

ADA Q&A...Child Care Providers

By Deborah Leuchovius, PACER ADA Specialist

Many questions we hear at PACER related to enforcement of the Americans with Disabilities Act (ADA) are about how the ADA affects child care providers. Here are answers to some of the most frequently asked questions:

Q. Are church operated child care centers covered by the ADA?

A. No, not by the ADA. Churches and other religious entities are exempted from having to comply with the ADA. If a child care program is operated by the church itself, the church is not required to comply with the ADA. However, if the church leases space to a privately operated day care center, the private child care center would have to comply with ADA provisions. NOTE: Although churches may be exempted by the ADA, they are not specifically exempted in Minnesota's Human Rights Act. Under that state law, which also requires that public accommodations such as child care centers provide access to their services to individuals with disabilities, church-run child care centers will be just as accountable as other Minnesota child care providers.

Q. Are family child care providers required to comply with the ADA?

A. Yes. Family child care providers may not discriminate against children with disabilities. The portion of a home that is used for child care would be covered under the ADA. However, many family day care providers have expressed concern that they will be required to make major architectural alterations to their home — such as building ramps or altering bathrooms. This is probably not the case. Family child care providers, like other child care providers, would not have to make structural alterations to their home if these are not “readily achievable.” This means without much difficulty or expense. This will always be judged in relation to the overall financial resources of a business. What would be a hardship for a family child care provider may not be considered a hardship for a facility

that has more financial resources to draw on. However, family child care providers would still be required to make modifications to policies, activities and procedures that would not be a financial hardship.

Q. Can child care providers charge more for tuition for children with disabilities?

A. Under the ADA, child care providers cannot charge the family of a child with disabilities for the total costs of having to comply with the ADA. Costs must be spread out to all the families enrolled, or taken as a tax credit or tax deduction. However, there are some exceptions. It appears that families may be charged for measures which exceed compliance with the ADA, or when a child care provider would not be required to make an accommodation or remove an architectural barrier because it would pose a financial or administrative hardship.

Q. Can a child care center refuse to accept my child with a disability because they are concerned that their liability insurance rates will increase?

A. No. Department of Justice guidelines make it clear that under ADA a child care center cannot refuse to accept a child with a disability, or employ a staff person with a disability, because it fears its insurance company will raise its rates.

Q. What kinds of accommodations would a child care center be required to make under the ADA?

A. Of course architectural modifications are the kinds of accommodations that most people think of. But there are many less expensive accommodations that also meet the needs of children with disabilities. It may mean adapting snack preparation and schedules to meet the dietary requirements of a child with diabetes, or providing games, puzzles and toys that reflect a wide range of abilities and development, or using more visual information during activities that include children with hearing impairments.

Q. Do child care centers have to accept all children with disabilities, no matter what the type or level of disability?

A. No. There are situations where child care providers can legally refuse to accept a child with a disability — if the child poses a direct threat to others, or if providing an accommodation would pose an undue hardship on the provider, or fundamentally alter the nature of the program. But each person must be considered on an individual basis. Children with disabilities cannot be excluded merely because they have a disability, or based on myths and stereotypes about that disability. Providers must make good faith efforts to consider each child individually. The most important step is that providers and parents sit down together to discuss what the specific needs of the child are, and then see if they are able to meet those needs. If there are costs involved in making accommodations, providers must analyze whether they would pose an undue burden (significant difficulty or expense). Care providers should remember that there are tax credits or deductions available to help them make these accommodations, and should investigate outside funding in addition to their own resources before they make a final decision on whether or not an accommodation would be an undue burden.

Q. Does the ADA affect extended-day child care for school-age children?

A. Yes. Extended-day child care programs operated by school districts are covered by Title II of the ADA. They may not discriminate against individuals with disabilities and must provide access to their programs for people with disabilities. Again, these providers are required to make accommodations unless it can be demonstrated that doing so would pose an undue burden.

Q. Can a child care provider refuse to accept children with disabilities who are not toilet trained?

A. In the past, many children with disabilities have been excluded from child care centers and nursery schools because of eligibility requirements that children be toilet trained by a specific age. The ADA, however, states that eligibility requirements must not have the effect of screening out people with disabilities. Toilet training requirements have this effect because many children with disabilities will never have bowel or bladder control as a result of their disabilities.

Another part of the law states that services of a personal nature including eating, dressing, and toileting do not have to be provided unless they are a service normally provided by a facility. Child care centers, however, usually do provide some degree of assistance in these areas to young children. They should therefore be prepared to modify these policies

and accommodate children with disabilities who need toileting assistance.

Some states have established clear guidelines for their child care centers that expressly forbid such requirements. Minnesota is not yet one of them.

Q. What if our child care center refuses to admit my child because they say they can't afford to make the accommodations necessary to meet my child's needs?

A. If you are not satisfied that your child was given a fair consideration, or that it would not in fact be an undue burden for the child care provider, you may file a complaint with the Department of Justice. It will investigate your case and can impose fines of up to \$50,000 for a first violation. You can also file a private suit. Private plaintiffs cannot receive money damages, but can receive injunctive relief — such as a court order requiring the day care center to make the necessary accommodations — and attorney's fees.

FOR MORE INFORMATION

For more information, visit the Department of Justice ADA Web site, <http://www.ada.gov/chcaflyr.htm>, or call the Department of Justice ADA information line: 800-514-0301 (voice) or 800-514-0383 (TDD).