



Inclusiveness in Action

Child Care and the Americans with Disabilities Act

by Linda Crisalli

I have spent the past four decades working with, and on behalf of, young children and their families. Over the years, there have been many changes in the field of Early Learning and Care; most have been good. We have come a long way in our knowledge about how young children learn and develop, and how best to support them. Our standards for best practice have expanded and evolved, as have our attitudes. Now we understand the importance of culturally sensitive, anti-bias practices. We strive to make our programs welcoming and inclusive. We value diversity. We teach children that differences should be respected, honored, and celebrated. We should be very proud of what we have accomplished.

When we think of diversity and inclusion, the first things that come to mind typically are race, ethnicity, religion, and gender. It is important to recognize that including children with disabilities

in our early learning programs is also a diversity issue. We are making progress, albeit slowly, in our attitudes and policies for working with children with special needs, challenging behavior, medical conditions and/or developmental delays. Years ago, most programs wouldn't even consider enrolling a child who had a disability or behavior problem. Children with challenging behavior were enrolled, but many were asked to leave without any kind of process or notice.

Including All Children

While it is true that things are improving, there continues to be significant hesitation when it comes to enrolling children with disabilities and challenging behaviors in child care programs. Many providers report that the notion of caring for a child with special needs makes them uncomfortable. Some say they are worried they're not qualified. Some think it will take too much time and work. Some insist it will take too much attention away from the other children. The truth is that with a positive attitude and a little creativity, inclusive settings can work for many children. And it's worth it, in more ways than you can imagine. Let's look at Samantha.

When Samantha, now four years old, was a toddler, her mother passed away, and shortly thereafter she was diagnosed with Type 1 diabetes. Her father was working full-time until her diagnosis, when her child care provider informed him she was unwilling to continue caring for her. He searched without luck for someone who was willing to care for a diabetic child, so he had to quit his job. He was forced to go on welfare because he couldn't work without child care. After two years he was given a deadline by the state to find child care and get back to work or lose his welfare. After additional searching, he finally located a child care center that agreed to accept Samantha before the deadline. He worked with Samantha's new teachers, instructing them how to check her blood sugar, track her food intake, and give her insulin injections. Samantha was a delightful child and she blossomed in group care. Her eyes twinkled and she smiled ear-to-ear as she arrived at school each day. She was a voracious learner, and she quickly caught up with her peers. The extra efforts required to plan for her care were well worth it by anyone's standards.



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And then there is the story of Benjamin:

Benny, three, was a handful. He seemed to have the energy of ten children. He struggled with poor impulse control, low frustration tolerance, and lack of social skills. He was aggressive and disruptive. Benny had already been expelled from three other child care programs. However, this time, the director and his teachers took the time to conduct objective classroom observations to determine what he needed to succeed. They soon realized that the classroom environment was too stimulating and transitions were difficult for him. Circle time was also challenging for Benny. Using their observations, his teachers developed a plan that involved: reducing the clutter and the amount of bright, hot colors in the classroom; creating and posting a picture schedule to help him remember the sequence of activities during the day; giving him extra support and close supervision during classroom transitions; and shortening circle time to 15 minutes. The results were nothing short of amazing! Benny's behavior and demeanor improved dramatically. Interestingly enough, the other children also benefitted from a neater, more organized classroom, and a more predictable schedule.

These case vignettes highlight three truths:

- It might not be as difficult as you imagine providing care for a child with disabilities, including special needs and challenging behavior.
- Doing so is very much worth the effort.

Glossary of Terms Used in the Americans with Disabilities Act

Direct threat: The child of concern poses a significant threat to the health or safety of other children or staff.

Disability: A physical or mental impairment that substantially limits one or more major life activities. A diagnosis of a specific condition is not necessarily required for a child to be protected under the ADA.

Major life activities: Functions such as breathing, hearing, seeing, speaking, walking, using arms and hands, learning, and working. In the case of young children, this definition includes play and getting along with other children.

Mental impairment: Emotional problems, challenging behaviors, mental illness, learning disabilities, and developmental delays.

Physical impairment: Physical and/or medical conditions such as blindness, deafness, seizures, heart disease, cerebral palsy, asthma, and diabetes.

Reasonable accommodation/modification: Changes that can be made without much difficulty or expense. This is individual to each program depending upon the nature of the modification, the cost involved, and the resources of the program. The ADA describes three primary types of accommodations:

- **Changes in policies, practices, or procedures:** In a child care environment, this might include practices related to daily schedules, meal service, drop-off and pick-up procedures, or administering medication.
- **Provision of auxiliary aids and services to ensure effective communication:** This includes a range of devices or services that help people communicate. Examples are using sign language, interpreters, large print books, or other communication equipment. Hearing aids are excluded.
- **Removal of physical barriers in existing program facilities:** You might rearrange the classroom environment to make it easier to navigate, install handrails and/or a ramp, or make step-stools available.

Undue burden: Changes that would result in significant difficulty or expense to the program. The intent is not to impose the kinds of expenses that would severely impact the program's budget. If you are open to thinking creatively, there are often solutions that won't break the bank. Sometimes community resources are available to help fund the removal of physical barriers.

- Categorically excluding a child who happens to have disabilities is not an option.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law enacted in

1990. This law guarantees that children with disabilities cannot be excluded from 'public accommodations' (which includes preschools, child care centers, school-age child care programs, out-of-school time programs, and family child care homes) simply because of a disability.

Here are the basic requirements of the law.

- You are required to make reasonable accommodations and/or modifications to your policies and practices to integrate children with disabilities unless doing so would constitute a fundamental alteration of the program. This includes children with physical or mental impairments and children with challenging behaviors. It is important to note that a diagnosis of a specific condition is not necessarily required for a child to be protected under the ADA. Children with disabilities cannot be excluded unless their presence would pose a significant direct threat to the health or safety of others or require a fundamental alteration of the program. You can't just assume that a child's disabilities are too severe for her to be integrated successfully into your program. You are required to make an individualized assessment about whether you can meet her needs without fundamentally altering your program. Talk with the child's parents and the health care professionals or specialists who work with her. You might be surprised. It is often realistic, even easy, to include her in your program.
- A child cannot be expelled unless good faith efforts have been made to include her and to support her success. This means providing reasonable accommodations and allowing enough time to evaluate their effectiveness.
- Higher insurance rates are not considered a valid reason for excluding a child with disabilities. The extra cost should be treated as overhead and divided equally among all paying customers.
- A child cannot be excluded due to needs for extra one-on-one attention,

which can be integrated without fundamentally altering the program. The ADA generally does not require centers to hire additional staff or provide constant one-to-one supervision of a particular child. A little creative planning can make a big difference to provide adequate supervision and attention.

Suggestions for Implementation

The following are some suggestions for putting the purpose and intent of the ADA into practice in your program:

- Adopt a positive, proactive attitude: "What can I do to support this child in being successful?" Assume you can make it work; think creatively.
 - Evaluate and modify your classroom environment to support the individual growth, strengths, interests, and needs of all of the children in your care.
 - Make simple changes in your daily schedule as needed to accommodate all children.
 - Eliminate program eligibility standards, which have the effect of screening out children with disabilities, such as the unwillingness to administer medication or work with special dietary needs.
 - Work closely with parents and specialists to integrate a child's developmental and therapy goals into your daily routines and activities. (For example, you might use sign language to expand your communication with children at snack or circle time.)
 - Identify and remove any barriers to the child's participation: Change your classroom floor plan to allow children who use assistive devices (like walkers or wheelchairs) to move between learning centers; reposition materials at the child's level so she can see and reach them; remove clutter that makes the environment too stimulating or difficult to navigate. (Note: Costly structural changes are not required if affordable alternatives are available, such as providing pitchers and cups rather than lowering or raising a sink or water fountain.)
- Seek out community resources that can help you make modifications to your program and/or provide needed services or equipment.
 - To assist businesses in complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses. The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees. This credit can cover 50% of eligible access expenditures in a year up to \$10,250 (maximum credit of \$5,000). The tax credit can be used to offset the cost of complying with the ADA, including, but not limited to, undertaking barrier removal and alterations to improve accessibility; provide sign language interpreters; and for purchasing certain adaptive equipment. The tax deduction is available to all businesses with a maximum deduction of \$15,000 per year. The tax deduction can be claimed for expenses incurred in barrier removal and alterations. To order documents about the tax credit and tax deduction provisions, contact the Department of Justice's ADA Information Line at (800) 514-0301, TDD (800) 514-0383 or www.usdoj.gov/crt/ada/adahom1.htm

Please note that this article is intended to provide basic information about how the ADA applies to preschool and child care programs. It is not intended as legal advice. For specific legal ques-

tions related to the ADA and child care, contact the United States Department of Justice ADA Information Line at (800) 514-0301.

My intention here is not only to inform providers about what must be done to comply with the law; it is also my hope that readers will welcome the opportunity to work with children with special needs and challenging behavior. Whenever we expand our attitudes, knowledge, and skills to make our programs more inclusive of all kinds of diversity, everyone wins: The child of concern has the opportunity to succeed; other children learn that differences can be tolerated, accommodated, and respected in the group environment; and adults experience deep satisfaction in the knowledge that the children in their care will take an important skillset with them into school and all their other future endeavors. It is so worth it.

Resources

American Academy of Pediatrics

141 Northwest Point Blvd.
Elk Grove Village, IL 60007-1098
(847) 434-4000 • www.aap.org

The Arc of the United States, National Headquarters Office

1010 Wayne Avenue, Suite 650
Silver Spring, MD 20910
(202) 783-2229 • www.thearc.org

- Child Care Settings and the Americans with Disabilities Act
- All Kids Count: Child Care and the Americans with Disabilities Act

Center on Social Emotional Foundations of Early Learning

www.vanderbilt.edu/csefel/

Child Care Law Center

221 Pine Street
San Francisco, CA 94104
(415) 394-7144 • www.childcarelaw.org

“How-to” booklets about the ADA and child care for providers and parents:

- Child Care and the ADA: Highlights for Parents of Children with Disabilities
- Child Care and the ADA: Highlights for Parents of Typically Developing Children
- Caring for Children with Special Needs: The Americans with Disabilities Act and Child Care

Children and Youth with Special Health Care Needs

www.health.state.ny.us/community/special_needs/

Circle of Inclusion

www.circleofinclusion.org/

Learning Disabilities Association of Washington

16315 NE 87th Street, Suite B-11
Redmond, WA 98052
(425) 882-0820 • www.ldawa.org

National Early Childhood Technical Assistance Center

517 S. Greensboro Street
Carrboro, NC 27510
(919) 962-2001 • www.nectac.org

National Information Center for Children and Youth with Disabilities (NICHCY)

PO Box 1492
Washington, DC 20013-1492
(800) 695-0285 • www.nichcy.org

- Including Preschool-age Children with Disabilities in Community Settings: A Resource Packet

National Professional Development Center on Inclusion

www.fpg.unc.edu/

US Department of Justice
PO Box 66738
Washington, DC 20035-6738
(800) 514-0301

www.usdoj.gov/crt/ada/adahom1.htm

- Tax credit information

- Online booklets including “Commonly Asked Questions about Child Care Centers and the ADA”

