

Town of Colma

ADA Concerns for Child Care Providers

1. What is ADA?

The Americans with Disability 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 individuals with disabilities.

The ADA Amendments Act of 2008, which took effect January 2009, strengthens protections for people with disabilities. It also reinforces the focus of the ADA on whether covered entities complied with the statute and not simply whether the person has a disability.

States may provide greater protection for people with disabilities than what is guaranteed by the ADA. In California, the Unruh Civil Rights Act prohibits all business establishments including childcare providers, from discriminating on the basis of a disability.

2. Who is protected by the ADA?

Three groups of people receive protection under the ADA. They are:

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

3. What does the ADA require for providers?

The ADA prohibits providers from discriminating against persons simply because they have disabilities. Instead, providers have 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. A provider does not have to make a reasonable accommodation if a person qualifies as a person with a disability under the "regarded as" standard described in Question 2 above.

4. What types of accommodations does the ADA require?

The ADA sets out four primary types of accommodations:

- Admissions policies that screen out or tend to screen out persons with disabilities;
- Changes in policies, practices or procedures;
- Provision of auxiliary aids and services to ensure effective communications, and;
- Removal of physical barriers in existing program facilities.

5. How does a program determine reasonableness?

In practical terms, what is reasonable will vary. Generally, the three most important variables are:

- The needs of a person with a disability;
- The accommodations requested, and;
- The resources available to the program.

Because family child care homes generally have fewer resources and a smaller staff than centers, they may be required to do less. The accommodations, however, must be based on individualized assessments of the child's needs and the program's ability to make the necessary modifications.

The ADA requires childcare programs to make accommodations in the areas described in Question 4 unless:

- In cases of changes in policies, practices or procedures, the accommodation would fundamentally alter the nature of the program or services offered;
- In the case of auxiliary aids and services, the accommodation would fundamentally alter the nature of the program or pose an undue burden (i.e. pose a significant difficulty or expense) and;
- In the case of the removal of physical barriers, the accommodation is not readily achievable. The ADA allows programs to provide services to individuals with disabilities through alternative methods if physical barriers are not removed.

Child care providers should begin the process of identifying reasonable accommodations by submitting a copy of the Town's reasonable accommodation request for to the parent(s) or legal guardian. If the child has an individualized family services plan (IFSP) or an individualized education plan (IEP) to meet his or her educational needs as required under the Individuals with Disabilities Act, the ADA Coordinator can also use that as a guide for determining reasonable accommodations, although these are only one tool and not the definitive answer to what is reasonable. An IEP can provide information about what services and accommodations a school is providing to help the child attain his or her educational goals.

6. 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. If a family chooses to share information about their child and his or her disability, it can provide valuable learning opportunities for all the children in the program.

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

7. Are 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 children with special needs, as each child with special needs is different, and there are no required staffing ratios. The provider must evaluate his/her own program, keeping in mind the special needs of each child before determining how many children with special needs the program can accommodate.

8. I understand that the program 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 your "program is fully accessible" or that your staff "have experience in caring for children with disabilities." This goes beyond what is required by law, but is helpful to make your facility visible as one that promotes inclusion.

9. How can I care for children with disabilities if I'm not trained or if I work on my own?

Many of the accommodations children need are not complicated and can be easily learned. If you work on your own, necessary accommodations can often be made without additional staffing. In other instances, where training is helpful or necessary, it may be available from the parent, early intervention or special education specialists, health professionals, disability organizations, local resources and referral agencies, or community colleges. An important first step is to identify community resources that can assist with inclusion.

10. 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.

11. 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, caused her ADA claim to fail.¹

Please contact the ADA Coordinator with any questions or concerns:

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¹ Q&A 1-11 Provided courtesy of the Child Law Center: Out of School Programs and the Americans with Disabilities Act, Updated March 2009

Effective practices and polices to ensure compliance:

- Continuing to use developmentally appropriate practices which emphasize individual growth patterns, strengths, interests and experiences of young children to design appropriate learning environments.
- Adopting an attitude of “how can I meet this child’s needs....” And adapting creatively.
- Making simple changes in the typical activities/routines in your program to meet the child’s needs (using tactile play materials for a child with vision impairments).
- Eliminating program eligibility standards which have the effect of screening out children with disabilities, such as being toilet trained (some children may never qualify)
- Include a question in your enrollment procedure that asks parents if there is anything you need to know that would help you care for their child (she goes to sleep with a pacifier or he wears hearing aids).
- Working closely with parents and professionals to integrate the child’s developmental and therapy goals into your daily routines and activities (using sign language to expand communication with children at snack or circle time).
- Identifying and removing barriers to the child’s participation (widening pathways between activity areas for walkers and wheelchairs or repositioning materials at child’s level for visual or motor activities). Costly structural changes are not required if affordable alternatives are available (providing pitchers and cups rather than lowering or raising a water fountain).
- Using community resources to make accommodations to your program and/or provide needed services or equipment. (Materials may be donated and/or built; recruiting volunteers may enhance child/staff ratios).