

***Inclusion of Children
with Special Needs
in
After School and
Summer Programs***

**A Guide for Families
and Professionals**



Laws-Best Practices-Resources

Published by the MAP to Inclusive Child Care Team
Southern Regional Child Care Resource Center EIRC

Introduction

The question of “WHY” a child with special needs should be included in afterschool programs is easy to answer. First, it’s the law. Second, all children, staff and families benefit from programs that promote a philosophy of inclusion rather than

segregation. The question of “HOW a child with disabilities is included” is not so easy to answer, especially with afterschool programs that have different missions, obligations, funding, regulations and managing agencies.



The information in this publication will help explain the laws that impact afterschool programs and make clearer their varying responsibilities. Examples of real life situations and suggestions for best practices are included throughout the booklet to provide actual observations on how to better arrange and provide accommodations. A Resource Page on federal and state education, civil rights laws and afterschool child care is also provided to assist you with finding additional information and services.

Actually, there is no magic formula that you can apply in every situation with every child. This guide is intended to give you information to start a dialogue in your community for putting the pieces together, which can result in successful inclusive practices in afterschool settings.

Best of success!

The MAP to Inclusive Child Care Team

Definition



For the purposes of this guide, “afterschool programs” refer to “supervised, multi-activity programs that operate on a regular daily basis and serve six or more children/youth when school is not in session (i.e., before school, afterschool, school holidays and summer).

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Afterschool Programs and the Law



The Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 and the New Jersey Law Against Discrimination prohibit child care programs (including afterschool programs located in public schools) from discriminating against a child with disabilities by denying admission based on disability or by denying a request for reasonable accommodations without making an individualized assessment of a child’s particular needs. Most afterschool programs are considered “places of public accommodation” under the law. The exception is programs run by religious entities that do not accept any state or federal funding. The law applies to all other afterschool programs, even if they are exempt from licensing.

How does the Americans with Disabilities Act (ADA) apply to afterschool programs?

The 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.

The ADA prohibits discrimination based on disability and requires most afterschool programs and schools to provide reasonable accommodations 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 or <http://www.ada.gov/chcaflyr.htm> (that includes general

information, and Commonly Asked Questions About Child Care and the ADA), or call 800 - 514 - 0301 (voice) to request their document entitled “Fax #3209.”

Public entities are subject to **Title II of the ADA**. “Public entities” include any state or local government and any of its departments or agencies, including public schools. The private entities, like child care centers, are considered places of public accommodation and are subject to **Title III of the ADA**. In many situations, however, public entities have a close relationship to private entities that are covered by **Title III**, with the result that certain activities may be at least indirectly affected by both titles. In fact, both titles apply to an afterschool program’s interactions with the children, parents, guardians, and potential customers that it serves.

What is Section 504 of the Rehabilitation Act of 1973?

Section 504 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 Individuals with Disabilities Education Act or other laws. The New Jersey Department of Education provides mediation and an administrative hearing process to resolve disputes that arise with respect to issues concerning Section 504.

What is the Individuals with Disabilities Education Act (IDEA)?

IDEA is a federal law that provides each eligible child aged 3 - 21 the right to a free and appropriate education in the least restrictive environment possible. ***Public schools and service providers contracting with public***

schools must take steps to educate children with disabilities alongside non-disabled peers. No one can automatically decide that the child must be served in a separate classroom or school because of a disability that requires individualized attention or classroom modifications and supports.

How does the New Jersey Law Against Discrimination (LAD) apply to afterschool programs?

The LAD, N.J.S.A. 10:5-1 et seq., 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 a public place like a child care center, registered family child care home, or afterschool program because he/she has a disability.*

In addition to prohibiting differential treatment, the LAD also requires that places of public accommodation take reasonable steps to ensure that a person with a disability can enjoy the goods, services and facilities that are available to the general public. *However, since “reasonable” accommodations (and not a free, appropriate education) are required, a place of public accommodation may refuse to provide a particular accommodation if doing so would cause the provider undue hardship as defined by federal and state law.*

*Religious organizations are exempt under the LAD unless they are required to comply by a contract or regulation.

Who is responsible for what?



An afterschool program operated or funded by a school or contracted by a school is clearly, closely connected to the school district. Therefore, the district (not the individual school) is responsible for ensuring reasonable accommodations to include children with special needs.

The relationship between the school and the afterschool program is often not clear. Simply stated, if an afterschool program is located on school grounds this does not imply that the program is run by the district, or that the district is responsible for ensuring that the program provides needed accommodations, even if the program is using the facilities at no charge.

Answering these questions can help you clarify the district/afterschool program relationship:

- *If there are fees, to whom are the checks written?*
- *Who hires the staff (especially the director)?*
- *Who pays the staff?*
- *Who assumes liability and insurance coverage?*
- *What name is on advertisements about the program?*
- *Are district funds used to support the overall program (scholarships, staff, supplies, office space, etc)? If yes, how significant is the district's contribution to the total program budget?*
- *Are there any contracts or grants which indicate an agreement for provision of afterschool programs?*

An afterschool program serving more than 5 children under age 13 that is not sponsored by a school must be licensed under New Jersey child care licensing regulations. More contact information is listed on the **Resources Page** of this publication.

BEST PRACTICE: Afterschool program staff who develop relationships with child study teams, prior to including individual children with special needs, are better able to arrange accommodations when necessary...because there is clearer understanding of the roles and responsibilities of both the program and the district.

What about fees?

Afterschool program procedures and policies are governed by the agency specifically responsible for the program. Sometimes, there are waiting lists for attendance. Some programs charge fees, some do not. Parents of children with special needs are expected to pay the same fees as any other child attending the program, unless the program is written into the Individualized Education Program (IEP) as “extended day services” or as opportunities for interaction with non-disabled peers and the school district agrees to pay. If it would be a reasonable accommodation to include the child with special needs, parents may not be asked to pay any extra fees for the afterschool program. If it would not be a reasonable accommodation, then the parent may be asked to pay for any additional costs that exceed what reasonable accommodations would cost.

Any additional costs for accommodations would need to be negotiated between the parent, the afterschool provider and the school district. The responsibility for paying for accommodations depends on which agency is responsible for the program (school or non-school), the type of services needed (medical or non-medical) and the size of the managing agency (small or large). Another consideration would be: if the accommodations would be “reasonable,” would not create an “undue burden” or “fundamentally alter” the program. For additional information, go to: [http://www.ada.gov/childq% 26a.htm](http://www.ada.gov/childq%26a.htm).

What is the relationship between IDEA and afterschool programs operated/funded by public schools?

Schools are required to offer students with the IEPs equal access to afterschool programs that the district offers to non-disabled children (i.e., clubs, sports, etc.).

If the district is paying/contributing/supporting the afterschool program, then **the district has an obligation to provide equal access for students with IEPs**, regardless of whether there are parent fees for the afterschool program. The district's obligation in such a case is not just to provide "reasonable accommodations" but to provide all supports that are necessary to include the child.

Students are entitled to have their particular needs met during afterschool hours as they would during the school day, although the services provided may not be the same since the activities would be different. (For example, a student that needs an aide during the day may or may not need an aide afterschool).

Real Life Example:

Public School Afterschool Program Situation

A father of a kindergarten child with Down syndrome enrolled his daughter in an afterschool program run by two teachers in his child's school and was told the rate was \$8 an hour. Just before school started, the father was told that the afterschool teachers requested an aide for his child and he would have to pay \$20 an hour. The father consulted the New Jersey Inclusive Child Care Project (NJICCP) for advice. Program fees were paid to the school and the teachers were paid by the district; hence, there was a clear obligation by the district to provide equal access for the

child in the afterschool program. After consultation with the child study team, the district amended the IEP to include afterschool support and agreed to pay for an aide for the first hour of the program to assist with transition and to provide information and support to the staff.

BEST PRACTICE: Afterschool programs can ask the parents for a copy of the IEP, especially those sections dealing with socialization so the program can support IEP goals. Parents can request modifications to the IEP at any time. Parents can also invite the afterschool provider to the IEP meeting.

If the school district refuses to provide afterschool accommodations, parents can:

- Request mediation
- Request a due process hearing
- File a request for a complaint investigation

The parent may also file a complaint, under the NJ Law Against Discrimination, with the Division on Civil Rights .

Does IDEA apply to afterschool programs not operated/funded by a public school?

With afterschool programs that are not operated/funded by public schools, it is the **parent/guardian's responsibility** to request IEP services afterschool. **Parents can request to have IEP goals met within the afterschool program that is not operated/funded by a public school; but the district is not required to provide services** (unless there is an extended school day provision in the IEP and the program meets IEP provisions, or the child needs to participate in the afterschool program to have an opportunity to interact with non-disabled peers). **The afterschool program is not**

required to follow the IEP (although the program must still meet ADA/504/LAD obligations). For more information on ADA obligations, go to www.ada.gov or call 800-514-0301. If the school district refuses to provide afterschool accommodations in the IEP, parents can follow the same complaint procedures as listed above.

Real Life Example:

Municipal Operated Afterschool Program Situation

A large school-based afterschool program operated by the municipal recreation department hired a behavior consultant to assist with inclusion of children with special needs. Prior to starting the program, the consultant holds a “meet and greet” with the family and child to determine individual needs. She also meets with program staff to talk about the child’s needs and any necessary accommodations. With the parent’s permission, she talks with the case manager of the child study team to discuss services that the child receives in school. If there is a need for a paraprofessional, the cost is absorbed by the program. During the school year, the consultant revisits the program at least twice. With the support of the behavior consultant, the program has successfully accommodated an average of 20 children with disabilities each year.

BEST PRACTICE: This is a large fee-based program and, as a result, the cost of these services is spread out among all families. A small program may not have the same resources, but could contact either the New Jersey Inclusive Child Care Project or the New Jersey School Age Child Care Coalition for guidance. **See Resources Page.**

What about children in out-of-district placements or self-contained classrooms?

Parents of children, who are in educational settings that provide limited or no interaction with general education peers during the school day, can request opportunities for afterschool socializing with typical peers as part of the IEP. **The type of activities and supports provided are based on the child's need for services, not the family's needs for child care.**

NJDOE REGULATIONS

6A:14-3.7e(17) Individualized education program (IEP)

(e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with non-disabled peers in extracurricular and non-academic activities, and delineate the means to achieve such participation, including, if necessary, returning the student to the district in order to effectuate such participation.

6A:14-4.2 Placement in the least restrictive environment

(b) Each district board of education shall provide non-academic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.

1. In providing or arranging for the provision of non-academic and extracurricular services and/or activities, each district board of education shall ensure that each student with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate.

Real Life Example:

Not-For-Profit Afterschool Program Situation

'Program A' is a private, not-for-profit afterschool program operating on site in the public schools. The school district provides free space for the activities and a small office for the program; but it does not advertise for the program or indicate in any written materials that the program is associated with the district. There is no contract with the district and no financial ties. All agree that the afterschool program is entirely independent, with a governing board and executive director of its own.

The child study team wrote an IEP for a child with autism, and 'Program A' was included in the IEP for socialization. The district requested that 'Program A' enroll the child at no cost.

After serious discussion, it was decided by the governing board of 'Program A' to permit the child to attend for socialization (at no cost to the parent or the district) as a one time concession, with the agreement that the district would provide a staff member to work one-on-one with the child during the time the child was in attendance at the afterschool program.

BEST PRACTICE: Afterschool programs using school space for free may want to budget a set number of annual scholarships for the district to use at their discretion for any child who would benefit from the program. This will promote collaboration and avoid having to make fiscal decisions based on individual children.

How can support for afterschool programs be included in IEP/IHP/504 plans?



Support for children with special needs in afterschool programs can be written into IEP goals, individualized health plans, and/or Section 504 plans. Three suggestions are listed below:

- *Use consistent, positive behavioral strategies in school, home and afterschool activities.*
- *Provide support for social goals contained in the IEP during out of school settings.*
- *Provide educational services for the length of the regular school district day. (This is helpful when children bussed out of district arrive back at the home school prior to dismissal, and there is a question of who will stay with the child until the end of the school day and the beginning of the afterschool program).*

There are many options for the types of support available for children with an IEP/IHP/504 in afterschool settings. Some suggestions:

- *Including afterschool staff in IEP/504 meetings;*
- *Providing training and consultation to afterschool staff;*
- *Creating lines of communication between school day, afterschool staff and families;*
- *Following consistent behavior strategies;*
- *Providing equipment and supplies for the afterschool program;*
- *Arranging appropriate space for small group activities;*

- *Providing support for transition from school to afterschool;*
- *Providing transportation to the afterschool program; and/or*
- *Providing an aide to support the child (for some or all of the program hours).*

Real Life Example:

For-Profit Afterschool Program Situation

A for-profit agency operating an afterschool program in a public school accepted a 7 year old girl with limited language from an out-of-district placement. Staff contacted the New Jersey School Age Care Coalition (NJSSACC) for assistance because the girl was acting out in the program and was swinging at the other children. Staff was exhausted trying to contain her behavior. NJSACC recommended a release form that the program could use to obtain parental permission to talk to the teacher and counselor from the other school. The staff also reviewed the IEP, which made them more informed about the child's issues and needs.

The staff worked with the parent to create a behavior plan based on the child's school plan and started using the same words that the school used to communicate with her. Staff was also able to explain her behavior to the other children in a way that was positive. The child was overwhelmed when she arrived at the program because there were so many children; she was swinging at them when they got too close to her because she did not have the language to express herself.

The staff was able to create a more comfortable environment for her and began to focus on social skills that the parent and school teacher identified as important. They developed a plan to communicate, on a regular basis, with the out of district school staff to share updates and foster a collaboration to support the child. The 7 years old girl was able to fit into the program on her own instead of needing one-on-one attention.

BEST PRACTICE: Children in small classes with low student-teacher ratios are often overwhelmed when they attend an afterschool program in a different location with a larger group of children, especially if they attend every day for several hours. One program set up a pup tent in a separate, quiet (supervised) space, where a child had a safe, cozy environment to unwind when needed. Although they set up the tent for one child, staff found that several children benefited from having a quiet space to “chill out.”



What kind of accommodations are required in afterschool programs?



Children with Individualized Health Plans (IHP) or 504 Plans may require accommodations in afterschool settings. The afterschool provider, family and school personnel should work together to ensure consistency between school and the afterschool program.

Real Life Example:

Child Care Health Consultation Situation

The director of a child care program had strong concerns about her staff's ability to manage a child with a seizure disorder. The center was thinking of terminating the child's enrollment due to fear and lack of information about the child's medical condition. The director contacted her local Child Care Health Consultant Coordinator (CCHCC), who made an immediate visit to the center's director and discussed possibilities of resolving the issue.

The director used Caring For Our Children National Health & Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs. Reference was made to Standard 3.060 Seizure Care Plan, with discussion of developing a seizure care plan in which the child's health care provider would document type of seizures, and medications required. There was a discussion about parental consent for administration and safe storage of medications as well as any activity restrictions necessary for the safety of the child.

The CCHCC visited the Trenton, NJ chapter of the Epilepsy Foundation and borrowed a 10 minute Seizure First Aid video. A packet of informational materials was provided. Within a week's time, she developed a PowerPoint presentation for the staff and then returned to the center for a one-hour presentation.

The feedback from the presentation was positive; it did help in relieving staff anxiety. With parental consent, the center director continued to obtain additional medical information about the child.

BEST PRACTICE: Best practice guidelines for managing children with special health needs are found in: (Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care,) Chapter 7: Children who are eligible for services under IDEA (<http://nrc.uchsc.edu/CFOC/>). The child care provider is responsible for obtaining training and information on all aspects of the child's health, safety and well-being from a multi-disciplinary team. It is the responsibility of parents to provide needed health and other information. The best practice goal is communication and collaboration in the care. The child care health consultant nurse can provide much assistance and training in this area. A special needs care plan should be developed that will document diet, activities, medications, field trips, and other accommodations. Special Care Plans are available at <http://www.state.nj.us/health/forms/ch-15.pdf>. These plans can be used to create an accommodation plan for children with special medical needs.



Accommodations required for afterschool programs under ADA/504/LAD might be the same accommodations that a school would provide under IDEA.

BEST PRACTICE: In making a determination of a child's needs, it is best to start with any existing plans to determine similarities or differences between the school day and the afterschool program. Existing plans include Individualized Education Program (IEP), Individual Health Plan (IHP) or 504 Accommodation Plans. In developing a plan that includes afterschool, parents can invite the afterschool provider to the IEP/IHP/504 meeting to develop consistent goals and strategies for the child. Parents must provide consent for the afterschool provider to see the plans.

If a parent refuses to disclose the nature or extent of a child's special needs, the afterschool program is not required to provide accommodations. However, the parent need not necessarily disclose the exact disability. For example, a parent need not disclose that a child has HIV/AIDS as long as the parent provides the information about the services, medications, etc., that the child needs.

BEST PRACTICE: Afterschool providers cannot ask families to identify special needs on a registration form. Families might be afraid to identify their child's special needs at the initial registration, due to fears that their child might be denied entry to the program. However, providers can create a general questionnaire for all children that asks about individual interests/issues/concerns. This questionnaire could then be used to start a dialogue on how to support a child with special needs. For some suggestions on questions, look at the Circle of Inclusion website: <http://circleofinclusion.org/english/guidelines/modulesix/a.html>

What about summer programs?



In order to receive district funding for services over the summer, students must have Extended School Year (ESY) services written into their Individualized Education Program (IEP). ESY services described in an IEP must be provided at no cost to the child's parent or guardian.

An ESY program may consist of, or include, a recreation program. As with all special education services, educational goal and objectives for a recreation program must be included in a child's IEP. Note, however, that camping or recreation programs provided **solely** for recreational purposes and with no corresponding IEP goals or specially designed instruction are not considered extended year programs.

School district summer programs must comply with ESY services in the student's IEP. Summer programs that are not operated by public schools must only comply with ESY services if the parent, school and provider agree to goals, services & accommodations.

ESY IS NOT a mandated 12-month service for all students with disabilities. It is not required for the convenience of the school or family and, therefore, cannot serve as a child care or respite care service. However, districts cannot limit ESY services to certain categories of disability or age groups.

For more information on ESY requirements go to: http://www.doe.mass.edu/pqa/ta/esyp_qa.html.

Summer programs serving the general public must meet the same ADA, 504 and LAD requirements as described above regardless of whether a child has ESY services written into the IEP.

Real Life Example:

Out-of-District Placement and Summer Situation

A parent of an 8-year-old child with autism in an out-of-district placement wanted to enroll her son in a before and afterschool program at his home-school. The non-profit operating the program in the school refused enrollment, which is a violation of the law. After working with the New Jersey Inclusive Child Care Project and being informed of her rights, the parent spoke to the director about including her child. The child was subsequently enrolled in the program. NJICCP supported the program with training and an inclusion plan. Next year, the mother plans to advocate for inclusive extended school year in the IEP for the non-profit agency's summer program instead of an out of district summer placement so the child will attend the same program year round.



Courtesy ARC of Massachusetts

Resources



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

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 609-292-4605; TTY 609-292-1785.

Department of Education: General information on special education: <http://www.nj.gov/education/specialed/info/> Information on filing a request for mediation, a due process hearing, or a complaint investigation 609-292-0147
<http://www.nj.gov/education/specialed>

Department of Children and Families:
Office of Licensing: Official state licensing requirements governing child care centers and family child care homes. 1-877-667-9845
<http://www.state.nj.us/dcf/divisions/licensing/centers.html>

Division of Child Behavioral Health Services: Services to children and adolescents with emotional and behavioral health care challenges and their families. I-877-652-7624
<http://www.state.nj.us/dcf/behavioral/>

Department of Human Services:

Division of Disabilities Services: Information and referral services to people with disabilities and their families, who are seeking help locating appropriate resources in their communities.

1-888-285-3036 1-609-292-1210 TTY

<http://www.state.nj.us/humanservices/dds/index.html>

Private agencies that receive funding from the Department of Human Services to provide services to child care providers and families.

Child Care Resource and Referral Agencies Information about child care programs and services, vouchers for low income working families, and training for child care programs within each county.

1-800-332-9227

<http://www.njaccrra.org/parentsAgencyListings.shtml>

Child Care Health Consultant Coordinators Registered nurses in each county provide consultation, education and training about health and safety needs of children in child care.

1-800-332-9227

<http://www.njaccrra.org/parentsAgencyListings.shtml>

NJ Inclusive Childcare Project

Regional trainings, telephone assistance and on site consultation to licensed child care providers.

1-800-654-7726 Ext.108

www.spannj.org

NJ School-Age Care Coalition

Training, telephone assistance and on site consultation to afterschool providers.

908-789-0259

www.njsacc.org



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