



## EARLY CARE & EDUCATION LAW UNIT

Publication Date: September 2013

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### THE AMERICANS WITH DISABILITIES ACT & CHILD CARE

In 1990, Congress passed the Americans with Disabilities Act (ADA), which is designed to make an array of services, including child care programs, accessible to people with disabilities. The ADA prohibits family child care providers and child care centers from discriminating against a child, parent, or employee based solely on his/her disability (such as denying admission into a child care program). The ADA requires child care providers to make reasonable accommodations for all children.

In 2009, the ADA was amended to strengthen protections for people with disabilities. Information about these recent amendments is included in the discussion below.

#### WHAT IS A DISABILITY UNDER THE ADA?

As described above, child care providers cannot discriminate against disabled individuals. The ADA defines an individual as “disabled” if his/her situation falls under one of the four categories below:

1. **An individual who has a physical or mental impairment that substantially limits one or more major life activities.** “Major life activities” include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system or digestion.

An impairment that is episodic in nature (like epilepsy) or in remission (like cancer) is a disability if it would substantially limit a major life activity when active. Also, whether an impairment substantially limits a major life activity must be determined without regard to the beneficial effects of mitigating measures taken by the individual. For example, a child whose disability is controlled with medicine would have to be evaluated as if her condition was not treated (i.e., without the benefits of her medication). However, a child care provider can consider mitigating measures such as ordinary corrective eyeglasses or contact lenses when assessing whether an impairment substantially limits a major life activity. It may be difficult to determine whether an impairment substantially limits a major life activity. If you have questions regarding this determination, you should consult with an attorney.

2. **An individual who has a record of such an impairment.** In other words, a person who has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities. For example, a person who has recovered from cancer or a mental illness.
3. **An individual who is regarded as having such an impairment.** This applies to a person who (1) has a physical or mental impairment that does not substantially limit any major life activities but who is treated as if her impairment does limit her in this way; or (2) has a physical or mental impairment that substantially limits a major life activity only as a result of other people’s attitude towards that impairment; or (3) has no such impairment but who is treated as if she does. For example, a person with a facial disfigurement that does not substantially limit any major life activity.
4. **An individual who is associated with other people who have disabilities.** This means, for example, that no child may be discriminated against because she has a family member who is blind.

**DOES THE ADA APPLY TO CHILD CARE PROVIDERS?**

**Yes.**

Generally speaking, a child care provider should not treat children with **disabilities** (described above) differently. A provider should make a good faith effort to integrate children with disabilities into his/her program and provide them with equal opportunities. Sometimes, in order to achieve this goal and follow the law, a provider is required to make reasonable modifications to the rules and policies of the child care program, the physical structure of the area where the care is being provided, or other aspects of the program based on the abilities of each child.

Please note, child care centers that are run by religious entities such as churches, mosques or synagogues might be exempt from the ADA’s requirements,<sup>1</sup> but there may be other state and federal laws that apply to religious entities. However, private child care centers that are operating on the premises of a religious organization are generally **not** exempt from the ADA.

**CAN A CHILD CARE PROVIDER DENY ADMISSION OR CONTINUED CARE TO A CHILD WITH A DISABILITY? IF SO, UNDER WHAT CIRCUMSTANCES?**

**Yes, if any of the following apply:**

1. **Admitting the child into the program requires changes in policies, practices, or procedures that would fundamentally change the nature of the program and there are no reasonable alternatives available.** For example, a child needs regular diapering and toilet assistance due to a disability, but the family child

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<sup>1</sup> 42 U.S.C. Section 12187

care provider has a policy of never providing toilet assistance to children in her care. Further, admitting the child with the disability would require that the provider leave other children unattended while diapering/providing toilet assistance and the child's parent is unable to provide diapering/toilet assistance during the hours that the child is in provider's care.

2. **A particular child's condition poses a direct threat to the health or safety of the disabled child or of any other children or staff and there is no reasonable way of eliminating the threat through changes in policies, practices, procedures, equipment, or services.** For example, despite extra naps, time outs or changes in his/her diet or medication, a child regularly hits and bites other children in the program.
3. **Accommodating the child's needs requires structural changes which are extremely expensive or difficult to carry out and there are no reasonable alternatives available.** For example, a child that cannot walk and uses a wheelchair seeks admittance into a family child care program, but installing a ramp outside of the family child care home and widening doors would be extremely expensive and difficult for the provider.
4. **Accommodating the child's needs requires the provision of auxiliary aids and services which would fundamentally alter the nature of the program or would result in an undue burden (i.e., significant difficulty or expense) and there are no reasonable alternatives available.** For example, a child is deaf and requires the assistance of a sign language interpreter, but the child care provider and the parents of the child do not have the resources to provide one.

#### HOW DO I DECIDE WHETHER A CHILD WITH A DISABILITY BELONGS IN MY PROGRAM?

Child care providers cannot just assume that a child's disabilities are too severe for the child to be integrated successfully into the child care program. The provider must make an individualized assessment about whether it can meet the particular needs of the child without fundamentally altering the program. In making this assessment, the caregiver must not react to unfounded preconceptions or stereotypes about what children with disabilities can or cannot do, or how much assistance they may require. Instead, in order to learn more about the child's particular needs, the caregiver should talk to the parents or guardians of the child 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 can be to include children with disabilities in their programs.

#### ADDITIONAL RESOURCES

For further information regarding the ADA and caring for children with special needs, please refer to:

1. The Department of Justice's ADA website at <http://www.ada.gov/>.
2. The Department of Justice's ADA information line at 1-800-514-0301.

3. Information on Children with Special Needs developed by the Inclusion Workgroup of the County of Los Angeles Child Care Planning Committee at <http://ceo.lacounty.gov/ccp/cwsn.htm>.

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