



Discrimination by Public Accommodations and Federal Law

In general, people with epilepsy can safely participate in all types of activities, from shopping to eating out to recreational sports to visiting museums. Though physically able, there are occasions when people with epilepsy are told by places of public accommodation, such as food stores, restaurants, sporting arenas, hotels, educational testing services and even day care centers, that they cannot enter the store or participate in the program because of their epilepsy. Depending upon the situation, these public accommodations may be violating federal, and possibly even state, law.

Title III 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 public accommodation, as well as family members and others who are discriminated against because of their association with a person with a known disability. For practical purposes, while the laws are separate, the requirements of both laws are the same. In some cases, both laws may apply.

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 in the program, with or without the use of a reasonable accommodation. Thus, if a person with epilepsy wants to join a swim club and medically is allowed to swim as long as he uses a flotation device, a pool club cannot turn him away because of his epilepsy.

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. Individuals who have a record of a disability but who may no longer have it, or who are regarded as having a disability, are also covered by the federal laws. Please note that, in practice, most public accommodations 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.

Public accommodations are, generally speaking, places that provide public services. Title III of the ADA covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial



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facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by Title III.

Religious entities, such as churches and programs run by the entity are generally exempt though, as are private memberships clubs like the Lion's Club and country clubs. Section 504 covers only those public accommodations that receive some federal funding. This can include, for example, a private daycare center or club that accepts federal subsidies to run a program, such as a basketball league or meal program.

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. This means the public accommodation must offer the same services, in the same setting, and at the same costs to a person with a disability as it would to a person without a disability.

Discrimination occurs when you are treated differently than other patrons because of your disability. For example, a restaurant manager cannot ask an individual with a history of seizures to leave or sit in another area because he is concerned about other customers' reactions to a potential seizure. Nor can a fitness club require a member with epilepsy to be accompanied by a companion at all times when there is no safety risk, just because the owner is concerned about liability. Federal law also requires public accommodations to provide a reasonable accommodation or make reasonable modifications in its policies if necessary to enable a person with a disability to participate.

Places of public accommodation are required by law to make reasonable changes in their policies, eligibility rules or facilities, or provide reasonable accommodations that make it possible for a person with a disability to access the public accommodation. For example, a store or movie theater may have to make an exception to its no-animals policy if a patron using a service animal wishes to use the facilities. In other contexts, the accommodation may be to provide training to daycare center staff in the proper recognition and treatment of seizures, or allowing a companion trained in seizure recognition and response to accompany an individual on a group trip.



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These accommodations must be provided at no charge to the person with the disability, but the individual may be required to provide documentation from a doctor indicating the medical condition and need for a reasonable accommodation.

The law requires public accommodations to make reasonable modifications in policies, practices, and procedures to ensure access, as long as the modification would not result in a fundamental alteration in the goods or services. For example, if a club required a driver's license for identification purposes, and a person with epilepsy who doesn't have a license sought admission, the club would have to modify its policy to allow other forms of identification, such as a state-issued identification card, since the policy would otherwise exclude all persons who do not have a license due to a disability and modifying the policy would not alter the type of services provided.

Standards or criteria that screen out persons with disabilities are also not permitted. For instance, requiring that all participants who join a local swim team be free from any medications would screen out many people with disabilities and would be considered illegal.

It depends on your personal medical history and the activity involved. Federal law allows public accommodations to impose legitimate safety requirements if it has been established that the individual's participation would result in a "direct threat" or significant risk to the health or safety of the individual or others, and that the risk cannot be eliminated or lessened by reasonable accommodation. For example, an individual with epilepsy with active seizures might pose a risk while horseback riding on steep trails. However, if the individual experiences 'auras' (warnings) prior to his seizures, and is able to stop the activity prior to a seizure, he may not actually pose a direct threat. Alternatively, the participant might want to ride with another rider, depending on the individual assessment of this particular person's seizure history, etc.

Whether an individual with a disability would be considered a direct threat must be based on *actual* risks and not on assumptions, stereotypes, or generalizations about individuals with disabilities. The ADA highlights the importance of making individual evaluations when safety issues are a concern. The individual assessment might include the involvement of the individual's treating physician, who is most familiar with the person's medical history and current condition. In addition, the particular activity and the specific abilities of the individual with epilepsy should be taken into consideration. The individual assessment must be based



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on reasonable judgment, relying on current medical evidence to determine: 1) the nature, duration and severity of the risk; 2) the chance that the potential injury will occur; and 3) whether reasonable modification of policies, practices or procedures will reduce or eliminate the risk.

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. It is not necessary to file a complaint with the Department of Justice (or any Federal agency), or to receive a "right-to-sue" letter, before going to court. In addition, the Department of Justice is authorized to bring its own lawsuits in cases of special importance. An individual filing a complaint with the Department of Justice should submit it writing, and include a description of the alleged discrimination, the complainant's or authorized representative's signature, and their address. Complaints should be mailed to: U.S. Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, NW, Disability Rights Section – NYAVE, Washington, DC 20530. For more information on the process of filing a complaint, go to <http://www.ada.gov/t3compfm.htm>.

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). For general legal information about this and other discrimination issues, please visit our website or call our Epilepsy and Seizures 24/7 Helpline. For additional information on Title III, contact the Disability Rights Section at the 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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