



All Kids Count: Child Care and the ADA

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Tears fill Ms. Smith's eyes as she hangs up the phone after being rejected by the sixth child care center. Three months ago, Ms. Smith's husband left her and two children without financial support. Ms. Smith starts a new job in one week, however, she cannot locate child care for Tonya – her six month old infant with Down Syndrome.

While most parents struggle to find affordable, quality child care, parents of a child with a disability struggle to find *any* program which will accept their child.

The 1990 passage of the Americans with Disabilities Act (ADA) opened a new and exciting world for Ms. Smith, Tonya and other families and children with disabilities. These families now have access to child care that others have enjoyed for years.

Prior to ADA passage, care for many children with disabilities was limited to family, friends or special disability-only child care centers. Now child care centers and home daycare providers are required to open their doors wide to welcome all children.

Almost all child care centers, 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. The basic requirements of Title III are:

- 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*.
- In general, centers must make their facilities accessible to persons with disabilities. Centers with existing facilities are responsible for ensuring that there aren't any obstacles that could cause accessibility problems for people with disabilities and for removing any barriers so long as



removal can be easily accomplished and carried out without much difficulty or expense. Newly constructed facilities and any altered portions of existing facilities must be *fully accessible*.

There are many ways in which a child care center or home daycare provider can comply with the ADA Title III regulations, including:

- Establish policies that support the inclusion of children or parents with disabilities.
- Provide the same services to children with disabilities that you provide for all other children, unless separate or different services are necessary.
- Ensure that each child with a disability is provided services in the same rooms or activity areas as all the other children, except in particular instances where some separation is needed to enable the child with a disability to have services that are as effective.
- Work with families of children with disabilities, collaborate with parents and confer with them often.
- Make your facility accessible to people with disabilities. If your facility needs to make modifications to make it more accessible to people with disabilities, some easy and inexpensive options are to install offset hinges to widen a door opening, install grab bars in toilet stalls, or rearrange tables, chairs, and other furniture.

If your center is not in compliance with the ADA, complaints may be made to the Department of Justice. If the Department receives a complaint or is asked to join an on-going lawsuit, it first investigates the allegations and tries to resolve them through informal or formal settlements. The vast majority of complaints are resolved voluntarily through these efforts. If voluntary compliance is not forthcoming, the Department may have to litigate and seek injunctive relief, damages for aggrieved individuals, and civil penalties. This can easily be avoided by making the needed modifications. Contact the ADA Center now to find out how to your business can do this.

The Rocky Mountain ADA Center, operated by Meeting the Challenge, Inc., serves individuals and organizations within a six state region which includes Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. We can help make suggestions and guide child care centers to make reasonable modifications to their policies, practices or procedures when such modifications are necessary to make the center's services and facilities accessible to individuals with disabilities, unless the modifications would fundamentally alter the nature of its services.

If you have further questions about child care centers or other requirements of the ADA, visit the Rocky Mountain ADA Center website at <http://www.adainformation.org/childcare>. To contact the ADA Center directly, e-mail adainfo@adainformation.org or call (800) 949-4232.

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