



Child Care and the Americans With Disabilities Act (ADA)

by Laura Nelson

Editor's Note: Sections of this article are taken directly from the Department of Justice Web site section titled, "Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act." The terminology used does not reflect the attitudes of the editors and staff of Celebrating Special Children.

I am a state-licensed family home child care provider in Virginia. Recently, a parent called me to ask whether I would accept his child who was totally deaf. I explained that I did not know sign language and therefore, while I was very willing to take her into my home, I was concerned that my lack of appropriate knowledge would be a detriment to the child. I suggested that the parent call the local office of the Virginia Department of Social Services (VDSS) to see whether licensed providers could be sorted by features that pertained to specific types of disabilities. (A listing of local agencies appears after this article on page 27.)

After our conversation had ended, I thought back to some of the children I have had in my program who required accommodations such as administering medications, monitoring food allergies and such. I wondered what exactly my obligation is as defined by the ADA. After some research, I discovered that almost all child care providers, regardless of size or number of employees, must comply with title III of the ADA. Even small, home-based centers that may not have to follow some state laws are covered by title III which requires that child care providers not discriminate against persons with disabilities on the basis of disability.

Specifically:

- Centers 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 the program.
- Centers have to make reasonable modifications to their policies and practices to integrate children, parents, and guardians with disabilities into their programs unless doing so would constitute a fundamental alteration.
- Centers must provide appropriate auxiliary aids and services needed for effective communication with

children or adults with disabilities, when doing so would not constitute an undue burden.

- Centers must generally make their facilities accessible to persons with disabilities. Existing facilities are subject to the readily achievable standard for barrier removal, while newly constructed facilities must be fully accessible.

My home facility is inspected twice a year by an inspector from the VDSS and packets of training opportunities are sent quarterly to providers across the state. I also receive quarterly training information from my local agency, Fairfax County Office for Children. It's possible that not every county or local agency is able to offer training in addition to that offered by the state. However every licensed provider is required to participate in at least six hours of training per year and every training packet includes a workshop on some aspect of dealing with disabilities. For example "Working with Families and Other Partners," includes ideas for building successful relationships with families and informs providers about services (like learning Sign Language) in the community and how to access them. However, my state inspector has never indicated that I was required to take this or any other specific disability training.

After reading the information cited below, parents may be tempted to insist that a particular provider immediately admit their child into the center's program. And after doing this research, I believe that the parent mentioned at the beginning of this article would be within his rights to expect me to learn Sign Language within a reasonable length of time, assuming that such specific training was available to me in a time frame suitable to my schedule and at a cost appropriate to my resources.

But probably, a parent's more prudent course of action would be to seek out a child care provider long before it's actually needed, so as to ensure that the child's particular needs can be met effectively and without undue burden on the facility, home-based or otherwise.

For more information, parents may request *A Parent's Guide on Selecting and Monitoring Child Care* produced by the Divisions of Licensing Programs and Family Services in Richmond. Call 804-692-1787 or visit www.dss.state.va.us.

The following Q&A is edited from "Commonly Asked Questions About Child Care Centers And The Americans With Disabilities Act" which can be viewed in its entirety at www.usdoj.gov/crt/ada/childq&a.htm. Or a copy may be requested by calling 800-514-0301 (voice), or 800-514-0383 (TDD).

Q: How do I decide whether a child with a disability belongs in my program?

A: The provider must make an individualized assessment about whether it can meet the particular needs of the child without fundamentally altering its program. Providers are often surprised at how simple it is to include children with disabilities in their mainstream programs.

Q: My insurance company says it will raise our rates if we accept children with disabilities. Do I still have to admit them into my program?

A: Yes. The extra cost should be treated as overhead and divided equally among all paying customers.

Q: Our center is full and we have a waiting list. Do we have to accept children with disabilities ahead of others?

A: No. Providers are not required to take children with disabilities out of turn.

Q: Our center specializes in "group child care." Can we reject a child just because she needs individualized attention?

A: No. A child who needs one-to-one attention due to a disability cannot be excluded if they can be integrated without fundamentally altering the center's program. However, centers are not required to hire additional staff or provide constant one-to-one supervision of a particular child with a disability. Parents may, at their own cost, provide a personal assistant to be with their child at the center.

Q: What about children whose presence is dangerous to others? Do we have to take them, too?

A: Children who pose a direct threat do not have to be admitted into a program. The determination that a child poses a direct threat must be based on an individualized assessment that considers the particular activity and the actual abilities and disabilities of the individual. For example, providers may inquire about specific conditions, such as infectious tuberculosis that, in fact, do pose a direct threat. Conversely, centers cannot exclude a child solely because he has HIV or AIDS.

Q: One of the children in my center hits and bites other children. His parents say that I can't expel him because his bad behavior is due to a disability. What can I do?

A: The first thing the provider should do is try to work with the parents to see if there are reasonable ways of curbing the child's bad behavior. If all reasonable efforts have been made and the child continues to bite and hit children

or staff, he may be expelled from the program even if he has a disability.

Q: One of the children in my center has parents who are deaf. Do I have to provide a sign language interpreter for a meeting with them?

A: It depends. Child care centers must provide effective communication to the customers they serve, including parents and guardians with disabilities. As with other actions required by the ADA, providers cannot impose the cost of a qualified sign language interpreter or other auxiliary aid or service on the parent or guardian. However, a particular auxiliary aid or service is not required by title III if it would pose an undue burden, that is, a significant difficulty or expense, relative to the center's resources.

Q: Can I charge the parents for special services provided to a child with a disability, provided that the charges are reasonable?

A: It depends. If the service is required by the ADA, you cannot impose a surcharge for it. For instance, if a center is asked to do simple procedures such as finger-prick blood glucose tests for children with diabetes, it cannot charge the parents extra for those services. However, if a child requires complicated medical procedures that can only be done by licensed medical personnel, and the center does not normally have such personnel on staff, the center would not be required to provide the medical services. If the center chooses to go beyond its legal obligation and provide the services, it may charge the parents accordingly. To help offset the costs of actions or services that are required by the ADA, some tax credits and deductions may be available to the provider.

Q: Our center has a policy that we will not give medication to any child. Can I refuse to give medication to a child with a disability?

A: No. As long as reasonable care is used in following the doctors' and parents' written instructions about administering medication, centers should not be held liable for any resulting problems. Providers, parents, and guardians are urged to consult professionals in their state whenever liability questions arise.

Q: We have a policy that we will not accept children more than three years of age who need diapering. Can we reject children older than three who need diapering because of a disability?

A: Generally, no. Centers that provide personal services such as diapering or toileting assistance for young children must reasonably modify their policies to provide diapering services for older children who need it due to a disability. If the program never provides toileting assistance to any child, then such a personal service would not be required for a child

