

How can I help a child care program meet my child's needs?

- Share with the program all you can about what you think is important for the child care staff to know about caring for your child.
- Maintain communication with your provider throughout the time your child is in care.
- Facilitate communication between your child care provider and any other professionals who are helping your child (your written consent will be necessary).
- Let the child care program know about any community agencies or state or national organizations, which provide resources and information regarding the type of disability or disabilities your child has.
- Assist the program in identifying any public or private subsidies, grants, or loans available to support their efforts.

Selected State and National Resources

U.S. Department of Justice

800-514-0301 (voice)
800-514-0383 (TTY)
www.usdoj.gov/crt/ada/adahom1.htm

The Access Board

800-872-2253
www.access-board.gov

California Department of Fair Employment and Housing

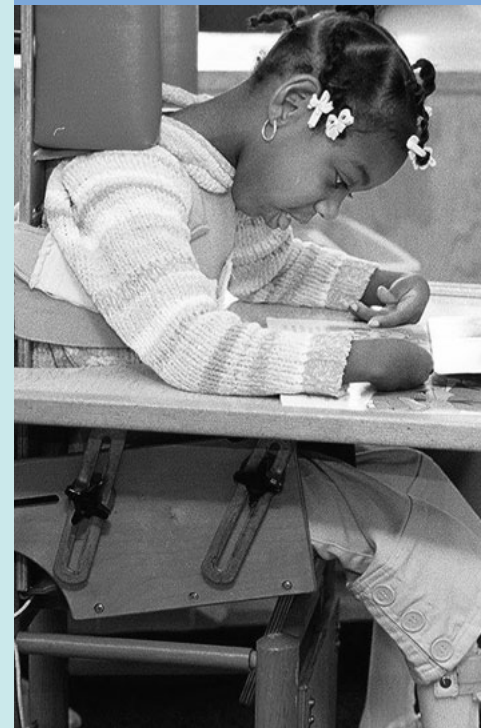
800-884-1684
800-700-2320 (TTY)
www.dfeh.ca.gov

California Child Care Resource and Referral Network

800-543-7793 or see their website's parent section:
www.rrnetwork.org/welcome/for-parents.html

For additional resources,

see the California Map to Inclusive Child Care Project website:
www.CAInclusiveChildCare.org
and click on "Legal and Licensing Issues."



What are my rights and the rights of my child in child care settings?

Mario is a three year old who desperately wants to play with children his own age. His mother, about to return to work, is eager to find just the right child care for him. Born with cerebral palsy, Mario cannot run and needs help eating. But he is able to enjoy social environments, can learn new things, and can walk on his own — even though the doctors said he never would. He is a bright, capable child, more alike than different from his peers.

Mario, like thousands of children across the country, is a child with a disability in need of child care. Caring for children like Mario in regular child care is not a new challenge, and in many cases, not particularly different from caring for other children. Child care has always focused on meeting the needs of individual children.

However, families and child care providers may not be aware that children with disabilities have certain rights under federal and state law.

A Parent's Guide The Americans with Disabilities Act and Child Care

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This material was adapted by Abby Cohen, JD, with permission from materials developed by the Child Care Law Center in San Francisco, California and includes information on the Americans with Disabilities Act as it applies to private child care programs only.

Do anti-discrimination laws cover children with disabilities in California's child care settings?

Yes. This brochure highlights the major features of the two most important of these laws as they apply to private care settings—the federal Americans with Disabilities Act (ADA Title III) and California's Unruh Act, an anti-discrimination law—and compares their protections.

What is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is a federal civil rights law. The Act states that people with disabilities are entitled to equal rights in employment, state and local public services, and public accommodations. This third right relating to public accommodations includes child care settings for children of all ages; as such, the law applies to the vast majority of infant/toddler programs, preschools, and after-school (out of school time) programs.



Whom does the ADA protect?

The ADA protects any child or adult who:

- has a physical or mental impairment that substantially limits a major life activity, such as hearing, learning, walking, etc.
- has a history of this type of impairment (such as a child who had leukemia but is now in remission);
- is “regarded” as having an impairment (such as a child with facial scarring who has no limitations but is stigmatized);
- is “associated with” any of the persons described above (such as a child whose brother has tested positive for HIV or whose mother uses a wheelchair).

What impact does the ADA have on child care programs?

According to the ADA, child care programs, whether or not they receive public funds, cannot discriminate on the basis of disability. Instead, programs are expected to make an individualized assessment, weighing the accommodations required by the child against the resources available to the program. In short, programs are expected to make “reasonable” accommodations. What is reasonable is determined on a case-by-case basis.

What exactly does the ADA require child care programs to do?

The ADA requires that child care programs consider making changes in four aspects of their programs.

First, programs must examine their admissions policies and procedures to ensure that these do not screen out or tend to screen out persons with disabilities. They then must modify those policies and procedures accordingly. Examples of modifications might include:

- eliminating policies that forbid administering medication to a child with a disability
- eliminating an admissions policy that requires that children be toilet trained when this is applied to a child whose disability precludes this skill

Secondly, programs must make reasonable modifications in their practices and procedures to accommodate an individual with a disability, unless the change would fundamentally alter the nature of the program and no reasonable alternatives exist for providing the modification. Examples of reasonable modifications in this area might include:

- providing alternative foods or snacks for a child with food allergies
- making a schedule change for a child who takes medication and/or naps in the morning
- providing visual cues for activities or for moving from one activity to another
- providing additional training for staff on how to work with challenging behaviors

Thirdly, child care programs are required to provide “auxiliary aids and services”: services and devices designed to ensure effective communication (interpreters, audiotapes, large print materials, etc.) for those with disabilities affecting their hearing, speech, or vision, unless to do so would fundamentally alter the nature of the program or would impose an undue burden on the programs and there are no alternative steps that can be taken. An undue burden means a significant difficulty or expense. Examples of manageable and affordable auxiliary aids and services might include:

- purchasing large-print books;
- learning some sign language or hiring an interpreter

Finally, architectural barriers that prevent access to services must be removed if removal is readily achievable, that is, easily accomplished and able to be carried out without much difficulty or expense. Examples of readily achievable modifications might include:

- putting in a temporary or permanent ramp
- moving furniture or equipment to provide wheelchair access.

New facilities must meet ADA Accessibility Guidelines (ADAAG); contact the Access Board in the Resources section for further information.

What types of personal assistance and devices must the child care program staff provide?

The ADA makes it clear that child care programs are not required to provide children with personal devices such as wheelchairs, eyeglasses, or hearing aids. However, child care programs are required to provide services—such as assistance in eating, toileting, or dressing—when they are ordinarily provided to other children in care. Such services might also include assistance with a leg brace, for example; in positioning it, putting it on, or taking it off.

What safety considerations must programs take into account when determining whether a child will be admitted to or maintained in a program?

Programs may refuse to admit a child if they can document that the child will pose a direct threat to the health and safety of others in the child care setting. This is a very narrow exception and would rarely apply in child care. Additionally, if the threat or risk can be eliminated without fundamentally altering the nature of the program, the child must be admitted or maintained in the program.

Is it legal to charge extra for the costs of caring for a child with a disability?

Generally no. The ADA is very clear that the child care programs may not charge families with children with disabilities more than other families are charged to cover the increased costs the program incurs in making necessary, “reasonable” accommodations. To help defray any additional cost, child care programs may spread the cost to all families and/or use available tax credits and deductions.

If I feel that a child care program is not complying with the requirements of the ADA, what can I do?

First, let the child care program know what your concerns are and provide them with information about the legal requirements of the ADA. If you are still unable to get satisfaction, contact your local child care resource and referral program to determine if they are able to make information and training available to the provider. You may also hire a private attorney to bring an action against the program, or you can file a complaint with the Attorney General at the U.S. Department of Justice. If you file a private action, you are entitled to a court order to stop the discrimination. If the Attorney General brings the suit, you may seek monetary damages and civil penalties.

What rights are available under California law?

The Unruh Civil Rights Act, California's primary civil rights law, guarantees full and equal accommodations, advantages, facilities, privileges, or services in all business establishments to all persons, regardless of medical condition or disability. This California law incorporates ADA but provides even more expansive protections. Private child care programs, such as family child care homes and centers—whether serving infants and toddlers, preschoolers, or schoolagers—are considered business establishments under Unruh.

What are the important ways that Unruh differs from ADA?

The Unruh Act provides the following, more expansive protections:

- It has broader definitions of who is covered, including those with certain medical conditions.
- It requires that the disability only limit, rather than substantially limit, a major life activity.
- It does not take into account mitigating or corrective measures, such as taking medicine, when determining whether a person has a disability.
- It offers the possibility of broader remedies.



If I feel that a provider is not complying with Unruh requirements, what can I do?

Families members who feel they have been discriminated against may either file private lawsuits through a private attorney or a complaint with the Department of Fair Employment and Housing (DFEH, the agency charged with enforcing the Unruh Civil Rights Act) within one year of the violation. The DFEH will investigate; attempt to conciliate; and, if there is sufficient evidence, litigate the case.



“Society's accumulated fears and myths about disability are as handicapping as the physical limitations that flow from actual impairment.”

— William J. Brennan, Justice, U.S. Supreme Court