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## **AMERICAN DISABILITIES ACT**

The Americans with Disabilities Act of 1990 (ADA) (P.L. 101-336) was enacted by President Bush on July 26, 1990.

The information contained herein is the most updated available at the time of publication. The Americans with Disabilities Act is a law which is currently being implemented and tested. It will take years for the law to be fully challenged in the Courts and for all of the agencies involved in administering ADA to amend and finalize regulations. This information is being presented as an outline of the major provisions of ADA with an emphasis on its effect on child care agencies. You are urged to seek competent legal advice if you are presented with a claim under ADA or are uncertain as to how a provision of ADA impacts your business.

ADA marks the culmination of nearly twenty years of efforts to establish a firm federal statutory basis for prohibiting discrimination against persons with disabilities in all parts of American life. ADA differs from Section 504 of the Rehabilitation Act in that all activities of state and local agencies (i.e. not just federally funded activities) are subject to the provisions of ADA.

Effective dates on a number of key provisions were purposely delayed for several years in order to allow affected entities to adjust to new requirements.

ADA preserves the requirement that state and local governments do not discriminate against qualified individuals with disabilities in any program, activity or service.

ADA contains many qualifiers such as "undue hardship," "qualified individual," "readily achievable." It will take years of administrative rules, policy interpretations and judicial decisions before any clear understanding of the qualifiers is attained.

The purposes of ADA as defined in Section 2 of the Act are:

- "(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities."

The term "disability" is defined in the Act as:

- "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;

- (B) a record of such impairment; or
- (C) being regarded as having such an impairment."

The term "disability" does not include: homosexuality or bisexuality, transvestitism, trans-sexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania, or psychoactive substance use disorders resulting from current illegal drug use.

## **TITLE I - EMPLOYMENT**

The Act includes employers in the private sector with 15 or more workers effective July 26, 1994. Employers with 25 or more workers were effected on July 26, 1992. Some of the key provisions are:

- Discrimination on the basis of disability in hiring or promoting is prohibited.
- Employers must make "reasonable accommodations" to the disabilities of qualified applicants or employees unless doing so creates an "undue hardship".
- Employers are allowed to reject applicants or fire employees who pose a "direct threat" to the health or safety of other individuals in the workplace.
- "Qualified individuals with a disability" is defined as: "... an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position..."
- A "reasonable accommodation" may include: (a) making existing facilities "...readily accessible to and usable by individuals with disabilities;" and (b) restructuring a job, modifying work schedules, re-assigning persons to vacant position, acquiring or modifying equipment/devices, modifying examinations, training material and policies, the provision of qualified readers/ interpreters and similar changes.
- An "undue hardship" is "an action requiring significant difficulty or expense when considering..." such factors as: (a) the nature and cost of the proposed accommodation; (b) the overall financial resources of the facility and the number of persons with disabilities who would be affected; (c) the overall financial resources of the covered entity; and (d) the type of operations of the covered entity.

### **Discrimination in employment is interpreted to include:**

- limiting, segregating, or classifying a job applicant or employee in a way that adversely effects his or her opportunities or status;
- participating in contractual or other arrangements that have the effect of subjecting individuals with disabilities to discrimination;
- using standards, criteria or methods of administration that have a discriminatory effect or perpetuate discrimination of other individuals who are subject to common administrative controls;
- excluding or denying equal opportunities to a qualified non-disabled individual because of his/her relationship to a person with a disability;
- failing to make reasonable accommodations to the known limitations of a qualified individual with a disability unless such entity can demonstrate that the accommodation would impose an undue hardship on the business;

- denying employment opportunities to a qualified individual because he/she needs a reasonable accommodation; and imposing or applying tests or other selection criteria that screen out ( or tend to screen out) individuals with disabilities, unless such tests or other selection criteria can be shown to be job-related and consistent with business necessity.

Pre-employment inquiries into the ability of an applicant to perform job-related functions are permitted, however, a prospective employer is prohibited from asking whether the affected individual is disabled or about the nature and extent of such a disability.

The E.E.O.C. has presented the following definition for major life activities in conjunction with A.D.A.: seeing, hearing, walking, breathing, performing manual tasks, learning, caring for oneself and walking. This would cover individuals who have epilepsy, paralysis, a substantial hearing or visual impairment, or mental retardation. It would not cover minor, non-chronic conditions of short duration such as a sprain, infection or broken limb.

## **TITLE II - PUBLIC SERVICES**

### **Regulated by Department of Transportation (federal)**

- New public transit buses and rail cars must be accessible
- New stations or any alterations must be accessible
- Existing "key stations" must be accessible by 7/25/93
- Amtrak must be accessible within twenty (20) years
- One (1) rail car per train must be accessible by 7/26/95
- Transit authorities must provide comparable para-transit or other special transportation to individuals with disabilities who cannot use fixed bus routes unless an undue burden would exist

### **Privately owned bus and van companies have special rules:**

- New over-the-road buses ordered on or after 7/26/96 must be accessible
- Other new vehicles (such as vans) must be accessible unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public

ADA requires public agencies providing school bus transportation to provide bus service to children with disabilities equivalent to that provided to children without disabilities. School bus transportation to children with disabilities must be provided in the most integrated setting possible. While all school buses do not need to be accessible, the bus serving the regular route of a child with a disability must be accessible. The lack of an accessible bus must never be used to limit the placement options of a child with a disability. (H.R. REP. NO. 101-485(II) at 86.

## **TITLE III - PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES**

### **Title III of the Act states that:**

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the

goods, services, facilities, privileges, advantages, accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodations." The term "public accommodation" is broadly defined to include: (a) an inn, hotel, motel, or other place of lodging (unless it has five or fewer rooms for rent and is occupied by the proprietor); (b) a restaurant, bar, and other establishment serving food or drink; (c) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment; (d) an auditorium, convention center, lecture hall, or other place of public gathering; (e) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or retail establishment; (f) a laundromat, dry cleaner, bank, barbershop, travel service, funeral parlor, gas station, office of an accountant, lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment; (g) a terminal, depot, or other station used for specified transportation; (h) a museum, library, gallery, or other place of public display or collection; (i) a park, zoo, amusement park or other place of recreation; (j) a nursery, elementary, secondary, undergraduate or postgraduate private school or other place of education; (k) a day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service establishment; and (l) a gymnasium, health spa, bowling alley, golf course or other place of exercise or recreation. (Emphasis added)

**ADA contains general and specific categories of prohibited discrimination.**

- denying individuals the opportunity to participate
- participation in an unequal program or benefit;
- provision of a separate benefit or program
- failure to provide goods, services or accommodations "... in the most integrated setting appropriate to the needs of the individual";
- denial of the opportunity to participate in programs and activities that are not separate and different;
- the use of administrative methods that have the effect of discriminating on the basis of disability or perpetuating discrimination of others who are subject to common administrative control;
- discriminating against an individual on the basis of his/her association with a person with a disability
- the use of eligibility criteria that tend to screen out persons with disabilities;
- failure to make modifications in policies, practices or procedures when such changes would result in appropriate accommodations for persons with disabilities, unless it can be demonstrated that such modifications would "...fundamentally alter the nature" of the goods, service or facilities being provided;
- the failure to provide auxiliary aids that are necessary to allow persons with disabilities to take advantage of the particular goods, services or facilities unless the provision of such aids would constitute an undue burden;
- the failure to remove architectural, communication and transportation barriers where such removal is "readily achievable"; and
- the failure to make goods, services or facilities available through alternative methods in cases where the removal of architectural, communications or transportation barriers are not readily achievable, provided such alternative methods are readily achievable.

Newly constructed places of public accommodation and commercial facilities which are opened 30 months or more after the enactment date of the ADA must be accessible to persons with disability, unless the

affected entity can demonstrate that such action would be "structurally impractical". New facilities, however, are not required to have an elevator unless they are more than 3,000 square feet of floor space per story (unless the facility is a shopping center or the professional office of a health care provider). The provisions of Title III do not apply to "... individuals who pose a direct threat to the health and safety of others". The term "readily achievable" is defined as "... easily accomplishable and able to be carried out without much difficulty or expense."

Title III became effective 18 months after the date of enactment. (1/26/92)

#### **TITLE IV - TELECOMMUNICATIONS**

Companies offering telephone service to general public must offer relay services to individuals who use TDD or similar devices by 7/26/93. The relay must be operational 24 hours a day.

#### **TITLE V - MISCELLANEOUS PROVISIONS**

Title V of ADA specifies that ADA shall not be construed to reduce the scope of coverage or standards applicable to federal agencies and recipients of federal assistance under Title V of the Rehabilitation Act of 1973, as amended. In addition to other administrative clauses Title V "... allows the prevailing party in any litigation under the Act to recover reasonable attorney's fees ... "

The Americans with Disabilities Act is the most sweeping civil rights reform legislation since the Civil Rights Act of 1964. Advocates for persons with disabilities see the legislation as the cornerstone for first class citizenship for disabled persons. There have been no federal funds allocated, or proposed, to assist in making modifications for compliance with the mandates of ADA. The financial burden will be left to the private sector and state and local governments. You should consult your tax advisor for information on tax credits for the cost of removal of qualified transportation and architectural barriers and certain tax credits for small business for certain costs of compliance with ADA. The true impact and effect of ADA will be seen in the future. The Courts will be flooded with cases challenging the subjective and ambiguous terms contained in this legislation. Until such time as there are judicial rulings many of the qualifiers in ADA will remain gray and open to interpretation. We expect that the Supreme Court will have the final say on several key points of ADA, however, it may take many years before such questions are addressed by the highest Court.

### **OVERVIEW OF THE LAWS PROTECTING INDIVIDUALS WITH DISABILITIES**

#### **SECTION 504 OF THE REHABILITATION ACT OF 1973**

Congress passed Section 504 of the Rehabilitation Act in September 1973. This law prohibits discrimination on the basis of a physical or mental disability. The legislation applies to every program or activity that received federal funds.

#### **AMERICANS WITH DISABILITIES ACT**

Americans with Disabilities Act (ADA) was signed into law on July 26, 1990. ADA provides "comprehensive civil rights protection to individuals with disabilities in areas of employment, public accommodations, state and local government services, and telecommunications. ADA extends the requirements of Section 504 to all public and private programs and mandates an end to discrimination against individuals with disabilities.

#### **INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

Individuals with Disabilities Education Act (IDEA) mandates that all children with disabilities, ages 3 through 21, have a right to a free, and appropriate public education in the least restrictive environment. To be eligible, children must be professionally diagnosed as having a disability according to one or more of IDEA's diagnostic categories.

Children with disabilities and their families have a right to a coordinated multi-agency approach to services. Collaboration between the Local Education Agencies and other community resources is essential.

Provisions of IDEA include the Individualized Education Plan (IEP), parents as co-decision-makers, due process, confidentiality and services in the least restrictive environment.

## **RESOURCES**

For more specific information about ADA requirements affecting Public Services and Public Accommodations contact:

Office on the Americans with Disabilities Act  
Civil Right Division  
U.S. Department of Justice  
P.O. Box 66118  
Washington, DC 20035-6118  
202-514-0301 (Voice) 202-514-0381 (TDD) 202-514-0383 (TDD)

For more specific information about ADA requirements affecting employment contact:

Equal Employment Opportunity Commission  
1801 L Street NW  
Washington, DC. 20507  
202-663-4900 (Voice) 800-800-3302 (TDD) 202-663-4494 (TDD for 202 Area Code)

For more specific information about ADA requirements affecting transportation contact:

Department of Transportation  
400 Seventh Street SW  
Washington, DC. 20509  
202-366-9305- (Voice) 202-755-7687 (TDD)

For more specific information about requirements for accessible design in new construction and alterations contact:

Architectural and Transportation Barriers Compliance Board  
1111 18th Street NW  
Washington, DC. 20036  
800-USA-ABLE (Voice) 800-USA-ABLE (TDD)

For more specific information about ADA requirements affecting telecommunications contact:

FEDERAL COMMUNICATIONS COMMISSION  
1919 M. STREET NW  
WASHINGTON, DC. 20554  
202-632-7260 (Voice) 202-632-6999 (TDD)

As an additional resource you can contact the Center for Independent Living (CIL) in your area. CILS have fashioned themselves to be web weavers between disabled and abled communities. They will often be able to offer inexpensive solutions to reasonable accommodation and offer a variety of services which may be helpful. For a national listing of CILS contact:

Independent Living Research Utilization  
2323 S. Shepperd  
Suite 1000  
Houston, TX. 77019  
713-520-0232

## **ADA Self-Assessment**

The following assessment can help programs determine their strengths and weaknesses in preparing the way for all children to participate in their programs and to comply with the spirit of the Americans with Disabilities Act. Although this is not a legal document, or a comprehensive survey, this checklist can help you see where you need to focus.

### **INSTRUCTIONS**

**Rate each item as:** 0 = not doing well; 1= doing okay; or 2= doing very well.

Be sure to include specific examples of how the program is, or is not, inclusive in relation to that item. Items that are rated 0-1 provide a guide to what the program needs to do to prepare to include all children.

### **Some Notes On Using This Assessment:**

- Completing this assessment may take some careful thought, so devote sufficient time for it. Developing quality programs takes concentrated energy. The time you spend on this form can be beneficial.
- Respond to each item as a team, comprised of all levels of staff and parents of children with special needs. Involve all staff in filling out the assessment. Quality services rely on everyone doing her or his part.
- Involve families. As recipients of your services, parents are uniquely qualified to share insights, observations, and ideas that may not be readily apparent to staff. Invite parents to join you in this process. Make sure you schedule mutually convenient times to meet.

- Although this is a group activity, your team can break into small groups to generate ideas. At different points of the process, you may want to:
  - conduct the discussions in one large group.
  - break the group into smaller discussion units and then reunite the smaller units to share ideas.
  - ask the participants to work individually and then reassemble to share ideas.

0= not doing well	1= doing okay	2= doing very well
<b>Our policies:</b>		
0	1	2
Specific examples		
Include a written program philosophy that promotes the inclusion of all children in early childhood programs.		
Include a written program philosophy that encourages collaboration with community services for children and families.		
Do not use eligibility requirements that exclude or segregate children with disabilities.		
Include a process for making referrals to local agencies that work with young children after written permission has been received from parents.		
Do not place special charges on families of children with disabilities.		
Describe safety requirements that are based on actual risks and not on mere speculation, stereotypes, or generalizations about children with disabilities.		
Other comments:		

0= not doing well	1= doing okay	2= doing very well
<b>Our programs:</b>	0    1    2	Specific Examples
Provide opportunities for all children to experience a variety of developmentally appropriate activities.		
Provide opportunities for all children to develop friendships.		
Use a curriculum that is both developmentally and individually appropriate.		
Adapt daily routines and activities to ensure full participation of all children.		
Allow individuals who provide services for children with disabilities in the classroom to help adapt the environment and activities.		
Provide opportunities for all children to access toys, equipment, play areas, and materials.		
Use alternative methods to ensure effective communication with all children and families.		
Provide accessible transportation services (if provided to all children).		
Use emergency exit plans that accommodate the needs of all children.		
Have medical emergency cards on file for all children with enough detail to meet the needs of each child.		
Other comments:		

0=not doing well	1=doing okay	2=doing very well
<b>Our Staff:</b>	0    1    2	Specific example
Receive ongoing training to resolve stereotypes and assumptions about disabilities.		
Receive ongoing training in the skills needed to make individual adaptations including using adaptive equipment and special materials.		
Receive ongoing training on the rights of young children with disabilities under the Americans with Disabilities Act (ADA) and the resources available under the Individuals with Disabilities Education Act (IDEA) and Pennsylvania's Act 212.		
Collaborate with individuals and programs in the community that provide services for children and their families.		
Know of community resources for obtaining auxiliary aids and services.		
Make adjustments and use alternative methods to ensure effective communication with all families.		
<b>Our building:</b>		
Is accessible and usable by all children.		
Is accessible and usable by all family members.		
Other comments:		

## ADA Technical Resources

Tax Provisions

Internal Revenue Service  
Office of the Chief Counsel  
P.O. Box 7604, Benjamin Franklin Station  
Washington, DC 20044  
800-829-1040 (Voice) 800-829-4059 (TDD)

Equal Employment Opportunity Commission and U.S. Department of Justice. (1991). **Americans with Disabilities Act Handbook**. Wash. DC U.S. Government Printing Office.

This book contains annotated regulations for Titles I, II, and III of the Americans with Disabilities Act, and resources for obtaining additional assistance, and an appendix which contains supplementary information related to the implementation of the ADA Information Line, (800) 514-0301 (voice) or (800) 514-0383 (TDD)

Child Care Law Center. (1993). **Caring for children with special needs: The Americans with Disabilities and Child Care. San Francisco: Child Care Law Center.**

This publication uses a question and answer format to discuss the ADA and its implications for child care providers. Chapters include: Admitting Children with Special Needs Into Your Program and Accommodating a Child With Special Needs. It also reviews other information such as liability insurance, books and materials on children with special needs, and legal and government resources. The cost is \$10.00 (shipping and handling not included). To order Publication number 9301, contact:

**Child Care Law Center**  
**22 Second Street, Fifth Floor**  
**San Francisco, CA 94105**  
**(415) 495-5498**

Doggett, L., & George, J. (1993). **All kids count: Child care and the Americans with Disabilities Act (ADA).**

This manual provides child care settings and day care homes with information on ADA including: An Overview of ADA and How it Applies to Child Care Settings; Steps To Successful Integration of Centers; Focus on Children with Mental Retardation and Other Developmental Disabilities; and other resources. The cost is \$10.00 (shipping and handling not included) To order Publication Number 30-17, Contact:

**Publications, ARC National Headquarters**  
**P.O. Box 1047**  
**Arlington, TX 76004**  
**(817)261-6003 Voice**  
**(817)277-0553 TDD**

Michaelson, K. & Carr, B. (1995). **Child Care and the Americans with Disabilities Act**.(Videotapes).

This series of eight videotapes explains the responsibilities of child care providers under the ADA and suggest strategies for providing services to young children with disabilities. Each videotape is accompanied by a manual that explains the ADA and that can be used as handouts for training. The entire set costs.\$85.00 (plus tax) and can be ordered from :

**The Center for Technology, Education, and the Community**  
**Eastern Washington University**  
**Paulsen Building Suite 421**  
**407 West Riverside**  
**Spokane, WA 99201**

Rab, V., & Wood, K. (1995). **Child care and the ADA: A handbook for inclusive programs.**

This book explains both the employment and public accommodations regulations for child care programs. It provides a working knowledge of the ADA, information on how to successfully implement the program and policy changes needed, and how to maintain optimal classroom environments. It is available for \$25.00 from Brookes Publishing. To order call (800) 638-3775.