



CHILD CARE LAW CENTER

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Providing Child Care Referral Services for Families that Include Persons with Disabilities

WHAT LAWS SHOULD RESOURCE & REFERRAL AGENCIES KEEP IN MIND WHEN SERVING FAMILIES THAT INCLUDE AN INDIVIDUAL WITH A DISABILITY?

The Americans with Disabilities Act (ADA)¹ is an important federal law protecting persons with disabilities against discrimination. Many states also have enacted related civil rights laws to prohibit discrimination against persons with disabilities. For example, California has the Unruh Civil Rights Act, a broad and comprehensive civil rights law that prohibits discrimination based on a number of protected categories including but not limited to disability and medical conditions.² The Unruh Civil Rights Act (Unruh) incorporates and expands the protections provided under the ADA.³

DOES THE ADA APPLY TO CHILD CARE RESOURCE & REFERRAL AGENCIES?

Yes. The ADA applies to a broad range of private businesses, nonprofit organizations, public agencies and other groups that serve the public. Under the ADA, these types of programs cannot discriminate against persons with disabilities.⁴ Hence, a Resource and Referral agency violates the ADA if it discriminates in providing services to families that include an individual with a disability.

IF A CHILD CARE PROVIDER INFORMS THE RESOURCE & REFERRAL AGENCY THAT SHE WILL NOT SERVE CHILDREN WITH DISABILITIES AND THAT THE AGENCY SHOULD NOT REFER PARENTS OF CHILDREN WITH SPECIAL HEALTH CARE NEEDS TO HER PROGRAM, WHAT SHOULD THE AGENCY DO?

Explain to the provider that under the Americans with Disabilities Act, the agency is not permitted to screen out programs that refuse to serve children with special health care needs when parents call for a referral. If the agency did that, it would itself be discriminating against those children and their families on the basis of disability, as well as giving tacit approval to the provider's illegal policy. Even if agency staff feels that referring the parent of a child with special health care needs to a particular provider would be a waste of that parent's time, they may not screen that provider from a referral given to the parent. As with parents of typically developing children, the Resource & Referral agency's role is to provide referral information which permits families to make their own choices about appropriate care for their children.

¹ 42 U.S.C. § 12101 *et seq.*

² Cal. Civ. Code § 51(f).

³ For more information on the Unruh Civil Rights Act, contact the Child Care Law Center (www.childcarelaw.org).

⁴ 42 U.S.C. § 12182; 28 C.F.R. §§ 36.302 – 36.304.

Furthermore, the agency should not encourage or discourage parents from seeking care from a particular program simply because staff think that program is not currently equipped to care for a child with a disability. The fact that a program is not currently prepared to serve a child with special health care needs does not excuse that program from complying with the requirements of the ADA. Attempts on the part of a Resource & Referral agency to shield providers from having to comply may result in the organization becoming liable under the ADA.

WHAT IF THE PARENT OF A CHILD WITH A DISABILITY ASKS FOR REFERRALS ONLY TO PROVIDERS WHO HAVE SPECIAL EQUIPMENT, TRAINING, OR EXPERIENCE IN SERVING CHILDREN WITH DISABILITIES OR SPECIAL HEALTH CARE NEEDS?

Many parents of children with disabilities prioritize finding a child care provider who already has equipment, training, or experience in serving children with particular health care needs. For example, a mother of a child with diabetes may want to place her child with a provider who is familiar with carbohydrate counting procedures. Due to pressures to start a new job as soon as possible, a father of a child with mobility impairments may need to find a provider who already has a ramp to her front door, rather than waiting for another provider to install a ramp before beginning child care. These parents may wish to receive referrals only for providers who presently meet certain criteria, rather than from a more general list of all providers in the area.

The ADA has been interpreted to permit individuals and agencies to provide different services to persons with disabilities when these services are “necessary to provide the individual . . . with a[n] . . . opportunity that is as effective as that provided to others.”⁵ An accommodation a child with a disability may need in the child care context is a provider who has special training or equipment in place, parents of these children may need referrals to such providers in order to benefit from child care referral services. Hence, a Resource & Referral Agency may provide unique referral services to parents of children with disabilities. One special referral service might include the creation of a list of providers with experience in, equipment for, or training in serving children with disabilities.⁶ For parents of children with disabilities who specifically request a more specialized service, the Resource & Referral agency can provide referrals from this narrower list. However, the parent should be informed that they always have the right to return to the broader list and that they have the right to pursue care from *any* child care provider. For the protection of the Resource & Referral Agency and the parent, it is a good idea to obtain the parents’ written consent that they choose to use the narrower list for child care referrals. The consent should also include an acknowledgement that the parent understands that they are always entitled to return to the broader list.

SHOULD A RESOURCE & REFERRAL AGENCY SIMPLY PROVIDE PARENTS OF CHILDREN WITH DISABILITIES REFERRALS ONLY TO PROVIDERS WHO HAVE SPECIAL EQUIPMENT, EXPERIENCE, OR TRAINING?

No. Although special services are acceptable under the ADA, Resource & Referral agencies may not deny the parent “an opportunity to participate in such programs or activities that are not

⁵ 28 C.F.R. § 36.202.

⁶ Importantly, in compiling this list, it is not appropriate to ask providers if they merely “wished,” “would be willing to,” or “have an interest in” caring for children with special health care needs or disabilities. That type of question implies that providers have a choice not to serve children with disabilities, which is illegal.

separate or different.”⁷ Moreover, an individual with a disability cannot be forced to accept any special service.⁸ Therefore, all parents, regardless of the abilities or disabilities of their child, are entitled to the general referral system, and parents of children with special health care needs should not be automatically given provider names drawn from a narrower referral list. To ensure that parents of children with disabilities understand their rights, a Resource & Referral agency that offers special referral services should be sure to inform these parents that:

- they also are entitled to obtain referrals from same general list that families of typically developing children receive;
- they are not required to accept a special referral service, and;
- that they have the right to pursue care from any provider.

DO RESOURCE & REFERRAL AGENCIES HAVE LEGAL OBLIGATIONS TO PARENTS WITH DISABILITIES IN PROVIDING SERVICES?

Yes. The ADA also protects adults with disabilities, so Resource & Referral agencies must reasonably accommodate parents with disabilities who request referral services. Such accommodations may include, but are not limited to, establishing a TTY line or relay service for parents who are deaf, arranging furniture in a resource library so that parents with wheelchairs can reach the materials, or producing written materials in big print versions for parents with vision impairments.

⁷ 28 C.F.R. § 26.203(b).

⁸ 28 C.F.R. § 26.203(c)(1).