insist that parents physically stay at site
- Cannot insist that parent pay for staff training



Discrimination

- Ignorance: Medical condition
- Ignorance: Law
- Ignorance: Liability



Not the Right Camp

Limited exceptions to ADA

- Fundamental alteration of program
- Undue burden
- Direct threat to health and safety of others



Fundamental Alteration Not Required

Not required to abandon mission or offer fundamental program alteration

- Exceptions: specific training programs
- Example: combat karate program not required to change bodily contact component of program



Undue Burden

Significant difficulty or expense

- Nature and cost
- Financial resources of camp
- Financial resources of parent company
- Number of employees
- Impact on total operation



Direct Threat to Health and Safety of Others

Individualized Determination

- Based on current medical knowledge or best available objective evidence to ascertain nature, duration and severity of risk, probability that injury will occur
- Consideration of particular activity and actual abilities and disabilities of child

Aftercare for Devon

Private aftercare program housed in public school

- Prior attendance: Devon and sibling
- Contact: Endocrinology and MLP
- Claim: written refusal/liability
- Result: referral to Justice Department
- Total review and rewrite of policies and procedures
- Acceptance of child back in program

Camp for Juliet

Hybrid camp/school run by national non-profit

Claims

- Could not meet needs of child with diabetes
- Not licensed by Office of Early Childhood
- Not required to accept child

Results

- Complaint filed with Justice Department
- Child accepted, staff trained at expense of facility
- Outreach to similarly rejected children
- Changes to policies and procedures

Transportation for Charlie

Special Ed student, requires door-to-door transportation
Condo complex: vehicle forbidden on property

Fair Housing Act - Accommodations to persons with disabilities

- Complaint filed with Dept of Housing & Urban Development
- Bus allowed on premises
- Individual letters to all tenants: duty to accommodate
- Notice posted on condo premises: duty to accommodate
- Training of condo staff at expense of condo management company
- Continuing oversight by HUD
- Press

Playground for Sasha

Inaccessible playground for child with cerebral palsy
School and town unresponsive

- Complaint filed with Justice Department
- \$200,000 playground upgrade
- Involved DOJ attorneys, architect
- Oversight
- National press

[Advocacy video from Sasha's mother:
cca-ct.org/our-work/aboutus_programs_mlpp/](http://cca-ct.org/our-work/aboutus_programs_mlpp/)

Questions and Information

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