



The Rights of Children with Disabilities to Get Services at Daycare

What is a disability?

Generally, the [Minnesota Human Rights Act \(MHRA\)](#) and the [Americans with Disabilities Act \(ADA\)](#) define a person with a disability as someone who has a physical or mental impairment that substantially limits one or more major life activities.

Major life activities include, but are not limited to:

- Caring for oneself
- Seeing
- Hearing
- Sleeping
- Walking

Major life activities also include the operation of a major bodily function. Like functions of the immune system, digestive, bowel, endocrine and reproductive functions.

Can a daycare provider say they won't take a child with a disability?

In general, the law says that private businesses can't discriminate against people with disabilities. Most daycare centers are private businesses. Daycare centers run by schools or community organizations also have to follow the law.



What if a church runs the daycare center?

Some churches rent space for a daycare center. If a church rents the space, then it has to work with the daycare organization to make the building accessible. If the church itself provides the daycare, 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.

What if the daycare 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 rules for defining undue burden. They look at the size of the business, the cost of the services and many other factors.

If making changes (accommodations) makes it financially or practically impossible for a business to keep operating, they can say that it is an undue burden. Then they may not have to make the changes.

A small business that spends extra money to serve disabled people can often get a tax break. If a daycare 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.

Does a daycare center have to change the building so my child can go there?

Usually yes, unless it costs too much (see above), or if a church runs the center. But if it is a new building, (built or remodeled since 1992) then the rules are strict. They have to make *reasonable accommodations*. This means making changes so that people with disabilities can use the building or services the same as people who don't have disabilities.

For older buildings, the rules are more flexible. Again, ask a lawyer to help you if this question comes up.

Does the daycare center have to provide an interpreter for my deaf child?



Sometimes yes, sometimes no. It depends on if it puts an "undue burden" on the daycare or not. Undue burden means it is something that is very hard to do or costs a lot of money. 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 daycare center should get an interpreter for special activities like field trips or visitors.

My child needs more services at daycare than others the same age. Does the center have to give us extra services?

The daycare center may not have to give you 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 can't put them 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 they need.

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 (PCA) or other services to help with daycare. A PCA is someone who helps with the activities of daily living, like eating, dressing, toileting, and bathing.

If I get a PCA or someone to help with extra services, does the daycare staff still have to work with my child?

Your child should get the same services as every other child in the group when 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 daycare staff can't ignore your child. They can't expect the PCA to do everything.



If the daycare 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 not watched, that might be a threat to safety. You might need a PCA to give your child the extra services to be safe. Deciding that your child is a "direct threat" must be based on an individual assessment. They need to look at the specific activity and the actual abilities and disabilities of your child. They can't base it on general ideas and stereotypes of the disability.

If the daycare 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 daycare.

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

What if only 1 or 2 daycare centers in my town take children with disabilities and those places are full?

If a daycare 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 4 children with behavior problems, it is not discriminating against the disability. The center just can't take another child.

Try to think of ways to work with a daycare center. Maybe you can find a way for your child to be in the program without making extra work for the staff. Then even a daycare center that has not had children with disabilities before might take your child.

A PCA 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 in special education programs for part of the day. If you and the daycare center work together, you may be able to get care for your child without having to get legal help.

If I can't find a daycare 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 you can go for help. An advocate is someone who is on your side and helps 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.

How can I contact the Minnesota Disability Law Center?

The Minnesota Disability Law Center provides free legal help to people with disabilities in Minnesota.

To apply for help, call:

Metro: (612) 334-5970

Toll Free: 1-800-292-4150

For all other calls: 612-332-1441

Minnesota Disability Law Center
111 North 5th Street, Suite 100
Minneapolis, MN 55403

<https://mylegalaid.org/disability-law-center/>



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