

Technical Assistance Memo: Moving Toward Americans with Disabilities Act Compliance: A Checklist and Guide for Privately Operated Child Care Programs

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The Office of Child Care's National Child Care Information and Technical Assistance Center

Introduction

Most child care programs are required to comply with the Americans with Disabilities Act (ADA, Title III).¹ Being in compliance largely depends on making reasonable accommodations to meet the **specific** needs of parents and children with disabilities who seek your services. However, there is a lot that can be done ahead of time to move your program toward full compliance with the law. This checklist and guide have been developed with that in mind—what can you do now, before any specific parent or child with a disability presents him- or herself at your door, to better comply with the law?

This resource focuses on four major areas in which accommodations may need to be made—admissions; general policies, practices, and procedures; communication methods; and physical accessibility (inside and outside the facility). For each area, the guide identifies areas for review and suggests ways to improve compliance. Although the focus is on ADA compliance, there is much more that can be done to welcome persons with disabilities. The resources section at the end of this document suggests further organizations and materials that can help you actively promote inclusion in your program.

This resource is designed to provide information, but **it is not legal advice**. To determine exactly what your program must do and how it should handle individual situations, seek the advice of a knowledgeable attorney.

Reasonable Accommodations

Making reasonable accommodations when necessary to serve a person with disabilities is central to ADA compliance. One overarching way to see that necessary modifications are made when appropriate is to **provide training to staff about the ADA and its requirements** at orientation and through ongoing training opportunities.² However, ADA training is not required to comply with ADA requirements. Note: The following information highlights some issues for consideration. It does not cover every possible issue that you may need to address for your program to meet ADA requirements.

¹ Child care programs operated by religious organizations are exempted from compliance. Child care programs operated by state or local government entities must comply with Title II rather than Title III. This document does not cover issues related to employing persons with disabilities and focuses only on Title III.

² Training should also be made available about other disability rights laws—Federal, State, or local—which may apply to your child care program. These laws may provide more protection to persons with disabilities than the ADA and may require your program to do more on their behalf.

Admissions	
Question to consider	Does your admissions policy/enrollment contract/admissions material screen out or tend to screen out persons with disabilities? <input type="checkbox"/> No <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action
ADA requirements	The ADA says that you may not have an admissions policy that screens out or tends to screen out persons with disabilities unless it is necessary for the safe operation of the program.
Tips for moving toward compliance	<ul style="list-style-type: none"> ■ Eliminate language in your policy/contract/materials indicating that children with disabilities will not be served, accommodated, or included. ■ Include clear, non-discrimination language. ■ While not required, consider an affirmative statement of inclusion of persons with disabilities. ■ Eliminate any language in your policy/contract/materials that screens out or tends to screen out persons with disabilities, unless it is made clear that exceptions will be made for those children whose disability prevents them from meeting requirements.
Examples	<ul style="list-style-type: none"> ■ Rainbow Child Care Program does not discriminate on the basis of disability in admissions to, access to, or operation of its child care program. ■ Rainbow Child Care Program is committed to serving persons with disabilities. To ensure that you do not encounter any barriers, please communicate with us so that every effort can be made to provide you with any reasonable accommodations you or your child may require. ■ Our policy is to accept only those children who have been toilet trained. However, if your child has a disability that affects their ability to become toilet trained, this requirement will be waived for admission.
Question to consider	Does your program charge more to families of children with disabilities? <input type="checkbox"/> No <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action
ADA requirements	According to the ADA, programs may not charge more to make the <i>reasonable accommodations</i> that the law requires. However, according to the U.S. Department of Justice, which enforces the law, programs <i>may</i> charge more for professional services not typically associated with providing child care, such as occupational therapy or speech therapy. It is also possible to charge more if a program goes above and beyond what is required by the law (i.e., above and beyond “reasonable accommodation”), but any program considering this option definitely should seek legal advice.
Tips for moving toward compliance	<ul style="list-style-type: none"> ■ Consider raising the rates of all families to cover any increased costs associated with serving children with disabilities. ■ Seek other sources of funding to help pay for any reasonable accommodations. For-profit programs may be eligible for Federal tax credits and deductions described in the accessibility section below, and some States have funding pools to assist with equipment, increased staffing costs, etc. ■ Access special needs rates from child care subsidy programs if they are available in your State and you are serving eligible children.

Examples	<ul style="list-style-type: none"> ■ Rainbow Child Care Program does not discriminate on the basis of disability. We charge the same rates to children with disabilities as to those who are typically developing when the children only require reasonable accommodations.
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Policy, Practices, and Procedures (Medication)	
Question to consider	<p>Do you have a medications policy which allows for the administration of medication and other typical health procedures?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p>
ADA requirements	If children with disabilities require the administration of medication or other typical health procedures, and it is a reasonable accommodation to administer, the ADA requires that this be done.
Tips for moving toward compliance	<ul style="list-style-type: none"> ■ Eliminate any “no medications” or “no health procedures” policy, or modify your policies to reflect that medications and typical health procedures will be administered, when otherwise legal, to children with disabilities requiring these in order to participate in the program. ■ Determine if your State’s licensing law or regulations have any limitations on your ability to administer medication or perform health procedures. If there are limitations you do not believe are reasonable, contact your licensing agency for further clarification. ■ In New York, take the course required to administer medications so that you will be prepared if children with disabilities requiring medications enroll in your program.
Examples	<ul style="list-style-type: none"> ■ Rainbow Child Care Program will administer prescription medication when considered a reasonable accommodation necessary to accommodate a child with a disability. (Keep in mind that a child care program need not limit its willingness to administer prescription medications only to those with disabilities but could make administration of medication an across-the-board policy.)

Communication

Questions to consider	<p>Do you have the ability to communicate with persons with disabilities who may be seeking your services? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p> <p>When communicating important information to parents, is the information available in alternative formats (such as large print, audio, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p> <p>Are you aware of community resources to help you communicate—such as Sign Language Interpreters or other methods—if you were to need them? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p>
ADA requirements	<p>Under the ADA, you are expected to take any necessary steps to accommodate persons with disabilities with added equipment or services to enhance communication (known under the law as <i>auxiliary aids and services</i>) unless it imposes an <i>undue burden</i> (i.e., it is too difficult or expensive) or would <i>fundamentally alter</i> the nature of the program.</p>
Tips for moving toward compliance	<ul style="list-style-type: none"> ■ You cannot know in advance whether those with visual, speech, or hearing impairments will seek your services, but you can prepare by identifying resources in your community that might be able to assist by supplying a sign language interpreter or a similar service. ■ You can also commit to accepting verbal answers to your child care application, which could be transcribed by you. (If you maintain a Web site, check to see that it is accessible to persons with disabilities. This is not required, but is desirable.³)
Examples	<ul style="list-style-type: none"> ■ Rainbow Child Care Program identifies two sources of assistance should those with visual, speech, language, or hearing impairments seek the services of its program. These include a local community college that teaches sign language and offers interpreter services to the public for a fee, and a Lighthouse for the Blind agency, which because of a specially funded program in its community, can print its child care brochure into Braille for a nominal fee.

³ The issue of whether a Web site is part of the definition of a public accommodation under certain circumstances is currently being litigated and has been decided differently in different circuits. Contact the U.S. Department of Justice for current information.

Physical Accessibility

Questions to consider	<p>Have you identified those elements of your indoor facility that are currently inaccessible? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p> <p>Have you prioritized projects for making accessibility changes? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p> <p>Have you started to identify resources that can be used to pay for accessibility projects? <input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p>
ADA requirements	<p>The ADA requires that <i>existing</i> programs evaluate their accessibility to persons with disabilities and identify any architectural changes that need to be made (i.e., removal of barriers) (check the new 2010 Department of Justice regulations in the Resources Section at the end of this document). These changes are expected to be made if they are <i>readily achievable</i>—that is, not too difficult or expensive. You are also expected to determine if there are any reasonable alternatives if the barrier removal is not readily achievable. Buildings undergoing major alterations/renovations are expected to ensure that to the <i>maximum extent feasible</i>, the altered portions of the structure are readily accessible to and usable by individuals with disabilities. <i>New</i> buildings are expected to meet ADA Accessibility Guidelines (ADAAG). Review the new accessibility regulations dealing with accessibility of children’s indoor and outdoor environments. Compliance is permitted as of September 15 2010, and required by March 15, 2012 (check the new 2010 Department of Justice regulations in the Resources Section at the end of this document).</p>

<p>Tips for moving toward compliance</p>	<ul style="list-style-type: none"> ■ Use an accessible facilities checklist, such as the one listed in the “Resources” section, to determine how accessible your facility is. Consult with disability organizations to get their input when feasible. The U.S. Department of Justice, which enforces ADA, has indicated that “A serious effort at self-assessment and consultation can diminish the threat of litigation and save resources by identifying the most efficient means of providing required access.” Review the new accessibility regulations dealing with accessibility of children’s indoor and outdoor environments. Compliance is permitted as of September 15, 2010, and required by March 15, 2012 (check the new 2010 Department of Justice regulations in the Resources Section at the end of this document). ■ Consider if any of the following are readily achievable, i.e., they are possible to accomplish without much difficulty or expense: <ul style="list-style-type: none"> ◆ Putting in a temporary or permanent ramp; ◆ Ensuring a path of travel from all areas of your program that is sufficiently wide enough to accommodate a wheelchair; and ◆ Removing high-pile, low-density carpeting and replacing it with flooring, which makes movement easier for those with disabilities. ■ If you are a for-profit program (center or family child care), you may be eligible for a Federal tax credit and/or deduction to help defray the costs of making your program accessible. Consult Internal Revenue Service Publication 907, included in the “Resources” section, for more information. Also, check with local clubs (e.g., Kiwanis or Rotary clubs) to determine if resources might be available to install ramps and the like.
<p>Examples</p>	<ul style="list-style-type: none"> ■ Rainbow Child Care Program borrows a wheelchair from a local assisted living program to determine whether a person in a wheelchair could move freely throughout the program. It determines that it will need to move some furniture and make more space by the dress-up corner and the reading nook. (Remember that while child-size wheelchairs do not need as much room, parents might also need to gain access to the facility.) ■ Rainbow Child Care Program’s lease expires in a year. Its current space is inaccessible. It informs its real estate agent to look for new space that is accessible to those in wheelchairs. ■ Maria’s Family Child Care Program, housed in her home, has several steps at her front door. Her rear entrance, which is rarely used, is level to the door and accessible to persons with disabilities. However, the path leading to the rear entrance is overgrown with shrubs and piled with old toys and bicycles. Maria has the hedge cut back and removes the toys and bicycles, making the rear entrance accessible if needed.
<p>Question to consider</p>	<p>Is the playground/outdoor area accessible to children with disabilities?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> Under review <input type="checkbox"/> Needs attention and action</p>
<p>ADA requirements</p>	<p>The ADA requirements for outdoor accessibility are no different than those for indoor accessibility. (See previous question and related information.)</p>

<p>Tips for moving toward compliance</p>	<ul style="list-style-type: none"> ■ Obtain a copy of the ADA Accessibility Guidelines for Play Areas (which is available on the Web at http://www.access-board.gov/play/index.htm), and look at your own play areas with an eye toward meeting the guidelines' recommendations. These guidelines do not apply to infant and toddler play areas or family child care homes. They also are not enforceable by the U.S. Department of Justice because they have not yet been formally adopted. However, they offer the most accurate guidance currently available on what can be considered ADA accessibility requirements for outdoor children's play areas.
<p>Examples</p>	<ul style="list-style-type: none"> ■ Rainbow Child Care Program is planning to replace its old play structure and is looking to purchase a new one. Before buying one, it reviews the Department of Justice's regulations dealing with children's outdoor play areas. It also requests that any vendors it is considering outline the various ways that the new play area and structure will be accessible to children with disabilities.

Resources

Federal Resources

- **U.S. Access Board**, <http://www.access-board.gov/>, is charged with developing guidelines for accessibility. The Web site includes the following two documents: *Building Elements Designed for Children's Use*, available at <http://www.access-board.gov/Adaag/kids/final.htm>, and *Play Areas*, at <http://www.access-board.gov/play/finalrule.htm> (see also <http://www.access-board.gov/play/> for more comprehensive information about the play area guidelines).
- **U.S. Department of Justice**, <http://www.ada.gov/>, enforces the ADA and provides comprehensive information about the law. For the most recent regulations, see <http://www.ada.gov/regs2010/ADAregs2010.htm>. The following are included on the Web site under Businesses and Non-Profit Service Providers:
 - ◆ ADA Tax Incentive Packet for Businesses;
 - ◆ Commonly Asked Questions About Child Care Centers and the ADA;
 - ◆ The Child Care Centers and the Americans with Disabilities Act flyer; and
 - ◆ The Checklist for Readily Achievable Barrier Removal.

For more information, call the DOJ ADA Information Line at 800-514-0301 or 800-514-0383 (TDD), which operates Monday through Friday from 10:00 a.m. until 6:00 p.m., except Thursday, when the hours are from 1:00 p.m. until 6 p.m. (Eastern Time).

National Organizations

- **Boundless Playgrounds**, <http://www.boundlessplaygrounds.org/>, is a nonprofit program that specializes in helping communities develop accessible playgrounds.
- **Child Care Law Center**, <http://www.childcarelaw.org/>, is a legal services organization that provides legal information to parents and child care providers on a range of issues, including compliance with the ADA. Call 415-558-8005 for more information.

- **National Child Care Information and Technical Assistance Center (NCCIC)**, <http://nccic.acf.hhs.gov/>, provides information and resources on all aspects of child care inclusion. Call 800-616-2242 or email info@nccic.org.
- **National Early Childhood Technical Assistance Center (NECTAC)**, <http://www.nectac.org/>, provides information about the inclusion of children with disabilities (from birth to 5 years) in early childhood programs to fulfill the mandate of the Individuals with Disabilities Education Act (IDEA).

State Organizations

- **Rhode Island Child Care Facilities Fund**, <http://www.rilisc.org/LearnMoreAbout/LearnMoreAbout/TheRhodeIslandChildCareFacilitiesFund/tabid/172/Default.aspx>, a project of the Local Initiatives Support Corporation, has developed resource guides on the development and design of child care facilities. *The Rhode Island Child Care Facilities Fund Resource Guide: Child Care Center Equipment and Furnishings*, provides inclusion tips throughout. For more information, call 401-331-0131.