



CHILD
CARE
LAW
CENTER

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Questions & Answers about the Americans with Disabilities Act: A Quick Reference (Information for Child Care Providers)

1. What is the ADA?

The Americans with Disabilities Act (ADA) is a federal civil rights law which was passed in 1990. Among other things, the ADA prohibits discrimination by child care centers and family child care providers against those individuals with disabilities. States may provide greater protection for people with disabilities than what is guaranteed by the ADA.¹ In California, the Unruh Civil Rights Act prohibits all business establishments, including child care providers, from discriminating on the basis of disability.² The Unruh Civil Rights Act goes much further than the ADA in its protections for children with disabilities.

2. Who is protected by the ADA?

Four groups receive protection under the ADA. They are:

- People with a physical or mental impairment which substantially limits one or more major life activities (when determining whether one has a substantial limitation, one takes into account any

corrective measures they use, such as medication);

- People with a **history** of a physical or mental impairment which substantially limits one or more major life activities;
- People who are **regarded as** having a physical or mental impairment which substantially limits one or more major life activities; and
- People who are associated with people who have a physical or mental impairment which substantially limits one or more major life activities.

3. What does the ADA require of providers?

The ADA requires that providers not discriminate against persons simply because they have disabilities. Instead, they are to make a case-by-case assessment of what the person with the disability requires to be fully integrated into the program. Once they know what is needed, they must assess whether reasonable accommodations can be made to allow this to happen.

¹ 28 Code of Federal Regulations § 12201(b).

² California Civil Code § 51 (West 2000).

4. Who determines if the accommodation is reasonable?

The ADA sets out three primary types of accommodations (changes in policies, practices, or procedures, removal of barriers in existing programs, and provision of auxiliary aids and services—special equipment and services to ensure effective communication). Making these accommodations is required unless:

- In the case of changes in policies, practices or procedures, the accommodation would fundamentally alter the nature of the program;
- In the case of auxiliary aids and services, the accommodation would fundamentally alter the nature of the program or pose an undue burden (significant difficulty or expense)
- In the case of the removal of barriers in an existing program, the accommodations are not readily achievable (cannot be done without much difficulty or expense).³

What is “reasonable” will vary, depending on the accommodations requested and the resources available to the program. Generally speaking, less will be required of a family child care home which typically has fewer resources and staff than a center, but individualized assessments of the child’s needs and the program’s ability to accommodate always need to occur to determine what is reasonable.

The most important thing is to undertake a process of dialogue with the parents to determine what accommodations are necessary and whether they are reasonable to the program. It should be the goal of both the parents and the provider to reach an informal resolution whenever possible.

³ If you are making major renovations or are constructing a brand new facility, the facility must be readily accessible to a child with a disability, almost without exception.

Ultimately, if the parent and the provider cannot agree, it is a court that determines if the accommodation requested is reasonable.

5. Are there situations in which care can be refused?

These situations will be very limited. They include situations in which a child poses a direct threat—a substantial risk of harm to others (which must be documented by objective professional evidence) or where the accommodations needed would not be reasonable for the program to provide (see question above for the standards used to determine if an accommodation is reasonable).

6. Can I be sued by other parents for taking a child with disabilities?

Not successfully. In fact, the law is to the contrary. Anyone who would interfere with a program’s rightful compliance with the law (for example, enrolling a child with disabilities) can be sued for violating the ADA. A high quality program will provide opportunities for parent education which in turn should include discussions of the benefits to all children of inclusive child care.

7. What do I do when another parent makes inquiries about a child with disabilities?

Information about a child’s disability is confidential and should not be shared with others unless you have consent from the parents of the child with the disability. If you have a respectful relationship with the parents, you may be able to have a conversation with them about how they would like to see you handle inquiries about their child’s disability from the parents and the children. Some parents will prefer that information about their child’s disability continue to be kept confidential while others may welcome the opportunity to share with other families the nature of their

child's disability. When a family is open about a child's disability, not only does the child benefit, but there are also many benefits and advantages for the staff and children in the center.

Once again, one of the best ways to respond to families is outside of the context of a particular child and in the general context of information about what quality care is all about. High quality programs will provide opportunities for parent education, which in turn should include discussions of the benefits to all children of inclusive child care.

8. Is there a certain number of children I may care for if I care for a child with special needs?

There is no particular number of children you may care for when you care for a child with special needs, as each child with special needs is different, and there are no special ratios. The provider must evaluate his/her own program keeping in mind the special needs of each child before making the determination of how many children with special needs their program can accommodate.

9. Can I charge more for a child with special needs because they require more individualized attention? If I can't how will I survive financially?

When an accommodation is above and beyond a reasonable accommodation, an additional fee may be imposed but a legal consultation should be made with someone knowledgeable with the ADA laws. Programs may not charge the parents of children with disabilities more for providing reasonable accommodations. Programs are free to raise their fees to all families, use tax credits or deductions available from the IRS, or seek resources from outside their programs. Programs may charge parents for the cost of providing additional, non-child care

services, such as physical therapy, occupational therapy and the like. Keep in mind that in many instances, the reasonable accommodations which are necessary are not very costly and/or in the case of improving ratios, could benefit all the children in care.

10. I understand that programs may not discriminate, but in addition I want to be clear that my program welcomes children with disabilities. How do I say that in my brochure?

Your materials may include language that states that your "program is fully accessible" or that your teachers "have experience in caring for children with disabilities."

11. When I care for a child with special needs who receives a subsidy, may I receive any additional money?

Yes, there are special needs rates and additional funding that may be obtained when caring for children with exceptional needs and severely handicapped children. However, the additional money cannot be charged to the parents, but must be billed to the funding entity. Also, the definitions of "children and with special needs" are interpreted differently from county to county. You should check with your local alternative payment program to determine the practice in your county.

12. How can I care for children with disabilities if I am not trained? If I work on my own?

Many of the accommodations children need are not complicated and can be easily learned. In other instances, where training is helpful or necessary, it may be available from the parent, from early intervention or special education specialists, from health professionals, from disability organizations, resource and referral agencies or community colleges. The important thing

is to identify community resources that can assist with inclusion.

13. May I automatically decline to serve a child with disabilities and simply refer them on to another provider who I think is better able to serve them?

No. A parent may prefer your care and if it is possible for you to make the reasonable accommodations necessary to serve that child he or she may not be turned away and referred to another program. If a program can document that it undertook an individualized assessment of the situation and found that accommodating the child would not be reasonable the program may then offer suggestions for other potential care.

14. Shouldn't providers get to choose who they enroll since it is their business?

By deciding to become professional caregivers, providers become responsible for complying with many types of laws—tax laws, licensing laws—as well as civil rights laws, which in the case of ADA, protects people with disabilities from discrimination. It is worth remembering that any of us could become a person with

disabilities at any time, and we too may benefit from the ADA's protections.

15. If a parent of a child with a disability has conflicts with the provider or the parent fails to comply with rules applied to all families can the family be terminated from the program?

Yes, if it can be documented that the reasons for termination have to do with failure to comply with rules or standards that are: uniformly applied to all families, not relevant to any potential required accommodations, and are not used as pretexts for discrimination. So for example, a recent case found that a mother's belligerence and total lack of cooperation, coupled with her failure to comply with rules imposed on everyone which had nothing to do with her child's disability, would cause her ADA claim to fail.

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of 10/30/01, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

Useful Resources

- **Call the Child Care Law Center at (415) 394-7144** if you would like information about child care issues. We are a national and California child care support center for legal services programs. We also provide counsel and advice over the telephone. The following are some of our legal services:
 - Answer legal questions regarding child care legal issues during our telephone intake hours: Monday, Tuesday and Thursday from 12p.m. to 3p.m.
 - Publish many useful publications. Visit our website at www.childcarelaw.org.
 - Conduct trainings for parents, teachers, community agencies, and others regarding legal issues affecting child care.
 - Occasionally we provide legal representation in impact cases.
- ◆ **Contact your local family resource center.** Internet search keywords: family resource center [insert type of disability].
- ◆ **Department of Justice Hotline** (between 11 a.m. and 5 p.m. EST weekdays) at (800) 514-0301 or (800) 514-0383 (TDD). DOJ Disability website: <http://www.usdoj.gov/disabilities.htm>. "Commonly Asked Questions About Child Care and the ADA" at: <http://www.usdoj.gov/crt/ada/childq%26a.htm>.