Child Care and the Americans with Disabilities Act

ADA

Opportunities and Resources for Child Care Providers and Families

2001

Prepared for the Washington State Department of Health Children with Special Health Care Needs Program by the Center for Children with Special Needs, a program of Children's Hospital and Regional Medical Center
Seattle, Washington

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This booklet answers some basic questions about the ADA and gives resources. The booklet does not offer specific legal advice nor discuss state regulations related to child care. For specific legal questions related to the ADA and child care, contact the United States Department of Justice ADA Information Line 800-514-0301, 800-514-0383 (TDD). For information about state regulations, contact your child care licensor.

ADA—it's about opportunity…

We're all unique…

Child care professionals know every child is unique. Meeting the needs of individual children is something child care providers understand. The Americans with Disabilities Act (ADA) is a federal law, enacted in 1990, that provides child care professionals with an exciting opportunity to serve children with special needs or disabilities. The law guarantees that children with disabilities can not be excluded from "public accommodations" simply because of a disability. "Public accommodations" refers to private businesses and includes preschools, child care centers, school age child care programs, out-of-school time programs and family child care homes.

Opportunity for inclusion…

The ADA gives the opportunity for child care providers to include children with disabilities in care. Providers, children and parents all benefit when children can learn and play together. Including both children with and without disabilities in child care reflects our larger community where people with and without disabilities live, work, and play together. Inclusion contributes to acceptance, improved socialization, and understanding of individual differences. In addition to the above benefits, child care providers can benefit from inclusion by acquiring access to a helpful network of professionals, improving their knowledge about child development, taking advantage of potential tax credits or deductions and by covering a larger share of the child care market by meeting a variety of needs.

We all have different abilities…

Some people don't like the word disability because it may give a negative impression of a person's abilities. The ADA uses the term disability to help prevent discrimination based upon a person's differing abilities. In ADA language, disability means a "physical or mental impairment" that substantially limits one or more of the major life activities of an individual. Major life activities means functions such as breathing, hearing, seeing, speaking, walking, using arms and hands, learning, and working. (*Play* is the work of children!)

Physical impairment means conditions such as blindness, deafness, seizures, heart disease, cerebral palsy, asthma, and diabetes.
Mental impairment means conditions such as behavior disorders, emotional or mental illness, learning disabilities, and mental retardation.

These are just some examples of different disabilities that children may have, but there are many more.

Usual good policy and practice…

Most child and youth care providers probably already meet requirements of the ADA just by continuing with good policy and practice. An important ingredient of good policy and practice is ***individual consideration.*** Most likely, you already talk with parents about any unique needs their child has. Continuing with your practice of providing caring, creative customer service to parents, children and youth is the first step toward compliance with the ADA.

Basic requirements of the ADA…

- Child care homes and centers must make ***reasonable modifications*** to their policies and practices to integrate children with disabilities into their program unless doing so would constitute a fundamental alteration of the program.
- Centers must provide appropriate ***auxiliary aids and services*** needed for effective communication with children with disabilities, when doing so would not constitute an ***undue burden***.
- Centers cannot exclude children with disabilities from their programs unless their presence would pose a ***direct threat*** to the health or safety of others or require a fundamental alteration of the program

Reasonable modifications means changes that can be carried out without much difficulty or expense. This is individual to each program depending upon nature of the modification, cost and resources of the program. Examples include a change in policy or procedures, removing physical barriers, staff training, providing adaptive equipment.
Auxiliary aids and services include a range of devices or services that help people communicate. Examples are using sign language, interpreters, large print books, or other communication equipment. Hearing aids are excluded.
Undue burden means changes that would result in significant difficulty or expense to the program.
Direct threat means the child's condition poses a significant threat to the health or safety of other children or staff. Providers must evaluate children on an individual basis and cannot determine risk based upon their own personal assumptions.

"Child Care Plus+", a program of the Rural Institute on Disabilities at the University of Montana in Missoula suggests the following **effective practices and policies** for ADA compliance (Child Care Plus+ Newsletter, Vol. 3, No. 4, Summer, 1993, reprinted with permission). These apply to **children and youth of all ages**:

- Continuing to use developmentally appropriate practices—which emphasize individual growth patterns, strengths, interests, and experiences of children—to design appropriate learning environments.
- Adopting an attitude of "how *can* I meet this child's needs…" and adapting creatively.
- Making simple changes in the typical activities/routines in your program to meet the child's needs (using tactile play materials for a child with vision impairment).
- Eliminating program eligibility standards which have the effect of screening out children with disabilities, such as being toilet trained (some children may never qualify).
- Including a question in your enrollment procedure that asks parents if there is anything you (or your staff) need to know that would help you care for their child (she goes to sleep with a pacifier or he wears hearing aids).
- Working closely with parents and professionals to integrate the child's developmental and therapy goals into your daily routines and activities (using sign language to expand your communication with the children at snack or circle time).
- Identifying and removing barriers to the child's participation (widening pathways between activity areas for walkers and wheelchairs or repositioning materials at the child's level for visual or motor activities). Costly structural changes are not required if affordable alternatives are available (providing pitchers and cups rather than lowering or raising a water fountain).
- Using community resources to make accommodations to your program and/or provide needed services or equipment. (Materials may be donated and/or built; recruiting volunteers may enhance child/staff ratios).
- Spreading added costs (if any) of insurance, etc, among all of the families, just as you do other expenses. (Under certain circumstances, a federal tax credit or deduction is available for expenses associated with accommodating special needs.)

Some Commonly Asked Questions About Child Care and the ADA

Adapted from the U.S. Department of Justice, Civil Rights Division, Disability Rights Section (for a complete list of questions contact the ADA Information Line)

Q: Does the ADA apply to child care (homes and) centers?

A: Yes. Privately-run child and youth care (homes and) centers -- like other public accommodations such as private schools, recreation centers, restaurants, hotels, movie theaters, and banks -- must comply with title III of the ADA. Child care services provided by government agencies, such as Head Start, summer programs, and extended school day programs, must comply with title II of the ADA. Both titles apply to a child care center's interactions with the children, parents, guardians, and potential customers that it serves.

Q: How do I decide whether a child with a disability belongs in my program?

A: Child care centers **cannot just assume** that a child's disabilities are too severe for the child to be integrated successfully into the center's child care program. The center must make an **individualized assessment** about whether it can meet the particular needs of the child **without fundamentally altering its program**. Caregivers should talk to parents or guardians and any other professionals (such as educators or health care professionals) who work with the child in other contexts. Providers are often surprised at how simple it is to include children with disabilities in their mainstream programs. Child care centers are **not required to accept children who would pose a direct threat** or whose presence or necessary care would fundamentally alter the nature of the child care program.

Q: My insurance company says it will raise our rates if we accept children with disabilities. Do I still have to admit them into my program?

A: Yes. Higher insurance rates are **not a valid reason** for excluding children with disabilities from a child care program. The **extra cost should be treated as overhead** and divided equally among all paying customers.

Q: Our center specializes in "group child care." Can we reject a child just because she needs individualized attention?

A: No. Most children will need individualized attention occasionally. If a child who needs one-to-one attention due to a disability can be integrated without fundamentally altering a child care program, the child cannot be excluded solely because the child needs one-to-one care. For instance, if a child with Down Syndrome and significant mental retardation applies for admission and needs one-to-one care to benefit from a child care program, and a personal assistant will be provided at no cost to the child care center (usually by the parents or though a government program), the child cannot be excluded from the program solely because of the need for one-to-one care. As in other cases, an individualized assessment is required. The **ADA generally does not require centers to hire additional staff or provide constant one-to-one supervision** of a particular child with a disability.

Q: What about children whose presence is dangerous to others? Do we have to take them, too?

A: No. Children who pose a **direct threat** -- a substantial risk of serious harm to the health and safety of others -- do not have to be admitted into a program. The determination that a child poses a direct threat **may not be based on generalizations or stereotypes about the effects of a particular disability**; it **must be based on an individualized assessment** that considers the particular activity and the actual abilities and disabilities of the individual. In order to find out whether a child has a medical condition that poses a significant health threat to others, child care **providers may ask all applicants whether a child has any diseases that are communicable** through the types of incidental contact expected to occur in child care settings. Providers may also inquire about specific conditions, such as active infectious tuberculosis, that in fact poses a direct threat.

Q: One of the children in my center hits and bites other children. His parents are now saying that I can't expel him because his bad behavior is due to a disability. What can I do?

A: The first thing the provider should do is try to work with the parents to see if there are reasonable ways of curbing the child's bad behavior. He may need extra naps or changes in his diet or medication. If **reasonable efforts** have been made and the child continues to bite and hit children or staff, he may be expelled from the program even if he has a disability.

Q: Can I charge the parents for special services provided to a child with a disability, provided that the charges are reasonable?

A: It depends. If the service is required by the ADA, you cannot impose a surcharge for it. It is only if you go **beyond what is required by law** that you can charge for those services. For instance, if a child requires complicated medical procedures that can only be done by licensed medical personnel, and the center does not normally have such personnel on staff, the center would not be required to provide the medical services under the ADA. **If the center chooses to go beyond its legal obligation and provide the services, it may charge the parents** or guardians accordingly. On the other hand, if a center is asked to do simple procedures that are required by the ADA -- such as finger-prick blood glucose tests for children with diabetes -- it cannot charge the parents extra for those services. To help offset the costs of actions or services that are required by the ADA, including but not limited to architectural barrier removal, providing sign language interpreters, or purchasing adaptive equipment, some **tax credits and deductions may be available**.

Q: We do not normally diaper children of any age who are not toilet trained. Do we still have to help older children who need diapering or toileting assistance due to a disability?

A: It depends. To determine when it is a **reasonable modification** to provide diapering for an older child who needs diapering because of a disability and a center does not normally provide diapering, the center should consider factors including, but not limited to, (1) whether other non-disabled children are young enough to need intermittent toileting assistance when, for

instance, they have accidents; (2) whether providing toileting assistance or diapering on a regular basis would require a child care provider to leave other children unattended; and (3) whether the center would have to purchase diapering tables or other equipment. If the program never provides toileting assistance to any child, however, then such a personal service would not be required for a child with a disability. Please keep in mind that even in these circumstances, the child could not be excluded from the program because he or she was not toilet trained if the center can make other arrangements, such as having a parent or personal assistant come and do the diapering.

Q: Must we admit children with mental retardation and include them in all center activities?

A: Centers cannot generally exclude a child just because he or she has mental retardation. The center must **take reasonable steps to integrate** that child into every activity provided to others.

Q: What about children with diabetes? Do we have to admit them to our program? If we do, do we have to test their blood sugar levels?

A: Generally, yes. Children with diabetes can usually be integrated into a child care program without fundamentally altering it, so they **should not be excluded from the program on the basis of their diabetes**. Providers should obtain written authorization from the child's parents or guardians and physician and follow their directions for simple diabetes-related care. In most instances, they will authorize the provider to monitor the child's blood sugar -- or "blood glucose" -- levels before lunch and whenever the child appears to be having certain easy-to-recognize symptoms of a low blood sugar incident. While the process may seem uncomfortable or even frightening to those unfamiliar with it, monitoring a child's blood sugar is easy to do with minimal training and takes only a minute or two. Once the caregiver has the blood sugar level, he or she must take whatever simple actions have been recommended by the child's parents or guardians and doctor, such as giving the child some fruit juice if the child's blood sugar level is low. The child's parents or guardians are responsible for providing all appropriate testing equipment, training, and special food necessary for the child.

Q: Do we have to help children take off and put on their leg braces and provide similar types of assistance to children with mobility impairments?

A: Generally, yes. Some children with mobility impairments may need assistance in taking off and putting on leg or foot braces during the child care day. As long as doing so would not be so time consuming that other children would have to be left unattended, or so complicated that it can only done by licensed health care professionals, it would be a reasonable modification to provide such assistance.

Q: How do I make my child care center's building, playground, and parking lot accessible to people with disabilities?

A: Even if you do not have any disabled people in your program now, you have an ongoing obligation to remove barriers to access for people with disabilities. Existing privately-run child care centers must remove those architectural barriers that limit the participation of children with disabilities (or parents, guardians, or prospective customers with disabilities) if removing the barriers is readily achievable, that is, if the barrier removal can be easily accomplished and can be carried out without much difficulty or expense. Installing offset hinges to widen a door opening, installing grab bars in toilet stalls, or rearranging tables, chairs, and other furniture are all examples of barrier removal that might be undertaken to allow a child in a wheelchair to participate in a child care program. Centers run by government agencies must insure that their programs are accessible unless making changes imposes an undue burden; these changes will sometimes include changes to the facilities.

Q: Are there tax credits or deductions available to help offset the costs associated with complying with the ADA?

A: To assist businesses in complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses. The tax credit is available to businesses that have total revenues of $1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of the eligible access expenditures in a year up to $10,250 (maximum credit of $5,000). The tax credit can be used to offset the cost of complying with the ADA, including, but not limited to, undertaking barrier removal and alterations to improve accessibility; provide sign language interpreters; and for purchasing certain adaptive equipment. The tax deduction is available to all businesses with a maximum deduction of $15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations. To order documents about the tax credit and tax deduction provisions, contact the Department of Justice's ADA Information Line (see National Resources).

Help—there's a lot of it out there…

Local Resources

Children with Special Health Care Needs (CSHCN) Coordinators are in each county public health department. Call your public health department, ask for the **CSHCN Coordinator** or **Child Care Health Consultant**. They can help with information about including children with special needs in child care. See the blue Government pages of your phone book under public health or health.

Local **child care resource and referral programs** may provide information on training and resources. For the number of your local child care resource and referral call 800-446-1114. www.childcarenet.org, choose "Referral"

Some children may qualify for a **"special needs" subsidy** to help pay for child care. The Department of Social and Health Services offers this and other services through Community Service Offices. 800-865-7801

Northwest Disability Business Technical Assistance Center

Information on ADA compliance, disability rights, technical assistance related to ADA.
800-949-4232

Washington Association for the Education of Young Children

Training and education for child care providers, professional guidance.
841 North Central Avenue, #206, Kent, Washington 98032
800-727-3107, 253-854-2565, www.waeyc.org

Schools Out Consortium

Information and resources on out-of-school time activities and school age child care.
888-419-9300, 206-323-2396, www.schoolsoutconsortium.org

National resources, great books and web pages…

U.S. Department of Justice

Tax break information and on-line booklets such as "Commonly Asked Questions about Child Care Centers and the ADA"
P.O. Box 66738
Washington, D.C.
www.usdoj.gov/crt/ada/adahom1.htm
800-514-0301
TDD 800-514-0383

Child Care Law Center

Provides low cost "how-to" booklets about the ADA and child care for providers and parents. See booklet descriptions in this list.
973 Market Street, Suite 550
San Francisco, CA
415-495-5498

The Arc of the United States

National Headquarters Office
1010 Wayne Avenue, Suite 650
Silver Spring, MD 20910
301-565-3842
www.thearc.org

All Kids Count: Child Care and the Americans with Disabilities Act

Libby Doggett and Jill George $18 1993
A 89 page booklet covering history, disability definition, requirements, compliance, action plans for successful inclusion, and resources
The ARC
3300-C Pleasant Valley Lane
Arlington, TX 76015
http://www.thearcpub.com

Caring for Children with special needs: The Americans with Disabilities Act

Doreen B. Greenstein, Edited by Laura Miller free
3 page fact sheet in Q&A format covering "reasonable accomodations", finances, and resources.
National Network for Child Care
Special Products, 119 Printing and Publications Building
Ames, IA 50011
515-294-5247 http://www.nncc.org

Child Care and the ADA: A Handbook for Inclusive Programs

Victoria Youcha Rad and Karren Ikeda Wood $25.95 1995
A 240 page book for educators and administrators in child care settings, identifies legal issues, suggests cost-effective solutions, presents hands-on materials for making ADA compliance easier, case scenarios, sample action plans, step by step instructions for evaluating a child care center in terms of accessibility.
Paul H. Brookes Publishing Co.
POB 10624
Baltimore, MD 21285
800-638-3775 http://www.brookespublishing.com

Child Care and the ADA: Highlights for Parents of Children with Disabilities

$5 1998

A 16 page booklet in question and answer format, explains what the ADA is, benefits, impact on parents and child care providers, what ADA requires of providers, what providers must make available, legality of extra charges, compliance questions, and:

Child Care and the ADA: Highlilghts for Parents

$5 1994

A 19 page booklet in question and answer format, explains what the ADA is, benefits, impact on parents and child care providers, what ADA requires of providers, what providers must make available, legality of extra charges, compliance questions, resource list, and:

Caring for Children with Special Needs: The Americans with Disabilities Act and Child Care

$12 1995

A 44 page booklet for providers covering all aspects of ADA implications, requirements, compliance for child care providers, includes resources.

Child Care Law Center
973 Market St, Suite 550
San Francisco, CA 94103
415-495-5498 http://www.childcarelaw.org

Child Care and the Americans with Disabilities Act

Karen L. Michaelson and Beth Ann Carr $85

8 videos and manuals, provide general information to promote voluntary compliance with ADA

Eastern Washington University, Child and Family Outreach Programs
407 W. Riverside, Suite 421
Spokane, WA 99201
509-623-4246

Child Care Settings and the Americans with Disabilities Act

free April, 1994

A 5 page web report explaining ADA implications for child care.

The ARC
http://thearc.org

Including Preschool-Age Children with Disabilities in Community Settings: A Resource Packet

S. deFosset $15 1999

Information on provisions of the ADA related to child care services for children with disabilities and basis in law for inclusion.

National Early Childhood Technical Assistance System
137 E. Franklin St., Suite 500
Chapel Hill, NC 27514 919-962-2001 http://www.nectas.unc.edu/

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Washington State Department of Health

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