

Reasonable Accommodations for Summer Camp Attendees

Legal Opinion | March 2017
Stephanie Allen O'Hara, MTAS Legal Program Manager
Via Email

Dear MTAS client,

It was nice speaking with you yesterday. During our conversation, I mentioned several items that you asked me to send you.

- Department of Justice notices regarding summer camps. As far as I can tell, these were last sent in 2016. Considering the changes in US attorneys, the positions and priorities may have changed. Here are some examples for [2015](#) and [2016](#).
- [Settlement Agreement](#) between US and the City of Rocky Hill, Connecticut.
- John N. McGovern has summarized many cases in the document [here](#) and provided guidance [here](#). I have been unable to locate the original case documents that he references. Specifically, I was searching for the Pocantico Hills 1994 case (outlined by McGovern with a few other cases [here](#)), as it seemed the most similar to your city's current question, but I was unable to find any other account of it. Also, after reading Mr. McGovern's [biography](#), it is apparent that his guidance is not necessarily neutral, but, per his biography, written with a goal of inclusion and accessibility.

The summary of our research provides that under 42 U.S.C.A. § 12132, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The city must provide reasonable accommodations for qualified individuals unless the city can show that the accommodation is an undue burden or a fundamental alternation in the nature of the program.

- Undue Burden: [Lindgren v. Camphill Village Minnesota, Inc.](#), No. CIV.00-2771 RHK/RLE, 2002 WL 1332796, at *7 (D. Minn. June 13, 2002) involved the care home for an autistic man, and the care home argued that they could not afford to hire full-time caregivers. The care home lost the case, as they failed to prove the costs of such hiring, and only asserted it was too high. The court in [Lindgren](#) cites 28 C.F.R. § 36.104 and states: "The EEOC has implemented regulations that describe 'undue burden' to mean 'significant difficulty and expense' and have listed five considerations to be used in determining if something is an undue burden." The factors listed in 28 C.F.R. § 36.104 (emphasis added) to be considered are:
 - (1) The nature and cost of the action needed under this part;
 - (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
 - (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
 - (4) If applicable, *the overall financial resources of any parent corporation or entity*; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

To prove an economic burden, the city would need to evaluate the cost of the accommodation against the full city budget, as the structure and overall resources of the larger organization would likely be considered. Larger entities with greater resources are expected to make accommodations requiring greater effort or expense than would be required of a smaller entity with fewer resources.

- Fundamental Alteration in the Nature of Service: The court in United States v. N. Illinois Special Recreation Ass'n, 168 F. Supp. 3d 1082, 1094 (N.D. Ill. 2016) held:

The fundamental alteration defense allows a state to avoid making modifications to accommodate disabled individuals if it can “show that adapting existing institution-based services to a community-based setting would impose unreasonable burdens or fundamentally alter the nature of its programs or services.” NISRA failed to prove this defense because, as the government pointed out many times, NISRA already offers many similar health and emergency services. More importantly, NISRA argued that it would be required to hire additional medical personnel, but failed to present sufficient evidence to show that this would actually be necessary. NISRA also argued that the accommodation sought by the government would subject NISRA to an undue amount of liability and administrative cost. The fear of a lawsuit, however, alone is not enough to constitute an undue burden under the ADA, because if it were, the defense would swallow the rule. NISRA's argument concerning administrative costs fails for similar reasons. To prove these defenses, NISRA was required to present specific evidence. NISRA chose not to do so.

Id. (quoting Radaszewski ex. rel. Radaszewski v. Maram, 383 F.3d 599, 611 (7th Cir.2004)). Most examples we found involve the changing of rules to sport leagues, but the following 1996 case involved the alteration of care of a day care facility from group care to one-on-one care.

The ADA prohibits an entity that provides a public accommodation from failing to take steps to ensure disabled persons are not denied service “unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the ... service ... or accommodation being offered.” 42 U.S.C. § 12182(b)(2)(A)(iii). See also § 12182(b)(2)(A)(ii). The MHRA contains the same qualifying language. Minn.Stat. § 363.03, subd. 3(c)(2) and (3).

This Court has no difficulty concluding that requiring KinderCare to provide one-on-one child care would fundamentally alter the nature of its service. The undisputed evidence at trial establishes that there are at least two distinct types of child care service: group child care and individual child care. KinderCare is in the group child care business and does not seek to provide individual child care. It does not provide one-on-one child care on a regular basis to any child except as necessary to deal with temporary, urgent needs. Requiring KinderCare to provide one-on-one service essentially places it into a child care market it did not intend to enter.

Roberts By & Through Rodenberg-Roberts v. KinderCare Learning Centers, Inc., 896 F. Supp. 921, 926 (D. Minn. 1995), aff'd, 86 F.3d 844 (8th Cir. 1996). However, KinderCare Learning Centers were a private entity with, presumably, a smaller budget than the city.

If you have any additional questions, please do not hesitate to give me a call.

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