

ADA Q&A...Summer Fun

By Deborah Leuchovius, PACER ADA Specialist

The arrival of spring prompts parents to begin the search for summer activities for their children. Besides extended school year special education services designed by school districts and a few programs that serve the needs of children with disabilities exclusively, parents of children with disabilities often have a difficult time finding social and recreational activities for their kids to participate in their community.

However, the Americans with Disabilities Act (ADA) should make more options available to families by ensuring their right to participate in community and neighborhood programs in integrated settings. School districts, park boards, community centers, libraries, and science, history and art museums that offer summertime classes, day camps, recreation programs, art activities, or nature hikes must make their programs accessible to individuals with disabilities. Parents should know that they can expect these kinds of programs to meet their child's needs, too.

Here are some examples of how the ADA affects such programs:

ELIGIBILITY REQUIREMENTS, DIRECT THREAT, FUNDAMENTAL ALTERATION

Q. Can a T-ball league run by a park board community recreation program exclude my son from participating because he has a disability?

A. No. A public (or private) entity may not deny participation to its programs based on disability. Your son must only meet the basic requirements required of other participants in the program such as appropriate age, residential status, enrollment deadlines, and payment of the application fee.

There are two exceptions to this rule: In cases where (1) the participation of an individual with a disability would pose a direct threat to the health or safety of others,

or would (2) fundamentally alter the nature of the program. In order for a program to successfully prove that an individual would pose a direct threat it must be demonstrated that this risk is actual, and not be based on stereotypes and generalizations, and that it cannot be eliminated or reduced to an acceptable level by reasonable modifications to policies, practices or procedures. The Department of Justice gives the example of a person who uses a wheelchair that may be excluded from playing in a basketball league if the recreation center can demonstrate that it would be unsafe for the nondisabled players to play with the person who uses a wheelchair.

REASONABLE MODIFICATIONS TO POLICIES, PRACTICES AND PROCEDURES

Q. Because of his disabilities, my 10-year-old son is not physically capable of playing softball with his peers, but can play T-ball. Would a recreation center be required to modify its softball games so he could play with peers his own age?

A. As long as your child meets the essential eligibility requirements of the recreation center, it would be required to make reasonable modifications to its programs, practices or procedures to allow him to participate—unless to do so would fundamentally alter the nature of the program.

The more recreational or social the activity, the less likely it would be for any modification to fundamentally alter the nature of the game. Many less structured neighborhood programs could easily make the kinds of modifications that are regularly made in adaptive physical education classes. These include having a child with a disability play with a nondisabled buddy, or allowing him or her to bat at a “T” instead of at a pitch.

However, the more competitive the program,

the more each player would need to demonstrate necessary athletic skills as an essential requirement. Likewise, it could be argued that it would be more “fundamental” for a competitive league to follow nationally standardized rules than a more loosely organized neighborhood effort. If so, it is less likely that competitive leagues would be required to make significant modifications to their normal practices than neighborhood programs that offer less structured, more recreation oriented softball games.

Little League Baseball, however, has a “Challenger Division” for children ages 6 through 18 that might be of interest to kids with disabilities interested in playing ball. The fundamental goal of this division is to give everyone a chance to play. Its rules are flexible to the skill levels of the players, and it pairs kids with and without disabilities together. To find out about establishing a Little League Challenger Division in your area, contact the Director of the Challenger Division, Little League Baseball Headquarters, P.O. Box 3485, Williamsport, PA 17701, (717) 326-1921.

AUXILIARY AIDS AND SERVICES TO PROVIDE EFFECTIVE COMMUNICATION

Q. I would like to enroll my daughter who is deaf in summer art classes offered by a museum education program. Do they have to provide an interpreter at their expense?

A. The museum would have to provide an interpreter for your daughter if that is the only way to provide effective communication for her to participate in the program, and if it is not an undue burden for them. Both public and private entities are required to provide auxiliary aids and services (such as interpreters) necessary for effective communication, unless it is an undue burden—this means a significant difficulty or expense. So it would depend on the cost of the interpreter, the resources of the museum itself, and access the museum has to additional community resources.

NOTE: When the museum’s resources are assessed to determine if an expense is an undue burden, one should look at the total resources of the museum, not just the budget for that program.

Community based education and recreation programs are starting to budget for these expenses, raise grant funds, or use external resources to pay or arrange for such services in order to meet their obligations under the ADA. Examples of external resources are:

- charitable organizations
- volunteer programs
- projects such as the Vinland Project serving the St. Cloud, Minnesota area which provides staff support

to programs serving children with disabilities

- financial contributions made by individuals, or
- other county or publicly funded programs that might cover such an expense.

If these resources have been investigated and are not available and an undue burden can be demonstrated, the child’s family can offer to pay for these expenses by themselves, if they can afford to.

SURCHARGES

Q. My child requires an aide to assist her in participating in the summertime school-age child care program offered by our school district. Can they raise our fees because they will have to hire an aide to meet her needs?

A. No. Providing an aide is one way public entities can make their programs accessible to individuals with disabilities as they are required to do by the ADA. Although providing such a service may result in some additional costs, the ADA states that they may not place a surcharge only on individuals with disabilities to cover these expenses. They may, however, adjust the tuition or fees for all students.

SERVICES OF A PERSONAL NATURE

Q. Would the ADA require a local health and fitness club to provide an aide so my child with physical impairments could participate in their swimming classes?

A. The ADA would require the health club to provide an aide for your child as a reasonable modification to their program if it did not cause them an undue burden, or fundamentally alter the nature of their program. However, under the ADA, the club would not be required to provide services of a personal nature such as toileting or dressing if this was not a service that club staff normally provided to other students.

‘SPECIAL’ VERSUS ‘REGULAR’ PROGRAMS

Q. My daughter who has cerebral palsy wants to take horse-back riding lessons at camp with her friends. Camp staff told us she should enroll in a special horsemanship program for people with disabilities that is offered elsewhere. Must she attend the “special” program?

A. Probably not. The ADA encourages the most integrated setting appropriate for each individual with a disability. Even when an organization has established separate or special programs for individuals with disabilities, it cannot deny an individual with a disability the opportunity to participate in its regular programs unless the person does not meet other eligibility requirements such as previous experience or necessary skills, unless there is a direct threat

to the health or safety of others that cannot be eliminated or reduced by reasonable modifications, or unless there is a fundamental alteration to the nature of the program. So, if your daughter meets the basic eligibility requirements and can safely participate with minor or no modifications to the existing program, she should be able to attend the regular riding program.

DISCRIMINATION BASED ON ASSOCIATION WITH A PERSON WITH A DISABILITY
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Q. Can my child without a disability be denied admission to a summer camp based on the fact that his older brother has HIV and the camp has concerns about contact with the virus?

A. No. Public or private entities may not refuse admission to any individual because of their relationship with persons who have disabilities.

A Final Note
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More and more community based education programs are

attempting to make their programs accessible for people with disabilities. The specifics of how to adapt a program will depend on the needs of the individual and the nature of the program. In some cases this will mean modifications such as hands-on, tactile activities for children with vision impairments; in others it will mean holding classes at a wheelchair accessible site. You will need to communicate your child’s individual needs to the program staff in order for them to be met. A growing public awareness of the requirements of the ADA as well as a commitment to serving the needs of individuals with disabilities, combined with your self-advocacy efforts, will result in an increasing number of inclusive community programs willing and able to meet your summer program needs. Don’t be afraid to ask community education and recreation programs to include you or your child.

Contact Deborah Leuchovius at PACER, (952) 838-9000, for ADA-related questions or mor information about the booklet *ADA: A Guide for People with Disabilities, Their Families and Advocates*.