

POLICY WEBINAR | FEBRUARY 2023

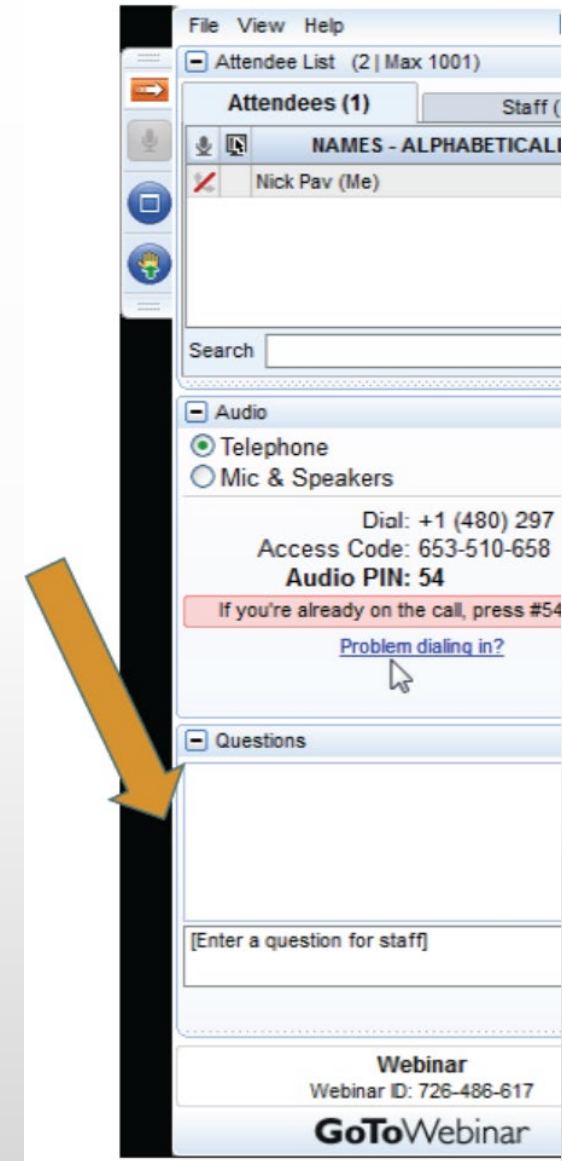
Disability Rights in Child Care Settings

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RIGHTS



Logistics

- Webinar resources, including recording and supplemental materials, will be posted at <https://allianceforchildrensrights.org/resources/>
- All attendees are muted during webinar.
- Please submit questions using the “Questions” function on your GotoWebinar dashboard.
- Email Erica Hickey at ehickey@alliancecr.org if you experience technical difficulties.



Disability Rights in Child Care Settings

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The following slides about the ADA were developed by the Child Care Law Center.





Child Care Law Center

We educate, advocate, and litigate to make child care a civil right.

- ❑ **Advocates** for better access to child care

- ❑ **Partners** with:
 - ❑ Child care providers and parents
 - ❑ Child care resource & referral agency staff, and
 - ❑ City administrators and staff

- ❑ **Provides:**
 - ❑ Publications accessible through our website
 - ❑ Legal technical assistance to QLSPs
 - ❑ Legal trainings to QLSPs



The ADA is a Civil Rights Law

- ❑ Americans with Disabilities Act (42 U.S.C. § 12101 et seq. (2009))
- ❑ California Unruh Civil Rights Act (Cal. Civ. Code § 51(b) (2016)).
- ❑ California Disabled Persons Act (Cal. Civ. Code § 54-55.32 (2001)).



Who, What, and Where of the ADA

□ WHO?

- "People with disabilities" as defined by the law.

□ WHAT?

- Protection from discrimination related to disability.
- Right to integration/to be included.

□ WHERE?

- "Public accommodations" as defined by Title III of ADA.
- Includes almost all child care centers and family child care homes.



Who Is Protected under the ADA?

Three groups of people are protected under the ADA:

- ❑ “People with physical or mental impairment that substantially limits major life activities”
 - ❑ *A child living with anxiety that impacts their ability to be in large classroom settings.*

- ❑ “People with a history (record) of a such an impairment”
 - ❑ *A person who was diagnosed with childhood asthma who later outgrew their diagnosis.*

- ❑ “People seen as having such an impairment”
 - ❑ *A child who wears corrective lenses*



What Protections Are Granted Under the ADA?

- ❑ “Individualized determination” of services
- ❑ Use of the balancing test
- ❑ Must:
 - ❑ Have eligibility standards that don’t automatically exclude
 - ❑ Make reasonable changes to program
 - ❑ Provide supportive/assistive aids for effective communication if hearing/vision/speech impairment
 - ❑ Remove physical barriers if readily possible



Where Are People Protected under the ADA?

- People with disabilities are protected from disability-related discrimination in almost all child care programs.
- Programs must base decisions on child's individual needs; not on stereotypes.
- Someone's disability is not a reason for a program to deny services or offer unequal services.



Inclusion/Integration Mandate

People with disabilities have the right to:

- Equal opportunity to participate in all activities in “the most integrated setting appropriate” to the person’s needs.
- Participate in mainstream programs.
- Be provided a “reasonable accommodation.”



Balancing Test

Changes (accommodations) are not required if they would cause a(n):

- Fundamental alteration** that changes basic nature of what child care program offers,
- Undue burden**, seen as a significant difficulty/expense,

OR

- Direct threat**, seen as a significant risk to health or safety of others.
 - Risk cannot be reduced to level that is not significant
 - Must have individual assessment based on medical evidence or facts



Examples of disability discrimination (1 of 2)

❑ Eligibility Standards:

- ❑ Not accepting a child because of their disability.
- ❑ “We aren’t a special needs provider....” “We’re not equipped to handle a blind child...”

❑ Assisting Aids:

- ❑ Not providing supports and services (modified materials, interpreters, etc.) for effective communication.
- ❑ “A Picture Exchange Communication System is just not something we’re trained in.”

❑ Surcharge:

- ❑ Charging higher fees or adding fees because of a child’s disability.
- ❑ “We can arrange some time for staff training, but the parents will have to pay for it.”



Examples of disability discrimination (2 of 2)

- ❑ **Separate/unequal benefit:**
 - ❑ Keeping a child separate due to his or her disability.
 - ❑ “We can’t let a child with cerebral palsy go on field trips - he might fall - it would be too much liability for us”

- ❑ **Reasonable modification**
 - ❑ Refusing to make reasonable program modifications to include a child with a disability.
 - ❑ “We can’t give extra attention at transition times - it’s not fair to the other children - if she’s not independent enough to follow schedules and rules, she’s just not eligible for our program.”

- ❑ **Readily doable barrier removal/inclusive settings:**
 - ❑ “That’s just how we arrange our activity tables. We can only bring materials to her in the area she can get to with her wheelchair.”



Administration of Medication in Child Care Settings

- ❑ Non-medical staff (child care providers) can give medication to children, if they follow certain procedures.
- ❑ Child care providers cannot exclude children from care solely because they have a disability-related need for medication.
- ❑ Child care licensing has adopted protocols for safe and healthy medication administration.



Incidental Medical Services (“IMS”) Plan

- ❑ All licensed providers (centers, family child care homes, after-school programs) **MUST** “reasonably accommodate” children who need medication.
- ❑ Providers and staff can learn how to safely give medications by creating an individualized Incidental Medical Services (“IMS”) plan with the child’s family and their doctor.
- ❑ The “IMS” plan should meet specific health and safety requirements under Community Care Licensing guidelines.



What kinds of medications?

Common examples:

- An inhaler for a child with asthma
- Glucose monitoring, insulin or glucagon for a child with diabetes
- Diastat for a child with epilepsy
- Epipen for allergic reactions
- Gastrostomy tube for nutrition



Administration of IMS Resources

- ❑ Community Care Licensing’s Provider Information Notice (“PIN”) [2022-02- CCP](#) offers information and best practices for administering IMS.
- ❑ California Code of Regulations, title 22, [section 101226\(e\)](#) outlines Licensing requirements for handling medication.
- ❑ Caring for Our Children includes performance standards for [Medication Administration](#).
- ❑ The California Child Care Health Program offers practical information and advice about [Medication Administration](#).
- ❑ Support for Families, Help Me Grow Program offers assistance, facilitating conversations between child care providers and families



CCLC Resources

- ❑ Child Care Law Center's [Know the Law about the Americans with Disabilities Act](#)
- ❑ Child Care Law Center's [Know the Law about Giving Medications and Incidental Medical Services in Licensed Child Care in California](#)
- ❑ Child Care Law Center's [Know the Law about Responding to Challenging Behaviors in California](#)
- ❑ Parent's Rights: An Early Start Guide for Families:
 - ❑ In [English](#)
 - ❑ In [Spanish](#)
- ❑ The U.S. Department of Justice's Civil Rights Division, Disability Rights Section, [Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act.](#)





Child Care Law Center Can Help You

How can CCLC help you?

- Publications
- Legal technical assistance
- Legal trainings and in-services

Contact us!

- www.childcarelaw.org/help/
- info@childcarelaw.org
- (415)558-8005 ext. 101



Thank you!

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