

Together Beyond the School Day:

Including Youth with Disabilities In Out of School Time Programs

A Guide for Parents, Youth and Program Providers

*Maryland Disability Law Center
Advocating to Improve the Lives of
Marylanders with Disabilities*

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Photographs on pages 11 and 17
by Marshall Clarke

About This Booklet

For many parents and guardians of children with disabilities, finding safe and accessible out of school time activities can be a difficult and frustrating process. Parents wonder: Is a program right for my child? Will the program take the steps necessary to make sure my child is fully able to participate?

At the same time, providers of such programs – known as Out of School Time (OST) programs – need information and advice about their obligations to enroll children with disabilities.

The bottom line is that under the law, children with disabilities generally have the right to take part in programs occurring before and after school and in the summer.

This booklet provides information about ways to ensure that all children have an equal opportunity to participate in OST programs.

An OST program is a program or activity where children participate in academic, athletic, recreational or cultural activities with other young people beyond the school day, before or after the school day or during the summer.

This booklet is designed to answer key questions for parents, young people and providers, explain relevant laws and connect both parents and providers with organizations that can help them meet the needs of all children.

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Please note that the information included in this booklet is not intended to be legal advice. Rather it is an overview of the laws governing OST programs and activities. This document does not address every aspect of the law and parents and providers are strongly encouraged to seek legal counsel regarding their specific situation.

Including All Children in OST Programs: A Guide for Families and Youth

All children, including those with disabilities, should be able to participate in OST programs and activities. Taking part in fun, engaging activities outside the school day is good for all children. Giving young people with and without disabilities the opportunity to participate together is beneficial to all.

If you ask an OST program whether your child can participate in a program or activity, the answer should be “Yes!” Your child should be able to participate fully in an OST program – even if it means the program will need to make changes to accommodate your child.

The law requires that almost all OST programs, regardless of size, take steps necessary so that all children can safely and meaningfully participate.



In deciding how your child will participate in an OST program or activity, it is important to know:

- Your child has the right to be in any OST program for which he or she meets the basic requirements for participation.
- There are resources available to help an OST program meet your child's needs.
- You can ask for help. If you do not feel comfortable speaking up about your concerns, you may want to contact one of the community partners listed on pages 33-35.

Remember: your child has rights. The laws and your child's legal rights are explained on pages 15-27 of this booklet.

Including all Children

Inclusion means creating programs and services where all children feel welcomed and valued.

Inclusion is an attitude and practice that makes it possible for every person, regardless of ability or background, to participate meaningfully in all aspects of life.

The defining features of inclusion are access (offering a wide range of activities and environments and removing physical barriers), participation (using a variety of teaching approaches), and supports (providing professional development and collaboration with families).

“He feels accepted”

Sheila Kates-Offord’s 8-year-old son Armand, who has autism, struggled for a while when he began taking part in the after-school recreational program at Rollingcrest Community Center in Prince George’s County. He had emotional outbursts and he would run away from the program. But the staff at the center “just would not give up on my son,” Ms. Kates-Offord says.

She worked closely with the staff and they developed a visual schedule for Armand to provide structure and consistency between school and after-school. A point system was created for Armand for encouragement and to address behavior issues. The after-school program provided an aide who worked with him one-on-one as he adjusted to the program.

Within weeks, Armand became fully adjusted and began to take part in all of the activities, everything from arts and crafts to dodge ball to swimming, and the other kids looked out for him. “They haven’t asked him to change and they also teach him. I think he feels accepted and that he’s not different. That’s a big thing,” Ms. Kates-Offord says.

Tips for Parents and Guardians

As you choose an OST program:

- Explore your child's needs and interests.
- Ask questions about staffing, schedules, expectations and rules of the program.
- Think about whether any part of the OST program may need to change for your child to participate.

Before your child begins participating in the OST program:

- Share information with OST program staff about your child and her/his unique needs.
- Share information about what your child enjoys and what helps her/him be successful in different activities at home and at school.
- If needed, sign appropriate forms to release information so that the OST program staff can get information about your child that will help them serve and support her/him.
- Work closely with OST program staff to develop an individualized plan of accommodations and supports, if needed.

If you have a problem with your child's OST program making needed changes or providing supports necessary for your child to participate, or if you are told that your child cannot participate because of his or her disability, you may wish to:

- Communicate directly with the OST program and attempt to resolve the matter informally (see page 28).
- Contact a community partner (see pages 33-35).
- File a formal complaint (see pages 29-31).

Tips for Youth

Know your rights

- You have the right to participate in after-school, extracurricular and other OST programs with people your age.
- You may be able to get extra help to participate successfully in the program.

Ask questions and share information

- Find out as much as you can about the program including activities, schedules and rules.
- Share information with OST program staff about yourself, your strengths and what helps you succeed.
- Share your ideas about extra help you might need. For example:
 - » Describe any extra help you receive in school that works well for your learning style or behavior.
 - » Speak up if you need help with transportation.
 - » If reading, writing or math are part of the program, tell the OST program staff if you work more slowly or need extra help.



Ask for help

If you don't feel comfortable speaking up alone, take a friend or someone with you.

If you cannot participate fully in the program for any reason, or you have been told that you cannot participate, you or your parent or guardian may:

- Set up a meeting with the staff to discuss how changes can be made to help you.
- Write a letter to staff at the OST program about your concerns.
- Contact one of the community partners (see pages 33-35) for support and help in making a formal complaint (see pages 29-31).

Including All Children: A Guide for OST Programs

All children have a legal right to participate fully in OST programs. Being inclusive is also a beneficial practice for OST programs. Being willing and able to include all children, whatever their disability, helps organizations fully reach their goal of helping young people learn, grow and thrive.

Providers can begin by reviewing the information in this booklet about their obligations under the law. A number of organizations can provide advice and support as program leaders address inclusion issues. (See pages 33-35 for a list of such organizations.)

It is recommended that OST programs take proactive steps to ensure that parents and children understand their rights to take part and feel welcome. The following list of best practices was developed in consultation with OST experts:

- Ensure that inclusion is fundamental to your business practices and identity.
- Print a statement about the program's commitment to inclusion on all registration materials.
- Designate a staff person to serve as inclusion facilitator and provide a written job description and appropriate training.

- Implement a process for explaining to parents why access to confidential information may be needed, using limited release of information forms that are easily understood by parents and guardians.
- Develop a process for getting copies of confidential materials when needed.
- Have a process for staff to make individualized decisions about the accommodations a youth needs to participate safely and effectively. This process should include collaboration with parents, timelines and designated staff members who have the skills and responsibilities for making such individualized decisions.
- Utilize community partners who can provide technical assistance and support.

“Using simple techniques to accommodate individuals with disabilities such as creating and sticking to a schedule, getting additional information from parents and giving clear, concise instructions benefit ALL participants in the out of school time programs.” – Jennene Lausier, Teen & Grant Recreation Coordinator, Howard County Recreation and Parks

- Ensure that staff have skills and knowledge to design accommodations and modifications including adapted materials, training and positive behavior supports, and can estimate the costs.

- For youth who have IEPs or Section 504 Plans, make sure staff understand and use the documents to plan supports.
- Have a process for informing parents and youth in writing about individualized decisions and advising them of their legal protections.
- Have staff evaluate their program based on principles of Universal Design for Learning, a set of principles for developing curriculum and materials in a flexible way so that all young people will have access. These principles can apply to materials, schedules, activities, expectations, rules and environments. (For more information about Universal Design for Learning, go to www.udlcenter.org.)

How Do Programs Make Inclusion Work?

OST programs are required to accommodate young people with disabilities, but they are not required to make “fundamental alterations” to their programs to do so. (See page 22 for an explanation of “fundamental alteration.”)

Programs can respond in many ways to include children with disabilities, such as

- Providing flexible scheduling and grouping.
 - Using adapted materials.
 - Creating positive behavior management tools.
- (See page 21 for a fuller list of accommodations.)

A Summary of Applicable Laws

Several federal laws protect the rights of children with disabilities to participate in OST programs and activities to the same extent as children without disabilities.

These federal laws are:

- Section 504 of the Rehabilitation Act (Section 504)
- Americans with Disabilities Act (ADA)
- Individuals with Disabilities Education Act (IDEA)

Each of these laws works to protect a child's rights in different ways and does not apply equally in all circumstances and to all OST programs.

It is complicated to understand the differences among these laws, and parents may need help to communicate with an OST program and protect their child from discrimination if a problem arises.

Section 504 and the ADA

Section 504 and the ADA require that youth with disabilities have access to OST programs. This may require OST programs to make reasonable accommodations to their physical layout, rules, policies or practices.

An accommodation is not considered reasonable if it would fundamentally alter the nature of the program or cause an undue burden to the program. (See pages 22-23 for further explanation.)

Do Section 504 and the ADA Apply to All OST Programs?

Whether Section 504 or the ADA applies depends on how the OST program is funded and operated.

Section 504 applies to all programs that receive federal funds. This includes public schools, extracurricular programs or religious programs that receive federal funding. See page 25 for more information about Section 504.

The ADA generally applies to all programs that provide services to the public, regardless of whether they receive federal funds. This includes schools, recreational centers and day care providers. There are some exceptions for religious organizations.

Who Is Protected Under Section 504 and the ADA?

Section 504 and ADA prohibit discrimination based on disability. Disability means that a person:

- has a physical or mental impairment that substantially limits one or more major life activities (see page 18); or
- has a record of such an impairment; or
- is regarded as having such an impairment.



What Is a Major Life Activity?

Major life activities may include, but are not limited to:

- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Seeing
- Hearing
- Speaking
- Reading
- Breathing
- Concentrating
- Learning
- Communicating
- Working
- Thinking
- Caring for oneself
- Performing manual tasks

Disabilities That May Be Covered by Section 504 and the ADA

The disability must substantially limit a major life activity of the individual.

- ADHD
- Autism
- Diabetes
- Heart and respiratory conditions
- HIV, AIDS, hepatitis
- Intellectual disabilities
- Mental illness
- Neurological disabilities
- Orthopedic disabilities
- Specific learning disabilities
- Visual, speech and hearing disabilities

What Must OST Programs Do to Comply With Section 504 and the ADA?*

- Provide equal access and equal opportunity for children with disabilities to participate in programs or services.
- Make individual determinations about what a child may need to successfully participate in the program.
- Make reasonable accommodations to enable children with disabilities to participate in all aspects of the program.
- Meet architectural standards for physical accessibility.
- Avoid eligibility criteria that screen out children with disabilities.
- Prohibit retaliation against an individual with disabilities who exercises her/his rights, including the right to file a complaint.

* Exceptions to these duties are listed on pages 21-23.

Examples of Possible Reasonable Accommodations

- Flexible seating, grouping and scheduling
- Adapted materials, such as large print or modified equipment
- Transportation
- Interpreters
- Accessible bathrooms
- 1:1 aides
- Small groups
- Supervised breaks
- Positive behavior supports
- Changes to game or program rules

What Are Programs Not Required to Do Under Section 504 and the ADA?

There are some limits to what Section 504/ADA can require a public or private OST program to do.

OST programs are not required to admit an individual with disabilities who poses an actual health or safety threat.

- The threat must be based on specific objective criteria and not on stereotypes and generalizations.
- The individual must be permitted to participate if the health or safety threat can be minimized by reasonable modifications to policies, practices or procedures.

Fundamental Alteration and Undue Burden

OST programs are not required to admit an individual when the needed accommodation would result in a fundamental alteration to the program or would be an undue burden.

A fundamental alteration is something that changes an essential aspect of the program. OST programs are not required to make fundamental alterations.

However, programs must make minor or moderate alterations to include youth with disabilities.

For example, it may not be a fundamental alteration to change tennis rules to allow a child in a wheelchair to take two bounces before hitting the ball. But it would likely be a fundamental alteration to change the rules of a contact sport like football to accommodate a child in a wheelchair.

An OST program might need to allow a child with behavior challenges to leave a group activity with a staff person for a few minutes if he or she is overwhelmed or needs to take a break, but most likely would not have to provide on-site psychiatric services to the child.

An undue burden is an accommodation that would create significant difficulty or expense to the program.

In order for an OST program to claim that an accommodation would be an undue burden, the program must make an individualized determination, on a case by case basis, and consider:

- the nature and cost of accommodations;
- type of program; and
- overall financial resources of the entity responsible for the program.

For example, adding an elevator might be a undue burden for a small grassroots organization, but not for a company building a new community center.

What Is the Individuals With Disabilities Education Act (IDEA)?

The Individuals with Disabilities Education Act (IDEA) is a federal law requiring that every child with a disability has the opportunity to receive a free appropriate public education (FAPE).

What Is FAPE?

FAPE stands for free appropriate public education, and means that schools must provide:

- Specialized instruction and related services to meet the individual needs of the eligible student in the least restrictive environment. This means the student must be educated with non-disabled peers as much as possible.
- Supplementary aids and services necessary for the student to have an equal opportunity to access the general education curriculum and participate in nonacademic and extracurricular services and activities along with her/his peers.

Who Is Eligible Under the IDEA?

Children ages 3-21 who need special education and related services to benefit from their education are eligible for services under the IDEA.

Infants and toddlers from birth to age 3 may also be entitled to services under the IDEA and will have an Individual Family Service Plan (IFSP).

What Is an IEP?

If a student is eligible for special education services under IDEA, the school is required to create an Individualized Education Program (IEP).

An IEP is a written document that describes the supports, services and modifications a particular student requires in order to make meaningful educational progress.

For OST purposes, an important part of the IEP is the statement of the supplementary aids and services, program modifications or personnel support that a child will need to participate in extracurricular and other nonacademic activities.

What Is a Section 504 Plan?

Not all students with disabilities require special education and related services as provided under IDEA. Some students may be successful in a general education setting but need accommodations to have the same opportunities in school as their non-disabled peers.

A Section 504 plan is a document that describes the specialized instruction, related services or accommodations that a student needs in a general education setting.

How Does an IEP or a Section 504 Plan Affect an OST Provider?

If the student's IEP or Section 504 plan includes participation in extracurricular or non-academic programs, the school system is responsible for providing the supports and services the student will need to participate in the program.

Examples of Nonacademic and Extracurricular Activities Under IDEA and Section 504

School-sponsored:

- Sports
- Trips
- Recreational activities
- Special interest groups or clubs, such as chess or drama

Practice Tip:

As a parent or guardian, if you believe that participation in an extracurricular and non-academic program should be part of your child's IEP or 504 plan, or that additional supports are needed for your child to participate in such a program, you may request an IEP or Section 504 meeting to discuss the issue.

If the IEP or section 504 team does not agree that additional supports for extracurricular activities should be added, you may want to contact legal advocacy organizations to learn more about your rights (see pages 33-35).

Note: Even if the IEP or Section 504 plan does not include participation in an extracurricular and non-academic program, Section 504 and/or the ADA still apply to the OST program, but the school system is not obligated to provide support.

Possible Areas of Conflict

If one of the following problems arises, a number of informal problem-solving methods may be helpful. A formal complaint process is also available.

Common problems include:

- An OST program discourages enrollment because staff lack knowledge of a child's disability.
- An OST program refuses to accept a child without giving any reason.
- An OST program states that they cannot provide a requested accommodation.
- An OST program seeks to remove a child from the program.

If you need help or have questions, you should contact a community partner (see pages 33-35).

Informal Problem Solving

If you think your child is being discriminated against because of her/his disability, you might try these informal problem-solving approaches:

- Ask for a meeting with the OST program to discuss your concerns and ways that they might be addressed.
- Ask the OST program whether they can make any changes or adjustments so your child can benefit from the program to the maximum extent possible.
- Share this booklet with the OST program and discuss whether the OST program is willing to ask for outside assistance from a community partner.
- If you are unable to resolve the issues, ask the OST program to give you a written explanation of its decision and information about the formal complaint process.

If you cannot resolve the disagreement informally you may want to file a formal complaint. You can seek assistance or legal advice by contacting a community partner (see pages 33-35).

Formal Complaints

To file a formal complaint alleging that an OST program discriminated against your child because of a disability, you must first know two things: (1) who provides the funding for the OST program, and (2) whether your child has a Section 504 plan or an IEP at school that calls for participation in an OST program. Ask the OST program if it receives federal funds and if so, from what office.

This is a complicated process and you may need to ask for help from one of the legal advocacy community partners listed in the next section.

If the OST program receives funds from a school district, or if you are alleging a violation of your child's Section 504 plan, you can file a Section 504 complaint with U.S. Department of Education/Office for Civil Rights.

Mail:

Office for Civil Rights Philadelphia Office
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323

Phone: 215-656-8541 | Fax: 215-656-8605

TDD: 877-521-2172

Email: OCR.Philadelphia@ed.gov

Web: www2.ed.gov/about/offices/list/ocr/complaintprocess.html

Online complaint form: www2.ed.gov/about/offices/list/ocr/complaintintro.html

If the OST program only receives federal funds for milk or meals, you can file a Section 504 complaint with the U.S. Department of Agriculture.

Mail:

Office of the Assistant Secretary for Civil Rights
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250, Mail Stop 0115

Phone: 202-720-3808 | Fax: 202-690-1782

TDD: 202-401-0216

Email: ascr@usda.gov

Web: www.ascr.usda.gov/complaint_filing_program.html

If the OST program receives no federal funds, you can file an ADA complaint with the U.S. Department of Justice.

Mail:

U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW
Disability Rights Section - 1425 NYAV
Washington, DC 20530

Phone: 800-514-0301

TDD: 800-514-0383

Email: ADA.complaint@usdoj.gov

Web: www.ada.gov/fact_on_complaint.htm

If you are alleging a special education violation (for example, the school system is not following your child's IEP), you can file an IDEA complaint with the Maryland State Department of Education (MSDE).

Mail:

Assistant State Superintendent
Maryland State Department of Education
Division of Special Education/Early Intervention
Services
200 West Baltimore Street
Baltimore, Maryland 21201

Phone: 410-767-7770

More information about the IDEA complaint process and an online copy of the complaint form can be found on the MSDE website:
www.marylandpublicschools.org/MSDE/divisions/earlyinterv/complaint_investigation/

Glossary

| | |
|-------------|--|
| ADA | Americans with Disabilities Act of 1990 (amended January 2009) |
| ADHD | Attention Deficit Hyperactivity Disorder |
| FAPE | Free Appropriate Public Education |
| IDEA | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program, a document describing a child's special education services based on the IDEA |
| IFSP | Individual Family Service Plan, a document describing the services to be provided to an infant or toddler and her/his family based on the IDEA |
| MSDE | Maryland State Department of Education |
| OST | Out of School Time |
| Section 504 | The anti-discrimination provision of the Rehabilitation Act of 1973 |

Community Partners

The following organizations may be able to provide information or assistance to you:

Local Resources

Abilities Network

Phone: 410-828-7700 or 1-800-492-2523

Web: www.abilitiesnetwork.org

Baltimore City Child Care Resource Center

Phone: 410-685-5150

Web: www.bcccrc.org

Maryland Center for Developmental Disabilities

Phone: 443-923-9555

Web: www.mcdd.kennedykrieger.org

Maryland Coalition of Families

Phone: 410-730-8267

Web: www.mdcoalition.org

Maryland Developmental Disabilities Council

Phone: 410-767-3670

Web: www.md-council.org

Maryland Family Network

Phone: 410-659-7701

Web: www.marylandfamilynetwork.org

Maryland Out of School Time Network (MOST)
Phone: 410-332-0170
“Getting From Yes to How” Hotline: 1-888-219-2440 ext. 1
Web: www.mdoutofschooltime.org

Parents’ Place of Maryland
Phone: 410-768-9100
Web: www.ppmd.org

Resource Finder at Kennedy Krieger Institute
Phone: 1-800-390-3372
TTY: 443-923-2795
Web: www.resourcefinder.kennedykrieger.org

Special Olympics Maryland
Phone: 410-242-1515 or 1-800-541-7544
TTY: 410-242-5162
Web: www.somd.org

Direct Advocacy/ Legal Services Providers

Maryland Coalition for Inclusive Education
*Advocacy services and training for families,
and technical assistance and professional
development for schools*
Phone: 410-859-5400
Web: www.mcie.org

Maryland Disability Law Center
Legal advocacy for Marylanders with disabilities
Phone: 410-727-6352
Web: www.mdclaw.org

Project HEAL (Health, Education, Advocacy and Law) at Kennedy Krieger Institute

Advocacy and legal services for low-income patients of KKI

Phone: 443-923-4416 or 443-923-9571

Web: www.kennedykrieger.org/community-community-programs/project-heal

National Training Resources and Publications

DEC/NAEYC. (2009). *Early childhood inclusion: A joint position statement of the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC)*. Chapel Hill: The University of North Carolina, FPG Child Development Institute.
Web: http://community.fpg.unc.edu/resources/articles/Early_Childhood_Inclusion

Kids Included Together

Web: www.kitonline.org

See Publication: *The Need for Skilled Inclusion in Out of School Time Programs*. Visit website, click on Research & Evaluations tab, select White Papers and search for title above.

National Center on Universal Design for Learning

Web: www.udlcenter.org

National Dissemination Center for Children with Disabilities (NICHCY)

Web: www.nichcy.org

National Inclusion Project

Web: www.inclusionproject.org

Special Needs Inclusion Project (SNIP)

Web: www.snipsf.org

The After-School Corporation (TASC)

Web: www.tascorp.org

See Publication: *Including Students with Special Needs in After School Programs*. Visit website, click on Resources tab, go to Document Library and search for title above.

