

# CHILD CARE AND CHILDREN WITH SPECIAL NEEDS ALMOST EVERYTHING YOU WANTED TO KNOW BUT WERE AFRAID TO ASK!

## 1. Are child care centers covered by the Americans with Disabilities Act (ADA)?

Yes. Almost all privately-run child care centers (including small, home-based centers, even those that are not licensed by the state) and all child care services provided by government agencies (like Head Start, summer programs, and extended school day programs) must comply with the ADA. Even private child care centers that are operating *on the premises* of a religious organization are covered by ADA. Only centers that are controlled or operated by a religious organization do not have to comply with ADA. Even those centers may have to comply if they have agreed to comply through contract with a federal, state, regional, or local government agency.

## 2. What are the basic requirements of the ADA for child care centers?

Child care providers may not discriminate against persons with disabilities. They must provide children and parents with disabilities with an *equal opportunity* to participate in their programs and services.

Centers and providers 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 their program.

Centers and providers must make *reasonable modifications* to their policies and practices to include children, parents, and guardians with disabilities in their programs unless doing so would be a *fundamental alteration* of their program.

Centers and providers must provide appropriate auxiliary aids and services needed *for effective communication* with children or adults with disabilities, unless doing so would be an *undue burden* (significant difficulty or expense, relative to **the child care provider's resources or the resources of the "parent" company.**)

Centers and providers must make their facilities *accessible* to people with disabilities. Existing facilities must remove any *readily achievable* barriers, while newly constructed facilities and any altered portions of existing facilities must be *fully accessible*. If existing barriers can be easily removed without much difficulty or expense, child care providers must remove those barriers now even if there are no children or adults with disabilities using the program. Installing offset hinges to widen a door opening, installing grab bars in toilet stalls, or rearranging tables, chairs or other furniture are all examples of readily achievable barrier removal. Centers run by government agencies must insure that their programs are accessible unless making changes would impose an undue burden; this will sometimes include changes to facilities.

**In order to demonstrate "reasonable efforts," child care providers must attempt to access available resources outside of their programs.** For example, resources to support the inclusion of a child with a disability may be provided by the New Jersey Early Intervention System-New Jersey Department of Health and Senior Services, or by a local school district through its special education program. Other resources may be available through the Special Needs Child Care project of the New Jersey State Department of Human Services and the local county Child Care Resource and Referral Center. These agencies offer free information and assistance to child care providers.

## 3. How do I decide whether my center can meet the needs of a child with a disability?

Child care providers must make *individualized assessments* about whether they can meet the particular needs of each child with a disability who seeks services from their program, without *fundamentally altering* their program. In each case, the provider must talk with the parents or guardians and other professionals who work with the child. Providers are often surprised at how simple it is to include children with special needs in their programs. Child care providers are not required to accept children who would pose a *direct threat* or whose presence or necessary care would *fundamentally alter* the nature of their program.

## 4. What are some reasons that are *not* acceptable for rejecting children with disabilities?

*Higher insurance rates* are not a valid reason for excluding children with disabilities. If any extra cost is incurred, it should be treated as overhead and divided equally among all paying families.

The need of a child with a disability for *individualized attention* is not a valid reason for excluding that child, unless the **extent of the child's need for individualized attention would fundamentally alter** the child care program or the cost of providing the individualized attention would be an *undue burden* on the program.

The need for a child with a disability to bring a *service animal*, such as a seeing-eye dog, to the center, is not a valid reason **for excluding that child, even if the center has a “no pets” policy. Service animals are not “pets.”**

The need for a child with a disability to *receive medication* while at the child care program is not a valid reason for excluding that child. As long as reasonable care is used in following the written instructions about administering medication, centers are generally not liable for any resulting problems.

The fact that a child has *allergies*, even severe, life-threatening allergies to bee stings or certain foods is not a valid reason for excluding that child. Child care providers need to be prepared to take appropriate steps in the event of an allergic **reaction, such as administering a medicine called “epinephrine” that will be provided in advance by the child’s parents or guardians.** New Jersey state law has recently changed to allow non-medical personnel to **administer these “epi-pens.”**

*Delayed speech or developmental delays* are not valid reasons for rejecting children with disabilities. Under most circumstances, children with disabilities must be placed in age-appropriate classrooms.

*Mobility impairments* are not valid reasons for rejecting children with disabilities. Some children with mobility impairments may need assistance in taking off and putting on leg or foot braces during the 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 be done by licensed health care professionals, it would be a reasonable modification to provide such assistance.

*The need for toileting* is not a valid reason for rejecting children with disabilities, even if the provider has a general rule about excluding children over a certain age unless they are toilet-trained. Under state regulations, the child care provider must have an approved toileting area if toileting services are provided for any child, regardless of age. This is not grounds for refusing to accept a child who requires these services. Of course, universal precautions, such as wearing latex gloves, **should be used whenever caregivers come into contact with children’s blood** or bodily fluids, such as when they are providing toileting services.

5. What are some reasons that *are* acceptable for not accepting children with disabilities?

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. This determination may not be made on generalizations or stereotypes; it must be based on an *individualized assessment* that considers the particular activity and the actual abilities and disabilities of the child.

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 or specific conditions, like active infectious tuberculosis, that in fact pose a direct threat. Providers may not inquire about conditions such as AIDS or HIV infection that have not been demonstrated to pose a direct threat.

6. What are some reasons that *are* acceptable for removing a child with disabilities from a child care program after he or she has been admitted?

If a child care provider has made *reasonable efforts* to meet the needs of a child with disabilities already in their program, **but the child’s needs cannot be met**, or the child continues to pose a *direct threat* to the health or safety of others, the child may be removed from the program. However, this decision must be made on an *individual basis*.

7. How does a child care provider cover the costs of providing special services to a child with a disability?

Child care providers may NOT charge parents of children with special needs additional fees to provide services required by the ADA. For example, if a center is asked to do simple procedures that are required by the ADA, like finger-prick blood **glucose tests for children with diabetes, it cannot charge the child’s parents extra. (Of course, the parents must provide all appropriate testing equipment, training and special food necessary for the child).** Instead, the provider must spread the cost across all families participating in the program. If the child care provider is providing services beyond those required by ADA, like hiring licensed medical personnel to conduct complicated medical procedures, **it may charge the child’s family.**

To help offset the cost of actions or services that are required by the ADA, such as architectural barrier removal, providing sign language interpreters, or purchasing adaptive equipment, some tax credits and deductions may be available. Contact the ADA Information Line, 1-800-514-0301, for more details. Contact the Special Needs Child Care project at 609-984-5321 for more information or for the Resource and Referral agency nearest you. Source: Statewide Parent Advocacy Network, 35 Halsey Street, 4<sup>th</sup> Floor, Newark, NJ 07102, (973) 642-8100.