

Child Care and The New Jersey Law Against Discrimination

General Protections:

The New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, makes it unlawful for the owner, operator, or employee of a place of public accommodation to discriminate against people with disabilities. ***This means that places open to the public may not treat a person with a disability less favorably than others, such as refusing to admit a child to public place like a child care center, registered family child care home, or after school program because he or she has a disability.*** In addition to prohibiting this type of differential treatment, the LAD also requires places of public accommodation to take reasonable steps to make sure that a person with a disability can enjoy the goods, services and facilities that are available to the general public. ***However, since only "reasonable" accommodations are required, a place of public accommodation may refuse to provide a particular accommodation if doing so would cause the provider undue hardship.***

What is a place of public accommodation under the LAD?

The LAD regulates individuals and entities that offer goods, services, or facilities to the general public. This includes restaurants, movie theaters, stores, camps, child care centers, schools, and professional offices such as doctors' and lawyers' offices. It also includes some membership organizations and others entities.

Note that there are exceptions:

- ◆ The New Jersey Department of Education also has jurisdiction over disputes that

involve public schools and raise issues covered by school law.

- ◆ The LAD does not apply to any educational facility operated or maintained by a *bona fide* religious or sectarian institution. However, a child care or after school program that accepts State or federal funds is required, in most circumstances, to comply with anti-discrimination laws even if the program is operated or maintained by a *bona fide* religious or sectarian institution.
- ◆ The LAD does not apply to any place or organization which is "in its nature distinctly private" such as a private club that does not open membership to the general public.
- ◆ The LAD generally permits a place of public accommodation that is "in its nature reasonably restricted to individuals of one sex" to limit access based on gender.

Who does the LAD protect?

The New Jersey Law Against Discrimination covers more people than the federal Americans with Disabilities Act (ADA). The New Jersey LAD prohibits discrimination based on:

- ◆ a physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness
- ◆ a mental, psychological or developmental disability resulting from an anatomical, psychological, physiological or neurological condition which either prevents the normal exercise of any bodily or mental functions **or** can be established

with accepted clinical or laboratory diagnostic techniques

In addition to protecting people who presently have a disability, the LAD also prohibits discrimination against people who have had a disability in the past and people who are expected to develop a disability in the future. The LAD also prohibits discrimination based on **perceived** disability. This means that the LAD will protect people who do not have a disability if they are subjected to discrimination by people who mistakenly believe that they do have a disability.

What protection does the LAD provide for children in an educational setting?

The LAD provides that it is unlawful to turn away a child or student with a disability because other students or staff might not be comfortable with his or her disability.

The LAD provides that it is unlawful to refuse to enroll a child or student with a disability because of anticipated insurance costs or to charge more to enroll a child with disabilities.

Reasonable Accommodation

In many circumstances, a school or child care center must change or waive a rule or policy to enable a child or student with a disability to enroll. For example, this may include waiving a requirement that children be toilet-trained in order to enroll in a particular class (especially if the school also enrolls younger children who receive toileting services).

In many circumstances the LAD (as well as school laws) may require a school or child care center to make sure that a child or student with a disability can participate in classroom learning and in school programs such as field trips and after-school activities. This may include providing assistance and support in the classroom and providing materials and tests in alternate formats. It may also mean providing accessible transportation and making sure that field trips and after-school activities are held in accessible facilities.

Obviously, it may cost money to make some existing places accessible. However, in

many instances, changes can be made for minimal or moderate costs without causing "undue hardship." Unless the place of public accommodation can show that the change will cause it undue hardship, it must make the changes so a person with a disability can enjoy what is available to the general public. Decisions must be made on an individualized basis. For example, the owner of a small center or family child care home might not be required to all of the accommodations that a large child care center must provide.

This means that a place of public accommodation cannot make a general rule, such as, "we do not give out medication" or "non-verbal children cannot attend our program." Instead, the center must determine whether supports and reasonable accommodations would enable a particular child to attend the center, school or program.

Federal Laws Governing Accommodations in Educational Settings

The Americans with Disabilities Act (ADA) requires places used by the general public, including most child care centers and private schools and all public schools, to develop a plan for making their programs, services, and facilities accessible to people with disabilities.

Like the LAD, the ADA also prohibits discrimination based on disability and requires most child care centers and schools to provide reasonable accommodations (in addition to the public school's obligation to provide a free and appropriate education) unless the accommodation would fundamentally alter the program, pose a direct threat to the child or others, or otherwise impose an undue burden on the center or school.

For more information about the ADA and child care centers see the publications link at www.ada.gov for Commonly Asked Questions About Child Care Centers or call 800 - 514 - 0301 (voice) and request their document entitled "Fax #3209"

The Individuals with Disabilities Education Act (IDEA)

gives each eligible child aged 3-21 the right to a free and appropriate education in the least restrictive environment possible. ***This means that public schools and service providers contracting with public schools must take steps to educate children with disabilities alongside peers who do not have disabilities. They may not automatically decide that the child must be served in a separate classroom or school because they have a disability that requires individualized attention or classroom modifications and supports.***

Section 504 of the Rehabilitation Act of 1973 requires all public schools to provide reasonable accommodations to students with disabilities and provides rights for some students with disabilities even if they are not classified as requiring special education under IDEA or other laws. The New Jersey Department of Education provides an administrative hearing process for disputes involving Section 504 requirements. Determinations of eligibility for IDEA and Section 504 are made by local school districts.

Resources

For more information about federal education law please contact the **New Jersey Statewide Parent Advocacy Network** at **800-654-SPAN** or www.spannj.org

With regard to younger children, the **New Jersey Department of Health and Human Services Early Intervention System** provides services to children with developmental disabilities aged birth to 3 years and their families. For more information **contact Project Childfind** at **800-322-8174**.

To get information about filing a discrimination complaint under the LAD or to get local contact numbers for the Division on Civil Rights visit www.NJCivilRights.org or call (973)-648-2700; TTY 973-648-4678; or (609) 984-3100, TTY 609-292-1785.

How can I get additional help to meet my child's needs in child care?

Resources to support the inclusion of a child with a disability in child care may also be provided by the following:

Office of Licensing Oversees the official state licensing requirements governing child care centers and family child care homes in New Jersey.
1-877-667-9845 or 609-292-1021

Unified Child Care Agencies
Provide information about child care programs and services within each county.
1-800-332-9CARE

Child Care Health Consultant Coordinators Provide consultation, education and training about health and safety needs of children in child care.
1-800-332-9CARE

NJ Inclusive Childcare Project
Provides regional trainings, telephone and on site consultation to licensed child care providers.
1-800-654-7726 Ext.108

www.spannj.org
NJ School-Age Care Coalition Provides training, telephone and on site consultation to school age child care providers
908-789-0259
www.njsacc.org

Published by the MAP to Inclusive Child Care Team

A coalition of State agencies, child care providers, parents, advocates and other stakeholders, that promotes the supported inclusion of children with special needs in natural child care settings. For more information, call: **856-582-7000, ext.161**.

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