



## CHILD CARE LAW CENTER

221 PINE STREET | 3RD FLOOR | SAN FRANCISCO, CA 94104 | V 415.394.7144 | F 415.394.7140  
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

To: California Resource and Referral Agencies  
From: Child Care Law Center  
Re: Parent complaints about alleged provider non-compliance with the ADA  
Date: October 21, 2004

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We have been asked by a number of R&R agencies for guidance on how to handle complaint calls from parents of children with disabilities who believe that their child was denied care because of the child's disability (alleged violations of the Americans with Disabilities Act). When you receive complaints of this nature, in all likelihood some complaints will suggest clear violations of the Americans with Disabilities Act (ADA), while others may not. However, it is inappropriate and risky for R&R agencies to take on the role of determining whether an actual violation of the ADA occurred, just as R&R agencies do not determine whether child abuse actually occurred when a complaint is registered. Investigation and enforcement of ADA compliance is the job of the Department of Justice, and that task should be left to them, if the parent chooses to pursue her or his rights. A legal relationship exists between parents and providers, and we urge R&R agencies not to become entangled in the legal relationships between parents and providers under the ADA, and not to become implicated in siding with either party.

The role of the R&R agency should be limited to maintaining and administering an updated record of complaints, just as you do with other types of complaints. Once a complaint about alleged noncompliance with the ADA has been registered, you should handle it in the same manner that you handle any other complaint, according to your written complaint policies and procedures. If child care programs are generally removed from the referral list after you receive a number of complaints, then you should count the ADA complaints in this number. If you simply maintain a record of the complaints, that is how the ADA complaints should be handled, also.

Additionally, receiving such a complaint creates a perfect opportunity for you to take on the role of educator, providing the program with materials, resources and information about compliance with the ADA. In many cases, the reason for the dispute may be the child care program's lack of understanding of its obligations under the ADA. We urge you to give the child care program the benefit of the doubt when complaints arise, and to take advantage of the opportunity that the complaint provides you to educate the program about the ADA. We invite you to make liberal use of the handouts from Child Care Law Center for this purpose.

To assist you in these efforts, and as an example of the tone we recommend you take in addressing these complaints, Child Care Law Center has drafted a sample letter enclosed with this mailing. Please feel free to adopt the language of the letter verbatim, filling in the spaces that are in bold letters with the appropriate information.

**Sample Letter from an R&R Agency  
to a Child Care Program  
After a Complaint about ADA Non-Compliance**

Dear **[Child Care Program]**:

It has come to our attention from a parent complaint that your program recently declined to care for a child with a disability who was referred to your program by our agency. In light of the enactment of the Americans with Disabilities Act (ADA), **[R&R agency]** believes it is important for all child care programs to understand their responsibilities to people with disabilities.

The Americans with Disabilities Act is a federal civil rights law that protects children and families with special needs. The law states that the parents of children with special needs are entitled to access to all child care facilities; both centers and family day care homes. This means that as a child care provider, you are required to consider caring for and accommodating children with disabilities on a case by case basis.

Child care programs are no longer permitted under this new law to automatically refuse to provide care for children with disabilities. Instead, programs are now required to think through whether or not they are able to reasonably accommodate the child in order to meet the child's needs (regardless of whether the program has prior experience in working with the particular disability at issue). This is to be done before a program makes a decision to accept or decline care of a child because the child has a disability. If a program is able to safely and reasonably meet the needs of a child, that child may not be excluded based on the disability of the child.

Because of the complexities of this law, there remains some confusion among some child care providers as to how to think through whether or not they are reasonably able to care for children with disabilities. **[R&R agency]** considers it a priority to provide the child care programs it serves with as much information and resources as we can to assist you in understanding your responsibilities under the ADA. It is our hope that you will access the information and resources available. By doing so, you will be in a better position to ensure your own compliance with the ADA.

**[R&R agency]** complies with the ADA and will not restrict the type of referrals that parents of children with special needs receive. We are required under the ADA to treat all providers as being willing to consider caring for children with disabilities. In the services we provide for parents, we cannot, and do not, condone the exclusionary policies or practices of any child care program that result in discriminating against families and children with special needs. We, therefore, urge all child care programs with whom we work to take the time to become well versed on what your obligations are under the ADA, and to ensure that your practices reflect these obligations.

Additionally, we urge you to:

1. Review the enclosed documentation on the ADA and its implications for child care providers.

2. Review your current staff attitudes, policies, practices, and physical site in light of ADA requirements.
3. Contact the Child Care Law Center during their Information and Referral Line hours, which are Monday, Tuesday, and Thursday from 12:00 to 3:00 p.m. Pacific Standard time, at (415) 394-7144 for additional information, materials, and resources to help you better understand compliance requirements of the ADA.
4. Contact **[specify local public health department and/or other community resources applicable to the situation]** at **[phone number]** for free program assistance with accommodating children with special needs.

As with other matters, **[R&R agency]** will document in your provider file any complaint filed by a parent who believes that her or his child has been discriminated against because of a disability. Complaints of this nature will be categorized as personal complaints. Facilities with a pattern of personal complaints are subject to removal from the **[R&R agency]** referral list according to our current complaint policy. Good faith efforts on your part to understand and comply with the ADA will go a long way in preventing this from happening. **[If your R& R complaint policy differs, replace this paragraph with one that accurately reflects your policy]**

If you have any questions about **[R&R agency]**'s complaint policy or ADA requirements, please do not hesitate to contact us.

Sincerely,

[R&R agency representative]