

# ADVOCACY-DISCLOSURE

The Land Mines of Disclosure in Daycare

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## *A Parent's Story*

### **How a Family Fought and Won, with the Help of the ADA**

By Christine K.

I live in a New England state that does not require hepatitis B vaccines for entry into daycare or public school. When it came time to enroll my daughter, who has hepatitis B, in daycare, I never realized what calamity would unfold.

I chose the most racially diverse daycare center I could find in my predominantly white community – the YMCA. Great, I thought, an organization that historically has advocated on behalf of all races would surely be a great place for my Asian-American daughter who was then 20 months old.

I told them upfront about her hepatitis B virus (HBV) infection and the staff expressed concerns. Undaunted, I provided them with literature and had them contact our pediatrician, who spent nearly a half hour assuring the director that my daughter posed no health risk to other children.

My daughter started daycare and all appeared to go well for the first couple months. Then I suggested the staff encourage my daughter, who was in the throes of potty training at home, to begin using the toilet at the center. They asked if I could bring in a child's toilet, just for my daughter. I did as they asked, but I was not happy.

Then one day I walked in and the teacher announced that my daughter had bitten another girl. No one had seen it happen and there were no teeth marks on the other child.

The daycare program was experienced with biters. Many kids go through biting phases and in the past the YMCA had actually relocated “biters” into a separate child care room with fewer kids until they appeared to have worked through their “biting” stage.

The staff was clearly upset about my daughter's sudden biting capabilities and told me if it happened again, she would be expelled. It floored me. My daughter had never bitten anyone in her life and had a kind and sweet reputation. Inevitably, a week later the

daycare staff called to announce my daughter had bitten a second child and would be dismissed from the program.

Again, no one had seen the incident. No one knew what had caused it, but there were “teeth” marks on the other child. When I talked to the director about the injustice of the dismissal, she told me they were afraid they would lose clients if it was discovered that one of the children in the program was infected with HBV.

I was outraged, angry, hurt and could not believe my child could be so discriminated against while other “biters” in the YMCA program were carefully accommodated in a separate room.

I contacted my state’s advocacy service for help. It was the best phone call I could have made. They acquainted me with the protections available under the Americans with Disabilities Act (ADA).

Under ADA, daycare centers are barred from refusing to take children or expelling them unless they pose a “direct threat” to the health and safety of others that “cannot be eliminated by a modification of policies, practices, procedures or by the provision of auxiliary aids or services.”

“True equality and justice are often unpopular,” I wrote to the YMCA’s director. “It is challenging to educate people about disabilities, especially when their children are on the frontline of this new foray into equal access and treatment for all. It takes moral leadership, creativity and a steadfast commitment to ensuring that every child’s needs are met. We assumed the YMCA would have that integrity and dedication. We were wrong. Your decision to expel our daughter, instead of crafting an approach to ensure her continuation in the daycare program, shows your lack of commitment to equality and compliance with state and federal laws. You took an easy out, which is illegal and morally wrong.”

I requested a meeting “to discuss reinstatement and to hear what policies and practices the YMCA would implement to prevent future discrimination against children with infectious disease.”

Now, in all honesty, over my dead body would my daughter ever return to the program, but I wanted to do all I could to make sure no parent would ever experience the shame and humiliation that my family had endured.

Before the meeting, I talked at length with a staff person at the state advocacy service

and we came up with a strategy that I proposed to the YMCA:

The YMCA would institute a policy that required everyone who entered the daycare program to be immunized against hepatitis B, as is currently recommended by CDC and the American Academy of Pediatrics. If parents refuse to have their child vaccinated, they could sign release forms that absolved the YMCA of any liability.

The daycare center ultimately revised their immunization policies to require children to have all state-mandated vaccines and strongly recommended the hepatitis B vaccine. It also held meetings for parents about the importance of hepatitis B vaccines and it beefed up its standard (universal) precautions training for its staff.

It also established biting guidelines that applied to all children regardless of their infectious disease status.

Meanwhile, I found a great new daycare for my daughter and before she stepped foot in the facility, I talked at length with the director to find out how well they complied with ADA and how thoroughly they practiced standard precautions. I told them about my daughter's infection and they responded well both personally and professionally.

The incident left me feeling bitter, hurt and angry, but ultimately empowered with new insights and appreciation for the protections offered by ADA. The experience has made me a ready and knowledgeable advocate for my daughter.

