Childcare Center Accessibility

Most Childcare Centers are Covered by the ADA

Many laws impact disability rights and accessibility standards. Title II of the Americans with Disabilities Act applies to State and local government agencies. Generally speaking, this means a childcare center or childcare program which is run by a government agency must comply with the accessibility requirements of the ADA. Examples of these types of programs might be a Head Start program, an extended school day program run by a public school, or after school childcare program run by a public school. These ADA requirements apply to children with disabilities, even if the child is not on a 504 plan or covered under the Individuals with Disabilities Education Act (IDEA). Children who are also covered by the IDEA may have additional rights. Title III of the Americans with Disabilities Act applies to private businesses. Generally speaking, this means a childcare center or childcare program which is a private business or program must comply with the accessibility requirements of the ADA. Examples of these types of programs might be a daycare center, an in-home daycare center, or a summer camp. The ADA does not cover religiously affiliated childcare centers. Generally speaking, this means a childcare center or childcare program which is controlled and operated by a religious organization such as a church, synagogue, temple, or ward does not have to comply with the accessibility requirements of the ADA. Examples of these types of programs might include youth worship programs or Sunday school.
Parents with a Disability

The ADA protects parents with disabilities, even if the child receiving care does not have a disability. This means that a childcare center must make reasonable modifications for the parent and provide auxiliary aids and services necessary for effective communication.
Admissions Denials
The ADA protects children with disabilities from discrimination. This means that a childcare program cannot deny a child admission for the sole reason of their diagnosis type or disability. A childcare center cannot assume that a disability is too severe to care for. A childcare center must engage in an individualized assessment to determine if the child with a disability can be cared for without a fundamental alteration of the program. Protected disability status does not give a child admissions priority over any other child.

Early Intervention Services (Part C of the IDEA)
If you have a child under the age of 3 who requires early intervention services due to a developmental delay or a diagnosis which has a high probability of resulting in developmental delay, they may be entitled to services under Part C of the IDEA. Public schools have the obligation to identify and evaluate children with disabilities and provide eligible students with an Individualized Family Service Plan (IFSP). If you feel that your child might require services due to a developmental delay, you can request an evaluation from the school your child attends; however, schools have the obligation to provide services to eligible students even if a parent has not made the request for an evaluation.

Suspension or Expulsion for Disability Related Behavior
The ADA protects children with disabilities from discrimination. This means that a child cannot be suspended or expelled from a childcare program for the sole reason of their diagnosis type or disability. A childcare center cannot assume that a disability will result in dangerous behavior. If a child with a disability does have disability related behavior which poses a direct threat to staff or other children, the childcare center has an obligation to make reasonable accommodations to mitigate the threat posed by the behavior or reduce the behavior. If reasonable accommodations cannot be made because they would fundamentally alter the program or pose an undue burden on the childcare center, the child may be suspended or expelled. If reasonable accommodations are not able to reduce the direct threat of the disability-related behavior, the child may be suspended or expelled. A direct threat is a substantial risk of serious harm. An individualized assessment about direct threat must be made. An individualized assessment about direct threat does not rely on stereotypes. An individualized assessment about direct threat must consider the reasonable accommodations that could mitigate the threat posed by the behavior or reduce the behavior.

Disability Discrimination Claims
If you feel that you or your child have been discriminated against by a childcare center, you may have a legal claim under the ADA. You have the right to file a claim with the United States Department of Justice Civil Rights Division. The Civil Rights Division investigates civil rights violations, including rights conferred by the ADA. You may also seek to file your claims in a court of law. These complaint processes are available to you for all childcare programs covered by Title II and Title III of the ADA, even if the child is not on a 504 plan or covered under the Individuals with Disabilities Education Act (IDEA).
Additional Rights under School Policies, State Law, and the IDEA

If a local education agency proposes to suspend, expel, or otherwise change the placement of a student with a disability for more than 10 days in response to a violation of school policy, it must conduct a Manifestation Determination Review to determine if the violation constitutes a manifestation of the student’s disability. This requirement also applies to a series of shorter suspensions (including partial-day suspensions or shortened school days) which occur during the same school year if the total number of days suspended is more than ten. If the school finds a manifestation, the school must return the student to their original placement unless the violation involves serious bodily injury to another person or possession of a weapon or illegal drugs at school, in which case the school may remove the student to an interim alternative setting for up to 45 days. Parents of students with disabilities who have been found eligible under the IDEA have special rights as members of an IEP team and have access to procedural safeguards in the event of a dispute. If you feel your child has been wrongfully suspended, expelled, or had their placement changed in response to conduct that is a manifestation of their disability, you have the right to request a due process hearing from the school district. A due process hearing is similar to a trial: the parties present evidence and question witnesses, and at the conclusion of the process, the hearing officer will issue a written decision if the parties do not decide to resolve their claims through mediation or otherwise. A due process hearing request must be submitted within 2 years of the events referred to in the request for hearing. You also have the right to file a State Complaint with the State Board of Education, which is an informal process wherein a neutral third party appointed by the Board investigates allegations made in a written complaint and issues a decision within 60 days of receiving the complaint. If the investigator finds that the school has violated the IDEA or state special education law, they may issue a Corrective Action Plan, which may include compensatory education services, mandatory training for school employees, or other remedies. Alleged violations in a State Complaint must have occurred within 1 calendar year of the date the complaint is submitted.

Additional Reading

For more information, please see the Department of Justice publication Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act.
The Disability Law Center (DLC) is a private, non-profit organization, designated by the governor as Utah's Protection and Advocacy agency. The DLC believes in a society where abilities, rather than disabilities, are recognized; all people have an equal opportunity to participate; and where all people are treated with equity, dignity, and respect. We work toward our vision by enforcing and advancing the legal rights, choices, and opportunities of Utahns with disabilities. DLC services are available free of charge statewide, regardless of income, legal status, language, or place of residence.

If you have further questions, please contact us. Even though our focus is on cases that can help as many people as possible - because time and resources are limited - we at least offer information and/or referral options to everyone who contacts us. Materials are also available in alternative formats such as audio, large-print, Braille and Spanish. Call (800) 662-9080 or apply for help online, and our staff will contact you within 1-3 business days.

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