



DISABILITY LAW COLORADO™

Protecting the rights of Coloradans of all ages since 1976

Day Care Centers and the ADA



HOW DOES THE ADA APPLY TO DAY CARE CENTERS?

- Privately run day care centers are considered “places of public accommodation” and must comply with Title III of the Americans with Disabilities Act (“ADA”). Similarly, day care centers run by government agencies, such as Head Start or summer programs, must comply with Title II of the ADA. Titles II and III provide the same basic protections.
- Must provide *equal access* to parents and children with disabilities, meaning they cannot exclude people based on their disability unless their presence would pose a *direct threat* to the health or safety of others or require a *fundamental alteration* of the program.
- Must make *reasonable modifications* to their policies and practices to integrate children and parents unless doing so would constitute a *fundamental alteration* of the day care center’s programs.
- Must make their facilities physically accessible for people with disabilities.
- Must provide auxiliary aids and services, if needed to communicate effectively with children or parents and if doing so would not constitute an undue burden.
- The ADA generally does not require day care centers to hire additional staff to provide assistance to a child with a disability.

WHAT ARE SOME OTHER RELATED ISSUES IN DAY CARE CENTERS?

- **Service Dogs** - If a child or parent with a disability has a service dog, a day care center must make an exception to a “no pet” rule to allow the service dog – who is not considered a “pet” under the ADA – to accompany the child or parent at the center.
- **Extra Fees** - A day care center cannot charge for services it must provide pursuant to the ADA, including architectural barrier removal, providing sign language interpreters, or purchasing adaptive equipment.
- **Medication** - Day care centers may be required to administer medication for a child with a disability if it is necessary to make the program accessible to that child.

WHAT ABOUT DAY CARE CENTERS AND SPECIFIC DISABILITIES?

- Day care centers must make *individualized assessments* of children and their needs – they cannot make generalized assumptions based on a child's disability.
- If a day care center provides diapering for any students, the center will likely have to provide that service for an older child with a disability.
- Assisting a child with a disability in getting on and off the toilet is not considered personal assistance and a day care center generally must provide this assistance.
- Children with HIV, AIDS or other blood borne communicable diseases can be safely integrated into all aspects of a day care. Day care centers need to take the same universal precautions they use with children who do not have disabilities when caring for wounds.
- Must provide services such as testing blood sugar or other simple diabetes care if a child with diabetes needs these services in order to be integrated into the day care.

ARE ANY DAY CARE CENTERS EXEMPT?

- Regardless of size or number of employees, day care centers must follow the ADA.
- However, the ADA does not apply to day care centers operating under the direct control of a religious entity.

WHAT SHOULD I DO IF I BELIEVE MY CHILD WAS DISCRIMINATED AGAINST?

- You have the right to file a charge of discrimination with the Colorado Civil Rights Division or with the Department of Justice.
- Be sure to know the deadlines for filing – if you miss a deadline, you may lose your right to file a claim or charge
 - **CCRD:** Must file within **60 days** from the date of discrimination
 - **DOJ:** No timeline for filing a complaint with DOJ, but must file in federal court within **2 years** from the date of discrimination

WHAT IF I STILL HAVE QUESTIONS ABOUT DAY CARE CENTERS?

- Please contact Disability Law Colorado at (303) 722-0300.
- Contact The Department of Justice ADA information line at (800)-514-0301.

***** DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. *****

References:

Disability Law Colorado – www.disabilitylawco.org

U.S. Department of Justice - www.ada.gov/childqanda.htm