

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION FOR CHILDCARE PROVIDERS

Childcare Providers are Covered by the ADA

The ADA¹ was passed by Congress to bring Americans with disabilities into mainstream American society. It states that individuals with disabilities have the same right to public and private services as all Americans. The act covers adults and children with many permanent disabilities such as mental retardation, autism, and hearing impairments.² As a childcare provider you must be aware of this law. You are required to comply with the ADA because you provide services to the public.³

Some parts of the ADA are quite complex, but in simple terms, it requires almost all service providers and businesses to take reasonable steps to serve people with disabilities in their programs. This means that children and adults with disabilities receive the same services that are available to others. Virtually all childcare providers must comply with the ADA. Private providers that serve the public as businesses are covered by Title III of the ADA.

Parents who believe that their children's (or their own) rights under the ADA have been violated by a childcare provider can file a federal lawsuit and/or a complaint with the Bureau of Oregon Labor and Industry (BOLI.)

ADA Reasonable Accommodations for Children with Disabilities

As a child care provider, you cannot refuse to serve children with disabilities or their families simply because the children have disabilities, or because they might require more time or attention from you or your staff. Typical reasonable steps you might be required to take include providing additional training for staff, obtaining information or consultation from a professional with knowledge of the child's disability, reassigning staff responsibilities, hiring additional staff, or making physical changes to accommodate a wheelchair.

A child with autism for instance, might require 1-on-1 assistance during transition times from one activity to another. Even if you are a family child care provider who works alone you can make reasonable accommodations. For example, serving a child with emotional disabilities might require that you follow a behavior plan designed to minimize emotional outbursts or anxiety. A child's parent, teacher or therapist can help you make these types of necessary accommodations.

Under the ADA you cannot charge more to care for a child who has a disability. Similarly, you cannot add charges for serving a child with disabilities unless the additional charge applies equally to children without disabilities. There are exceptions. For instance, courts have decided that you can charge more to serve children with disabilities who wear diapers, but only **if** you charge more for all children who wear diapers. The same principle generally applies to other "extra" charges.

¹ The Americans with Disabilities Act is Public Law 101-336 and can be found in the U.S. Code at 42 USC 12101 et. seq.

² The ADA definition of a disability is a physical or mental impairment that substantially limits one or more major life activity. Temporary impairments such as broken arms and colds are not covered by the ADA.

³ Centers that are operated by religious organizations are not generally subject to ADA requirements. Title II of the ADA applies to government agencies and other groups or businesses (including childcare providers) who receive government money.

The law related to this sort of thing is probably more complicated than something you want to look at without legal help, but in simple terms:

1. You cannot charge extra for anything that affects only children with disabilities;
2. You cannot refuse to serve a child with disabilities unless the extra costs and changes involved are so large that they will put you out of business or fundamentally alter your program.

Limits of ADA Responsibilities

The ADA does **not** require you to serve children with disabilities if doing so would directly threaten the safety of others, even with modifications or added extra staffing to make the situation safe. Also, the ADA does not demand that you make modifications that would fundamentally change the nature of your program or impose an undue financial burden upon you. Whether the modifications needed to serve a particular child would fundamentally alter the nature of your program or impose an undue burden are complex questions that you should not take on without legal advice.

Three indicators that you may need legal advice are:

1. Making decisions about whether you can serve a child with disabilities based on your general beliefs or past experience with a disability rather than specific facts about the child;
2. Changing or ignoring written policies or changing the way you have done things in the past when a child with disabilities wants to enter your program (for example, changing your process for an initial interview);
3. Adding a charge that affects only children with disabilities even if the explanation for it does not specifically mention disabilities.

Additional Resources

A more detailed set of questions and answers about childcare and the ADA is available at <http://www.ada.gov/childg%26a.htm> or through the U.S. Department of Justice ADA website at www.ada.gov. DOJ also operates a toll-free ADA hotline at 800-514-0301 (voice) or 800 514 0383 (TDD) that will answer specific questions about the ADA.

The Inclusive Childcare Program operated by the Oregon Council on Developmental Disabilities is a statewide resource that can provide information and materials on the ADA and child care. The program may also have other resources to help you serve children with disabilities. You can contact the program toll-free at 866-837-0250.