

**Rights and Responsibilities of Private Child Day Care Providers
(Under Title III of the ADA) Rights Information**

What Does the ADA Generally Require with Respect to Day Care Providers?

The basic requirement of Title III of the ADA is that children with disabilities should have full and equal enjoyment of the day care's services, facilities, privileges, and advantages.

What Day Care Providers are Covered by the ADA?

All privately operated day care centers are responsible for adhering to the requirements of ADA, Title III. In fact, the language of the ADA specifically includes "day care centers" (42 U.S.C. §12181(7)(K)). The ADA's requirements also apply to providers of day care in private residences (family day homes); however, portions of the residence which are not used in the provision of day care are not covered by the ADA (28 C.F.R. §36.207).

The ADA's requirements for government-operated child day care are covered by Title II of the ADA and is not addressed in this brochure. Day care provided by religious organizations is exempt from the ADA's requirements, but private child day care providers who operate within a religious facility are liable under the ADA.

Who Is Responsible for Ensuring that the Child Day Care Provider Adheres to the Requirements of the ADA?

Both the owner and operator of the day care are equally liable under the ADA. Additionally, the building owner can be liable for failing to remove barriers that prevent individuals with disabilities from accessing day care services.

What Steps Should a Private Day Care Provider Take to Accommodate a Child with a Disability?

Specifically, a private day care provider ensures full and equal enjoyment by:

- modifying policies and procedures;
- providing appropriate auxiliary aids and services; and
- removing barriers.

Title III requires that the day care provider assess each child's needs individually and carefully analyze how the provider might modify a policy or procedure, provide an appropriate auxiliary aid or service, and remove barriers to address those needs and accommodate the child or parent.

To ensure compliance with the ADA, the day care provider should make this a deliberate, step-by-step process and consult with the parents and other professionals who interact with the child—such as teachers, pediatricians, therapists, or psychologists. With this input, the day care provider can determine not only what accommodations the child needs but also how the day care provider might capitalize on available community and school services. (See section on How a Day Care Provider Might Modify Its Policies and Procedures in Order to Accommodate a Child with a Disability for examples.)

Must a Private Day Care Provider Make Accommodations For a Parent with a Disability, Even Though the Child Has No Disability?

As consumers of day care services, parents with disabilities are also protected by ADA. Thus, day care providers must make their services and facilities accessible to parents with disabilities whose children are enrolled or eligible to enroll in the day care program.

Is it Possible for Someone Without a Disability to Exert Rights Under the ADA?

If a child has a record of having a certain disability and either no longer has that disability or has a new or different disability, he or she is protected against discrimination based on that record. Also, a child who is regarded as having a disability, whether or not he or she has a disability, is protected from discrimination based on the misconception that he or she has a disability. Finally, a child who is related to or associates with someone who has a disability is protected from discrimination based on that relationship or association, even though the child has no disability (28 C.F.R. §36.205).

Are There Any Instances When a Private Day Care Provider Does Not Have to Accommodate a Child With a Disability?

Day care providers are not always required to accommodate children and parents with disabilities. There are exceptions; however, the day care provider bears the burden of proving that the provider is excepted from the requirements of the ADA.

Direct Threat

A day care provider does not have to accommodate a child who poses a direct threat. To determine if a child's disability makes him a direct threat, the day care provider must demonstrate not only that the child poses a significant risk to the health or safety of others but also that the risk cannot be eliminated by a modification of policies and procedures or by the provision of auxiliary aids or services.

To determine if a child poses a direct threat, the day care provider must assess that child individually and base the assessment on reasonable judgment that relies on current medical knowledge or on the best available medical evidence. In other words, the determination cannot be based on stereotypes, fear, or public perception.

Diseases that cannot be spread through casual contact do not pose direct threats. For example, HIV/AIDS is not a significant threat. Also, in many cases, the direct threat posed by an infectious or communicable disease can often be eliminated by employing universal safety precautions. For example, staff should always wear latex gloves when coming in contact with any child's blood or other bodily fluid.

Fundamental Alterations

A day care provider does not have to accommodate a child with a disability if to do so would result in a fundamental alteration of the day care program. However, providing a child one-on-one assistance, even in a group child care program generally does not rise to the level of a fundamental alteration. Day care providers are not required to hire additional staff to meet the needs of a child with a disability—nor are day care providers required to provide assistance to a child with a disability if it will result in leaving other children unattended.

Undue Burden

A day care provider does not have to accommodate a child or parent if doing so would result in an undue burden. An undue burden is a significant difficulty or expense and must be determined in light of all resources available to the day care provider. Additional overhead costs, such as increases in insurance premiums, do not rise to the level of being an undue burden, since overhead expenses are typically dispersed among all families with children enrolled in the day care.

What are Some Examples of How a Day Care Provider Might Modify Its Policies and Procedures in Order to Accommodate a Child With a Disability?

Sometimes, a child or parent with a disability is unable to access day care because of a certain policy or procedure of the day care provider. If the policy or procedure is what is preventing access, the day care provider must attempt to modify that policy or procedure to accommodate the individual with a disability. The day care provider does not have to modify the policy or procedure if doing so would fundamentally alter the day care program.

Some examples of situations which might call for a day care provider to modify a policy or procedure include:

- Allowing children and parents with disabilities to bring service animals onto the property. (Service animals are not pets; rather they are highly trained animals that accompany their owners to assist them with life activities such as seeing, hearing, walking, and carrying.)
- Allowing children with attention disorders to have more breaks throughout the day. Allowing children with diabetes to have snacks throughout the day to maintain their glucose level.
- Eliminating eligibility criteria that inadvertently “screens out” children with disabilities (28 C.F.R. §36.301).

What are Some Examples of Appropriate Auxiliary Aids and Services that a Private Day Care Provider Might be Required to Provide in Order to Accommodate a Child or Parent With a Disability?

Sometimes, a child or parent with a disability is unable to access day care because they require certain auxiliary aids or services to fully participate. The day care provider must provide the individual’s preferred auxiliary aid or service, if it is appropriate, and doing so would not result in either a fundamental alteration or an undue burden to the provider. Examples of auxiliary aids or services include but are not limited to:

- communication devices
- sign language interpreters
- alternatives to visual delivery
- assistance with transferring
- assistance with assistive technology devices
- assistance with certain allergy medications
- assistance with checking blood glucose.

With respect to providing auxiliary aids or services, day care providers are not required to administer medications or conduct medical procedures which require the expertise of a medical professional, unless the day care provider employs such a professional. Also, as previously noted, day care providers are not required to hire additional staff to meet the needs of a child with a disability nor are they required to divert staff to attend to the needs of a child with a disability if doing so would leave the other children unattended.

What are the Standards for Removing Barriers to Access?

The ADA requires that a day care provider's facility be accessible. Providers should look to the ADA Accessibility Guidelines, located in the Appendix of Title 28 of the Code of Federal Regulations, for these standards. For buildings and modifications to buildings completed before 1992, day care providers must do what is "readily achievable" to ensure access. Readily achievable is defined as "easily accomplishable and able to be carried out without much difficulty or expense" (28 C.F.R. §36.104).

Installing accessible parking, ramps, and widening doorways are among a number of steps which are deemed "readily achievable" (see 28 C.F. R. §36.304 for a complete list of what the U.S. Department of Justice has deemed readily achievable). For buildings and modifications to buildings completed after 1992, day care providers must strictly comply with the barrier removal requirements of the ADA.

Who Pays For the Cost of Providing an Appropriate Auxiliary Aid or Service and Removing Barriers?

A day care provider cannot charge the child's family for the costs of any appropriate auxiliary aid or service or for the cost of removing barriers. Rather, day care providers can offset these expenses through a federal tax incentive program that provides a credit and deduction. The day care provider is not required to hire additional staff or to perform services that should be performed by medical personnel nor is the provider required to cover the cost of aids, services, or physical modifications that go beyond the minimum requirements of the ADA.

Resources

For more information on rights and responsibilities under the ADA, visit the U.S. Department of Justice website www.usdoj.gov or call (800) 514-0301 (Voice) (800) 514-0383 (TTY).



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