



The Rights of Children with Disabilities to Get Services at Daycare

This fact sheet talks about children with disabilities in daycare settings and the different laws that protect them from discrimination depending on the kind of daycare and who operates it.

What is a disability?

The [Minnesota Human Rights Act \(MHRA\)](#) and the [Americans with Disabilities Act \(ADA\)](#) are disability laws that protect you if you have a disability. The law defines a person with a disability as someone who:

- has a physical or mental impairment that substantially limits one or more major life activities,¹
- has a history of that condition,² or
- is seen by others as having a disability, even if they don't actually have one.³

Major life activities are things like:⁴

- Walking
- Speaking
- Eating
- Breathing
- Caring for oneself
- Thinking
- Concentrating

Major life activities also include the operation of a major bodily function. Things like functions of the brain, immune system, digestive, bladder, bowel, endocrine, and reproductive functions.⁴

What are some common disabilities for children in daycare?

Common disabilities for children in daycare settings are things like:

- Allergies
- Asthma
- Cerebral palsy
- Diabetes
- Down Syndrome
- Orthopedic or physical impairments
- Sensory processing disorders
- and more

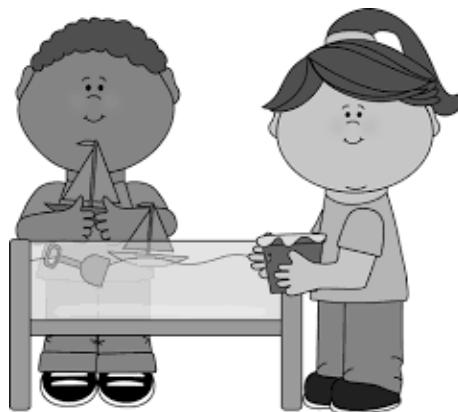


Are there different rules for different daycare settings?

Children with disabilities in daycare settings are protected from discrimination under different laws. The laws depend on the kind of daycare setting and who operates it.

1. Privately Run Daycare Providers (including in-home and center-based daycare)

Privately run daycare is often in a person's home or in a private building (not a school). These are usually more expensive daycare options. Title III of the Americans with Disabilities Act (ADA) says that businesses open to the public, like privately run daycare settings, can't discriminate against people with disabilities.⁶ This applies to all daycares. It doesn't matter how big or small, or if it is run "in-home" by a person or by a large company in a building. Title III also applies to daycare centers on religious property (like a church) but run by non-religious parties. The Minnesota Human Rights Act (MHRA) provides similar protection as the ADA, but at the state level.⁷



2. Government-Run Daycare Programs (including Head Start, Summer, and After-School Programs)

These daycare programs are publicly funded and are often in schools or other public buildings. These programs are often low-cost or free to families. Title II of the Americans with Disabilities Act (ADA) and The Rehabilitation Act of 1973 both ban discrimination based on disability in any program or activity that gets federal funding.⁸ The Minnesota Human Rights Act (MHRA) provides similar protection as the ADA, but at the state level.

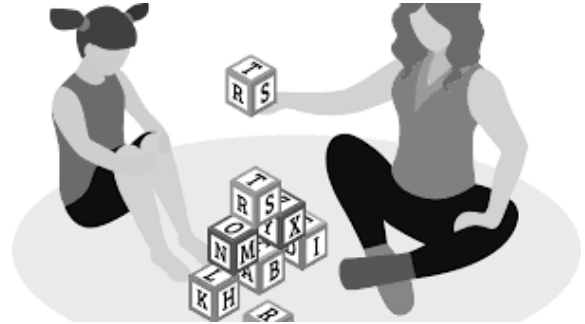
What are things the daycare provider must do for my child?

Daycare providers must give children with disabilities an equal chance to take part in the center's programs and services as other children. The only time these things would not be required are if they cause an "undue burden" on the daycare provider or a "fundamental alteration" of the daycare's program.

- "Undue burden" means that making the changes would be so hard that the business couldn't function. An undue burden is usually something that is too expensive for the business.
- A "fundamental alteration" would change the basic nature of a program.

The ADA and the MHRA have rules for defining undue burden and fundamental alteration. They look at the size of the business, the cost of the services or accommodations the child needs, and many other factors.⁹

Daycare providers must carefully look at each child with disabilities and their needs. This is so they can decide if they can meet the child's needs without making significant changes to their program. This decision must be an individualized assessment based on the child's actual needs, not on stereotypes or assumptions. A daycare center can't refuse admission to a child with a disability based on assumptions about severity of the disability or level of support they may need. Prior to removal or exclusion of any child with a disability based on behavioral concerns, daycare providers **must** consider reasonable modifications that may help to address behavioral issues.



- **Making Changes:** Daycare providers must make “reasonable modifications” (changes)¹⁰ to help include children with disabilities. Examples of common reasonable modifications that a daycare **would** have to make are things like:
 - Giving extra time for the child's transitions or tasks.
 - Using visual schedules or picture cues.
 - Changing a policy that bans children from using personal devices so your child can use their communication device.
- **Necessary Aids and Services:** Daycare providers must offer necessary aids and services to communicate with children and parents with disabilities. Necessary aids and services are things like:
 - Making sure that websites and other technologies used for updates to parents are accessible to people with hearing, vision, or speech disabilities. This may include things like screen-reader-friendly website design, adding captions to videos, and providing written transcripts of audio messages.
 - Having a sign-language interpreter for field trips or special events if needed.
- **Accessibility:** Daycare centers must make their buildings accessible. Older buildings must meet a “readily achievable” standard.¹¹ This means easy and affordable changes should be made. New buildings or parts being remodeled must be fully accessible. This means that a facility must meet the [ADA Standards](#) for Accessible Design. These are changes like:
 - Adding grab bars in bathrooms.
 - Replacing gravel and mulch in playground areas with wheelchair-friendly materials.
 - Making doorways wider to let wheelchairs pass through easily.

- **Direct Support Workers (formerly PCAs):** Some children may qualify for a support worker through Community First Services and Support (CFSS). You can ask for a MnCHOICES assessment form through your [County Human Services office](#). Support workers help with daily tasks like eating, dressing, and using the bathroom. They can go to daycare with your child and give them one-on-one support. This lets your child take part in programs and activities.
- **Individualized Family Service Plan (IFSP):** Some children may qualify for early intervention services through an Individualized Family Service Plan (IFSP). This is provided by the school district. Children can get those services at their daycare center by school district staff who come into the daycare center during the day.¹² You can ask your local school district for an evaluation.
- **Diaper and Toilet Help:** Daycare centers can't discriminate against children who need diapers or help using the toilet because of issues related to their disability. Centers that have diapering or toileting help for young children must "reasonably modify" their policies to do the same for older children who need it due to a disability. In general, daycares that diaper infants should diaper older children with disabilities as long as it's not leaving other children unattended.

Can a daycare provider turn my child away?

- Daycare providers can turn away children with disabilities if the child's presence is a "direct threat" to others.¹³ Direct threat means there is a big risk of serious harm to the health and safety of others. Children who pose a direct threat do not have to be admitted into the program or can be kicked out of the program. But the daycare provider must do an "individualized assessment." This assessment must look at the specific activity and the actual abilities and disabilities of the child.

For example, a daycare provider may turn away a child with active infectious tuberculosis if they do an assessment and decide that the risk of serious harm to the health and safety of the other children is too great.



- Daycare providers can turn away children with disabilities if the child's presence would mean major changes, or "fundamental alterations," to the program.¹⁴ These changes are things like:
 - Extending the program's regular hours for one child.
 - Accepting a child who is outside the program's age range.
 - Providing one-on-one nursing care.
- Daycare providers can refuse to accept a child with disabilities if the program is already full. If there is a waitlist to get in, centers do not have to give children with disabilities priority or let them skip ahead in line.

Get Help with Issues of Disability-Based Discrimination in Daycare

1. File a complaint with the [Minnesota Department of Human Rights \(MDHR\)](#)

- Submit your complaint with the MDHR online form: [Report Discrimination / Minnesota.gov](#)
- If you can't do the online form, you can call MDHR at:
(651) 539-1100 or 1(833) 454-0148.

2. File a complaint with the Department of Justice

- Submit your complaint with the DOJ online form:
<https://civilrights.justice.gov/report>
- DOJ also accepts written complaints by mail:
U.S. Department of Justice
Civil Rights Division
Disability Rights Section
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

3. Talk to a Private Lawyer

- [Find a Lawyer](#) is a Minnesota resource that can help you find a private lawyer based on where you are and what you need.

More Resources

Commonly Asked Questions about Child Care Centers and the Americans with Disabilities Act

<https://www.ada.gov/resources/child-care-centers/>

Minnesota Disability Law Center

Metro: 612-334-5970

Toll Free: 1-800-292-4150

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



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Laws, Statutes, Rules and Regulations

What is a disability?

1. [42 U.S.C. § 12102\(1\)](#)
[42 U.S.C. § 12102\(4\)](#)- this part of the ADA gives more details about what counts as impairments that “substantially limit” a major life activity.
2. [29 C.F.R. § 1630.2\(k\)](#)
3. [42 U.S.C. § 12102\(3\)](#)
4. [42 U.S.C. § 12102\(2\)](#)

Are there different rules for different daycare settings?

5. [The Americans with Disabilities Act \(ADA\) Title III](#)
[42 U.S.C. § 12181\(7\)](#). Gives the definition of “public accommodations.”
6. [Minnesota Human Rights Act \(MHRA\), Minn. Stat. § 363A.01](#)
7. [The Americans with Disabilities Act \(ADA\) Title II](#)
[42 U.S.C. § 12131](#)
8. [Section 504 of the Rehab. Act of 1973 \(Rehab Act\)](#)
[29 U.S.C. § 794](#)

What are things the daycare provider must do for my child?

9. [28 C.F.R. § 36.104](#)
10. [28 C.F.R. § 35.130](#)
11. [U.S. Dep’t of Just., Title III Tech. Assistance Manual § 4.4200.](#)
12. [Minn. Stat. § 125A.27, Subd. 6](#)
[34 C.F.R. § 303.13](#)

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13. [28 C.F.R. § 36.208](#)
14. Fundamental alteration happens when policies, practices, or procedures that would be changed are essential to the provision of the childcare services.