



CHILD CARE LAW CENTER®

Know the Law About
The American with Disabilities Act and
Individuals with Disabilities Education Act
&
Housing & Zoning Protections for
Family Child Care Providers

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Maisha H. Cole, Staff Attorney

What is the American with Disabilities Act (ADA)?

ADA is a **federal civil rights law** that prohibits discrimination against individuals with **disabilities** in all areas of public life, including jobs, schools, child care, transportation, and all other public and private places that are open to the general public.



Who Must Comply with the ADA?

- **Title I. Employers of 15 or more persons.**
 - Prevents employment discrimination against people with disabilities.
- **Title II. Public Places**
 - Child care centers part of a government agency
 - Ex. Head Start, summer programs, & extended school day programs
 - If you care for children with child care subsidies
- **Title III. Public Accommodations**
 - Family child care homes, child care centers, preschools, & Head Start programs run by non-public agencies



Who is Protected by the ADA?

- Individuals who **have, or record of having, or regarded as having, impairments that substantially limit their major life activities.**



Who is Protected by the ADA?

The ADA protects **four groups** of people:

1. People **with** a physical or mental impairment that substantially limits one or more major life activity;
2. People with **a record (history)** of a physical or mental impairment that substantially limits one or more major life activities;
3. People who are **regarded as** having a physical or mental impairment and treated as though they have a substantially limiting disability; and
4. People who are denied equal jobs or benefits because of their **relationship or association** with individuals who have disabilities.

What is a Disability?

Impairment must “**substantially limit**” a “**major life activity**”

- Substantially limit: Something that prevents or significantly restricts doing an activity that an individual without a disability can easily engage in
- Some major life activities:

Grooming	Walking	Seeing
Hearing	Breathing	Speaking
Learning	Working	Sitting
Standing	Thinking	Sleeping

How Do I Comply with the ADA?

People with disabilities have a right to:

- Equal opportunity to participate in all activities in “the most integrated setting appropriate” to the persons needs
- Eligibility criteria that does not exclude based on disability
- Have the opportunity to participate in regular (mainstream programs)
- Be provided with “reasonable accommodations”



Balancing Test

Reasonable Accommodations are required under most circumstances.

Accommodations or modifications are not required if they would cause a(n):

- ❑ **Fundamental alteration**, or
 - Changes the **basic nature** of what the child care program offers

- ❑ **Undue burden**, or
 - A **significant difficulty** or expense

- ❑ **Direct threat**
 - A **significant risk** to health or safety *of others*

How Do I Comply with the ADA?

What are reasonable modifications?

- (1) Providing braille books
- (2) Following nutritional guidelines to avoid allergic reactions
- (3) Installing a ramp
- (4) Checking a child's hearing aid from time to time and replacing the battery
- (5) Providing a translator for a hearing impaired parent
- (6) Policy allowing diapering for children older than 3 years old
- (7) Installing a hydraulic lift

Hypo #1:

- Aaliya hits and bites other children in Eva's care. Her parents tell Eva that Aaliya's behavior is the result of a disability.
- What must Eva do under the ADA?

Hypo #2:

- Floyd is enrolled in Lizzette's child care. He has diabetes which requires that he take medication three times a day.
- Can Lizzette refuse to admit Floyd? If she admits him, can she refuse to give Floyd his medication?

Lizzette's Duties Under ADA

- Lizzette
 - Cannot exclude Floyd based on his disability-related need for medication
 - Must “reasonably accommodate” Floyd’s medical needs: balancing test
 - Giving glucose test and medication is doable with proper training and protocol
 - A court or the DOJ would very likely find that she must accommodate Floyd



Common Incidental Medical Services

- An **inhaler** for a child with asthma
- **Glucose monitoring, insulin** or **glucagon** for a child with diabetes
- **Diastat** for a child with epilepsy
- **Epi-pen** for allergic reactions
- **Gastro-tube** for nutrition



Administration of Medication Requirements

- ❑ Non-medical staff may give medication to children
 - Medical orders from child's medical doctor
 - Consent from child's parent/guardian
- ❑ Licensing has adopted protocols for safe and healthy medication administration. Providers must have a Plan of Operation which includes:
 - Type of Incidental Medical Services provided
 - Medication name, method, amount and time schedule
 - Description of required training for all staff giving the medication
 - Verification that designated licensee or staff has completed training, and that at least one trained staff will be at the facility while the child is in care

Resources

- DOJ FAQ: <https://www.ada.gov/childqanda.htm>
- Department of Justice on Child Care and the Americans with Disabilities Act
- Know the Law About Giving Medication to Children in Child Care in California
- Know the Law About Disabilities and Challenging Behaviors in California
- Know the Law About the American with Disabilities Act in California
- Know the Law About the American with Disabilities Act – Espanol
- Know the Law About the American with Disabilities Act – Chinese
- Disabilities Rights California
- Disability Rights Education and Defense Fund
- Evaluator Manuals

What is the Individuals with Disabilities Education Act (IDEA)?

- IDEA is a federal law created to ensure that all children with disabilities have available to them a free appropriate public education and ensures that related services are designed to meet their individual needs.



Who is covered under the IDEA?

Children and Youth Ages 0-21

0-2 → DDS or School

Individualized Family Service Plan (IFSP)

- Developmental delay
- At risk of developmental delay

3-21 → School District

Individual Education Plan (IEP)

IDEA Includes...

- Free Appropriate Public Education, designed to meet child's individual needs
- Fair, timely evaluation of child's needs at no cost to parents
- Individualized plan (specialized for that child)
- Progress toward child's individualized goals
- Least Restrictive Environment (Inclusive)
- Parents are part of planning process
- Procedural rules protect right to timely, appropriate services

Resources

- Know the Law about Giving Medications to Children in Licensed Child Care in CA.
- Know the Law about Disabilities and Challenging Behaviors in California
- Parent's Rights: An Early Start Guide for Families (English) This is also available in (at least) Spanish and Vietnamese.
- Other Resources on Children with Disabilities, the ADA and IDEA

Visit www.childcarelaw.org for more information

Know Your Rights: Housing and Zoning Protections

- State laws that protect family child care homes
- Local zoning permit and business license laws
- What landlords can and cannot do
- What HOAs can and cannot do



Protections for Family Child Care: Child Day Care Facilities Act

The Child Day Care Facilities Act was created because law makers recognized that affordable, quality licensed child care is critical to the well-being of parents and children. They highlighted that:

- Child care should be located in “normal residential surroundings” that give children a home-like environment which is good for their healthy development;
- Many parents prefer child care in their neighborhood;
- Licensing must be affordable, easy to regulate, and not heavily burdensome

Protections for Family Child Care

- State law “preempts” local family child care zoning laws
- Local laws and rules that don’t agree with the state law cannot be enforced





State Child Care Licensing

- ❑ The California Department of Social Services, Community Care Licensing Division enforces licensing rules for family child care and child care centers.
- ❑ Cities, counties, landlords, and HOAs for the most part CANNOT regulate licensed family child care.




Business License vs Zoning Permit

- Business License
 - Issued by City or County
 - Certifies large family child care provider can operate
 - Usually an annual fee

License Number	000000	BUSINESS LICENSE	Valid
		NOT TRANSFERABLE	July 1, 2015 - June 30, 2016
BUSINESS LOCATION	ABC Company 1234 Main Street Bothell, WA 98011	BUSINESS TYPE DESCRIPTION	000 Contractor - General
		BUSINESS OWNER	John Smith Jane Doe
MAILING ADDRESS	ABC Company PO Box 1234 Bothell, WA 98011		
		City of Bothell	License Officer
<small>In conformity with the provisions of the Bothell Municipal Code, the person, firm or corporation named below, whose residence or place of business is located as shown, has paid the appropriate fees to the City and is hereby granted this license to engage in the business, profession, occupation, trade or exhibition named, in the City of Bothell, Washington, for the period indicated. The license does not constitute a guarantee or endorsement by the City. TO BE POSTED IN A CONSPICUOUS PLACE.</small>			

- Zoning Permit
 - “Land use permit,” “use permit,” and “conditional use permit”
 - Permission to use land for a different reason
 - Usually a one-time fee

	ZONING PERMIT APPLICATION
CITY OF SHOREWOOD	<small>PLANNING AND PROTECTIVE INSPECTIONS</small>
<small>(Please Print or Type)</small>	
SITE	Address: _____
Lot _____ Block _____ Subdivision _____ P.O. No. _____	
OWNER	Cell phone No. _____
Name _____ Telephone No. _____	
Address _____ City _____ State _____	
Email Address _____ Zip No. _____	
CONTRACTOR	Cell phone No. _____
Name _____ Telephone No. _____	
Address _____ City _____ State _____	
Email Address _____ Zip No. _____	
LAND USE	<input type="checkbox"/> Residential <input type="checkbox"/> Commercial
<small>The undersigned hereby agrees that, in case work permit is granted, that all work shall be done and all materials which shall be used shall comply with the plans and specifications herewith submitted and with all applicable Ordinances.</small>	
Signature of Applicant: _____	<small>ELECTRONIC SIGNATURES NOT ACCEPTED</small> Date: _____
APPLICATION FEE:	FEES: <small>FOR SERVICE ONLY</small>
<input type="checkbox"/> New or Existing Building <input type="checkbox"/> Portable Storage Unit	Plan Fee (100-3220) _____
<input type="checkbox"/> Decking <input type="checkbox"/> Sign: Front Court	Investigation Fee (100-3210) _____
<input type="checkbox"/> Exterior Wall <input type="checkbox"/> Temporary Sign	Other _____
<input type="checkbox"/> Irrigation System <input type="checkbox"/> Deck or Canopy	
Other _____	
Estimated Fee: _____	Total Amount Payable: _____
APPROVAL:	<small>FOR OFFICIAL USE ONLY</small>
Plan(s) _____	Receipt No. _____
<input type="checkbox"/> Conflicting <input type="checkbox"/> Non-conflicting	Date: _____

Small Family Child Care

Must be treated like any other family home -
ALWAYS considered a **residential use** of
property.

- No Zoning permit
- No Business license
- No Fire inspection



Large Family Child Care

Cities and counties must allow large family child care in residentially zoned areas

Three zoning options for regulating large family child care homes:

1. No zoning permit - must be treated like all other family homes
2. Administrative permit – no hearing
3. Special Use Permit – with a hearing if requested (sometimes called a Conditional Use Permit)

Large Family Child Care

Zoning requirements for large family child care must be **reasonable** and **limited to**:

- 1. Spacing & concentration**
- 2. Traffic control**
- 3. Parking**
- 4. Noise control** – Rules about noise must be consistent with local noise ordinances in the general plan AND must take into account the noise levels made by children.

*Laws and rules outside these 4 areas are not allowed, UNLESS the same law or rule applies equally to all single-family dwellings

Large Family Child Care

- **Zoning permit** must be processed as **economically (affordable)** as possible. The city must give:
 - Breakdown of costs, if she asks
 - Costs must be related to reviewing and processing the permit
 - If a deposit is required, an estimate of the permit cost
 - How long it will take for her to get your permit

More Protections for Family Child Care

- Cities must tell child care providers all other requirements upon request
- Cities must treat family child care homes as a single-family dwelling for building and fire codes
- Cities must follow the STATE fire and building codes
- Cities cannot subject family child care to CEQA (Cal. Environmental Quality Act) & other environmental laws

Examples of Zoning Problems

- High costs for permits
- Requirements outside the 4 allowed areas
- Specific items and requirements for fire safety or environmental reasons
- Overly burdensome requirements
- Very lengthy process



Housing Protections For Renters

A landlord CANNOT...

- Create special rules for a family child care home
Increase a tenant's rent for having a family child care in their home
- Evict a tenant based on the "no business" clause in lease. This clause does not apply to a family child care
- Require a tenant get permission to open a family child care (Tenant only needs to inform the landlord)
- Refuse to rent to a family child care provider
- Make special rules that only apply to a family child care provider
- Require that a child care provider get insurance

Housing Protections for Renters

- A landlord CAN...
 - Require a tenant to pay more for a security deposit
 - Require a tenant to obtain permission to add 2 more children to child care license
 - Request to add his/her name to tenant's insurance if tenant has insurance. Requirements:
 - Must ask in writing,
 - Must pay for increased insurance premium, &
 - Insurance cannot be cancelled.
 - Require tenant follow the same rules as every other tenant (payment of rent on time, parking rules, noise requirements, and common space rules)

Housing Protections for Home Owners

- If a provider lives in a development with an Homeowners Association (HOA), the HOA must follow California law.
- The HOA CANNOT...
 - Limit or restrict use of the family child care home (hours of operation)
 - Make special rules for her that do not apply to other residents
 - Require a provider to inform or get permission from the HOA
 - to operate, or
 - to add 2 children to their care
 - Require a provider to have insurance
 - Enforce licensing rules
- The HOA CAN only:
 - Ask provider to show their child care license
 - Ask to be added to her insurance policy in writing and pay for the increased premium

Keeping Kids Close to Home Act: SB 234 (Skinner)

SB 234 updates the law to meet the needs of today's families:

- Large family child care homes treated the same as small family child care homes
- Clarifies licensed family child care homes are allowed in apartments and other types of multifamily units
- Updates family child care provider housing protections
- Family child care providers can hold local governments and others accountable if their protections are violated under the law



Resources

- Know the Law for City Planners: Is Your City or County Compliant with California Law for Family Child Care Homes?
- Know the Law About Business Licenses and Zoning Permits for Family Child Care Homes in California
- Know the Law About Family Child Care in California Rental Property
- Toolkit: What To Do If Your City Requires Business Licenses or Zoning Permits
- Conozca las leyes de California sobre licencias de funcionamiento y zonificación para hogares de cuidado diario
- Conozca las leyes de California sobre los hogares de cuidado diario en viviendas alquiladas – Arrendadores
- Recursos: Lo que debe hacer si su ciudad le exige obtener una licencia comercial o un permiso de zonificación

We Can Help You

- Online Intake Form for your Legal Questions
 - www.childcarelaw.org/help
 - www.childcarelaw.org then click “Get Help”
 - 415-558-8005 ext. 1