



Discrimination by State and Local Government Agencies and the Federal Law

State and local governments provide many important services and programs. These include police and fire protection, recreational programs, social services, and public schools. While eligibility rules and programs may differ from one area to another, one thing is clear. Under federal law, a person with a disability generally cannot be turned away or denied services solely on the basis of his or her disability. Discrimination occurs when you are treated differently than other patrons because of your disability.

Title II of the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act of 1973 may apply. Both federal laws protect “qualified individuals with disabilities” against discrimination by a covered program and in some cases, both laws may apply. Title II covers all programs, services and facilities operated by state and local governments, including public colleges, government agencies and public amenities such as a town park. Section 504 covers only those state and local government programs and agencies that receive federal funding. This can include, for example, a local police department that receives federal money to train officers, a department of motor vehicles if the state department of transportation accepts federal money for its highways, or a state university that accepts federal student loan money. For practical purposes, though, while the laws are separate, the requirements of both laws are the same.

If one or both federal laws apply, then you have the right not to be discriminated against and may also, if necessary, receive a reasonable accommodation to enable you to participate in the program. It is the program’s responsibility to pay for and arrange for the reasonable accommodation. If the program refuses to provide an accommodation or excludes a qualified individual with a disability, or otherwise discriminates, the individual can file a complaint or sue the state or local government as described below. Regardless of whether federal law applies, state law may also offer some protections.

A person with epilepsy may, depending upon the situation, be a “qualified individual with a disability”. To be qualified, you must be able to participate and meet the program’s requirements or eligible to receive services, with or without the use of a reasonable accommodation. For example, a five year old child with epilepsy wants to participate in the town’s recreational swimming program for children age 5 to 12. His doctor has given the go ahead, but says the child must use a safety floatation device. The town pool already has safety flotation devices for children. Since the child is the right age the town must allow him to participate using the floatation device as a reasonable accommodation.



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Technically, you must also have a disability as defined by the statute. Under Section 504 and the ADA, epilepsy may qualify as a disability if it substantially limits a major life activity such as caring for yourself, interacting with others, reproduction, or working. The federal laws also cover individuals who have a record of a disability but who may no longer have it, or who are regarded as having a disability. Please note that, in practice, most agencies will try to accommodate the needs of its service recipients regardless of whether the individual's medical condition meets this legal standard. Thus, for practical purposes, it is generally best to assume your epilepsy qualifies as a disability under the law and that you are entitled to the protections it offers.

A reasonable accommodation is an auxiliary aid, or policy change that enables an individual with a disability to participate in a program or to receive the services. If you need a reasonable accommodation, then the agency must provide it at no cost to you. There is no standard list of reasonable accommodation(s) because each situation must be looked at on a case-by-case basis. What is reasonable in one situation may not be reasonable in another depending on the accommodation sought, the type of program involved, the agency's financial and administrative resources and other circumstances.

Accommodations and policy modifications can include:

- training staff, including police, teachers, and day camp workers, who come into regular contact with the public in seizure recognition and response;
- providing a flotation device for a child with epilepsy who wishes to participate in a town swimming program;
- adjusting the flicker rate on strobe light fire alarms used in town buildings to minimize the likelihood of triggering a seizure;
- modifying a "no-animals" policy at a local library to allow a seizure-alert dog to accompany a patron;
- allowing a state university nursing student, whose seizures are not well controlled, to be accompanied by a partner when attending to patients so that she can meet the academic program's curriculum requirements; or



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- permitting an applicant with epilepsy to take a professional licensing exam, such as an accountant's exam, police academy exam or bar examination, in shorter segments with intervals to rest in between each segment.

Under federal law, public entities are required to work with the individual to identify an appropriate accommodation. While the individual is free to request a particular accommodation, legally, the public agency is not required to provide it. The agency is only required to provide an accommodation that is effective, not necessarily the best one or the preferred one.

You cannot be denied services or turned away from a program just because you have epilepsy. Policies, known as "blanket policies", which automatically exclude people with a particular condition such as epilepsy are, in fact, generally prohibited under federal law. Thus, a town recreation program cannot have a rule that bars any child with epilepsy from swimming at the pool. Nor can a town library automatically bar all animals (including service animals) from entering the facility. Instead, the agency is required to consider each applicant's or recipient's eligibility on a case-by-case basis, and make reasonable accommodations as appropriate.

While blanket policies are generally prohibited, there are some situations in which a public program can legally deny services or exclude a person with epilepsy from the program. The first is the situation in which providing any reasonable accommodation or modifying the policy will fundamentally alter the program or service. For example, if a nursing student with epilepsy sought a waiver from all clinical programs required to receive a nursing degree, and claimed this was the only reasonable accommodation she would accept, the public school would be justified in excluding her from the nursing program since making such a waiver would fundamentally alter the nursing education curriculum. But it is important to keep in mind that even if the accommodation requested would result in a fundamental alteration, there may be other accommodations available that would not, and both sides should try to identify these to enable the individual to participate in the program. In the above example, if the student were willing to team up with a partner when attending to patients, then the school may not be legally allowed to exclude her from the program.

The second situation in which a person with epilepsy, or other disability, can be legally denied admission or services, is if he or she would create a safety risk, or "direct threat" to himself or others in the program and there is no reasonable accommodation available to remove that risk. It is important to keep in



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mind though that a public agency cannot bar a person from participating on the basis that he or she poses a safety risk just because they are aware of his epilepsy diagnosis. Under the law, the agency must consider the safety risks involved in the particular activity, as well as the abilities and limitations of the individual. The individual assessment must be based on reasonable judgment, and rely on current medical evidence to determine: 1) the nature, duration and severity of the risk; 2) the probability that the potential injury will occur; and 3) whether reasonable modification of policies, practices or procedures will reduce or eliminate the risk. Thus, it may be helpful for an individual to provide a letter from his or her treating physician identifying any applicable restrictions on physical activities and if appropriate, stating whether he or she believes it is safe for the individual to participate in the particular program.

What should I do if I have been refused an accommodation because the agency says I do not have a disability, or was not discriminated against?

If you have been denied services or entrance to a public program because of your epilepsy, you have several choices. You can file a complaint or seek mediation through the United States Department of Justice, or file a lawsuit. Filing a complaint or pursuing mediation are often efficient ways of resolving the problem but generally do not result in monetary awards to the grievant. Filing a lawsuit may also be an effective way to resolve the problem. While lawsuits generally take more time and require more money in terms of expenses, you may, depending upon the types of services and program at issue, be eligible to receive a monetary award as well as an order from the court requiring the violator to correct his actions. Also, note that a court may order the program to pay your attorneys' fees, if your lawsuit is successful.

What must be included in a complaint? First, a complaint must be in writing. Second, it should contain the name and address of the individual or the representative filing the complaint. Third, the complaint should describe the public entity's alleged discriminatory action in sufficient detail to inform the Department of Justice of the nature and date of the alleged violation. Fourth, the complaint must be signed by the complainant or by someone authorized to do so on his or her behalf. A complaint must be filed within 180 days of the date of the alleged act(s) of discrimination. Complaints should be mailed to: U.S. Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, NW, Disability Rights Section – NYAV, Washington, DC 20530



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While you are not required to have an attorney to file a complaint, you may wish to consult a local attorney to learn how the law applies in your particular situation and for advice on how to proceed. For information on obtaining a referral to an attorney in your area that may be able to provide specific advice or representation, please visit the website for the Jeanne A. Carpenter Epilepsy Legal Defense Fund, at www.epilepsylegal.org, or call our Epilepsy and Seizures 24/7 Helpline toll free at 1-800-EFA-1000 (1-800-332-1000).

Where can I get more information on the ADA?

For additional information on Title II of the ADA, contact the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at the above address, or by phone at (800) 514-0301 (Voice), (800) 514-0383 (TDD), or see <http://www.justice.gov/crt/about/drs/>. You may also find helpful information by going to <https://www.disability.gov/> and clicking on “Community Life.”

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