



CHILD CARE LAW CENTER

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LICENSING FACT SHEET: NEW MEXICO

Does the Child Care Licensing Division require anything additional of providers in including children with disabilities in child care?

The Child Care Services Bureau of the New Mexico Children, Youth and Families Department is responsible for licensing child care providers. Although the Licensing Division does not speak much about inclusion issues in the child care setting, it does make some comments in its regulations. Please note that the Licensing Division does not have regulations related to the administration of health care procedures in child care. The Licensing Division does not state what procedures to follow if a child care provider wants, for example, to perform procedures such as blood glucose monitoring for children with diabetes, or administer an Epi-Pen in case of a severe allergic reaction.

Development of comprehensive licensing regulations that address the needs of children with disabilities must also comply with the Americans with Disabilities Act (ADA) and the Individuals with Disabilities in Education Act (IDEA).

Below are the areas that Licensing does mention concerning children with disabilities in child care:

Family Child Care Providers

- Diapering/Toileting Provision – a home will not attempt to toilet train a child who is not developmentally ready.ⁱ This is relevant to inclusion because requiring a child, who by reason of their disability is not toilet-trained, to be toilet trained can be a violation of the ADA.ⁱⁱ

Child Care Centers

- Diapering/Toileting Provision – same as above.ⁱⁱⁱ
- Access Requirements for Individuals with Disabilities in New Centers – this includes the following: (i) main entry into the center is level or has a ramp to allow for wheelchair access; (ii) building layout allows for access to the main activity area; (iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius; (iv) if ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise; and (v) ramps exceeding a six-inch rise are provided with handrails. These requirements are minimum and additional disability requirements may apply depending on the size and complexity of the center.^{iv}
- Referral for Care and Services for Children with Special Needs – child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of 5 years as well as

those of school age. If a child is suspected of having a disability, at the director's discretion, staff must inform parents of possible resources for referral and assistance. Family Education Right and Privacy Act (FERPA) will be respected in that no referral for special needs services to an outside agency will be made without a parent's written informed consent.^v

Out of School Time Care (child care program serving educational and recreational needs before and after school or when school is not in regular session for children 5 to 18 years of age)

- Access Requirements for Individuals with Disabilities in New Facilities – same as above.^{vi}

ⁱ New Mexico Administrative Code (NM ADC) § 8.16.2.37 (B).

ⁱⁱ See Letter to Abby Cohen, Managing Attorney, Child Care Law Center, from John Wodatch, Chief Public Access Section, Department of Justice, which states, in part, "...whether it is permissible to maintain an admissions requirement that children be toilet trained. Programs are not required to abandon such a requirement altogether, but must make an exception for children who are not toilet trained due to their disabilities. This does necessarily mean, however, that diapering service must be provided for such children (see discussion below). Requiring parents to identify their children as having disabilities in order to obtain a modifications of general rules is permissible," available at: <http://www.usdoj.gov/crt/foia/tal575.txt>.

ⁱⁱⁱ NM ADC § 8.16.2.27 (F).

^{iv} NM ADC 8.16.2.20 (4).

^v NM ADC 8.16.2.27 (D). This provision also states that a child with a known disability may be admitted to a center as instructed by parents, service, educational and/or medical plans that address emergency situations under the guidance of a primary service provider (early interventionist, school, or licensed specialist).

^{vi} NM ADC 8.16.2.40 (5).