

Americans with Disabilities Act (ADA): Part One

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Welcome to Inclusion Matters. Produced by the Center for Inclusive Childcare, aka the CICC, we're located at inclusivechildcare.org.

Welcome to Inclusion Matters, the podcast of the Center for Inclusive Child Care.

I'm Cindy Croft, executive director, and I'm here with Priscilla Weigel, the assistant director.

Hi, Priscilla.

Hi, Cindy.

For those who are listening to this podcast, we thought we would talk about the Americans with Disabilities Act as it pertains to child care. And this may be one that we continue in another podcast because there's a lot of questions and information that might not be readily available to those of you who are working in early childhood.

I think it's going to be really helpful for the listeners.

Great.

Before we start, we probably need to do a legal Disclaimer. Neither one of us are attorneys, Right?

Correct.

And we're really talking about attitudes about the law more than actual case law, we are not interpreting the law. That's the work of judges. So we're really just talking about what we know about the ADA and what we know that has come from legal sources, and it's been posted through the Americans with Disabilities Government website.

Great. That's helpful.

So if anyone has questions as they listen to this, or once it's over or they go back into their work and they're thinking about things, they certainly can access the ADA hotline, and that number can be accessed through again, Ada.gov. There's a hotline that is manned by professionals who know a lot about the law. And so that's probably the best resource for any questions that really would pertain to legal matters.

So we thought we'd start by just talking about what the Americans with Disabilities Act is, and it really became law in 1990 was fully enacted in 1992. So it's been around a long time, and it's surprising how many people working in early childhood still kind of have maybe not as much information as we would hope about it.

Very true. And sometimes I think that it can cause some challenges because for families who don't know what their rights are in a child care setting and also a provider who doesn't even realize what they don't know, they don't realize that they might be doing something that they truly can't do. And so being aware of the guidelines and what's set out in this really important law is helpful to children and individuals. And because you care for children, you should know these things.

Right. And it's actually I've always thought it's very empowering to early childhood because it's a law that includes early childhood. It's not like we aren't part of this huge civil rights law. In fact, we are. Now it is a big law, and it has a lot to do with employment. And it has a lot to do with communication and government, but a very small part of it. It pertains to child care because child care is what the law refers to as a public accommodation, because child care programs, whether they're childcare centers, whether they're nonprofit, whether they're for profit, whether they're a standalone mom and pop sort of small child care Center, or whether they are a National chain, whether they are part of a University, whatever the process is, they're considered a public accommodation because they're open to the public for business. The only real exception to that is child care programs that are operated by a religious entity, a Church not housed in a Church, but actually ran by a Church. And you should really check with your state's human rights laws, because, for instance, in Minnesota, the Minnesota Human Rights Act still has the same civil rights protection for children or or people with disabilities in child care programs that are operated by religious entities. So every state has a different kind of depending on what your law says, take on that as well.

Really helpful information. I think, too, of what you said, Cindy, about the fact that it's a business and that's open to the public. And that's something that you've reminded our coaching team of that to also share that information with providers that they're working with, to that they have to follow these guidelines.

And it's important that people understand that this is a civil rights law. So it protects the rights of children and families to the Bill of Rights in the Constitution, and a lot of it's about access and prevention of discrimination. But its no one's intent to be punitive or prescriptive in a way that keeps anyone from going into the child care business or putting somebody out of the child care business. One of the phrases that you hear often when you read about or hear other people talking about that ADA, which is the Americans with Disabilities Act, is that the Department of Justice, which oversees the law the which enforces the law, really looks for what they call a good faith effort. And that just means, you know, what what is behind your actions as a childcare program? And that's really at the heart of it. You know, nobody's out to really trap somebody or get somebody into trouble. But there are practices that we will talk about in another podcast that could be seen as discriminatory if we aren't careful in how we write policies or how we talk to parents at enrollment. So it's really important that we're just knowledgeable.

I agree, Cindy. And I think even just talking about the fact that, you know, who are the individuals that are protected under this law and laying that out in a little clearer way for those who are listening will be helpful. The helpful first step in the right direction.

Well, of course, we're thinking about children because children are enrolled in child care programs. It could also pertain to a family member of the child who has a disability, if that would in any way interfere with the child being enrolled. But for the most part, we're probably looking at children with disabilities. And the ADA differs from other disability law and that it has a very broad definition of disability. So, for instance, one of the ways that it describes or define disability is a substantial, substantial limitation in one of the life functions. And then the ADA lists what those life functions are. So it could be something like walking. It could be hearing, one of the life functions is speaking self care is a life function. So you can check under the law and see if there have been additions to those what is considered a life function. So a child doesn't have to have an assessment by a school district or necessarily at a medical diagnosis. But if they have that limitation. So it's a very broad definition of how we see disability.

There are also a couple of other ways the ADA defines disability that makes it a much broader law as well. It could be that a person or a child is regarded or perceived to have a disability or that they have a history of a disability or a misclassification of a disorder. So either one of those ways, for instance, somebody might think a child. And I think you and I could attest to this where a teacher might say, I know that child has ADHD. That's my ADHD child. Well, maybe the child has never been formally assessed, but he's very active and has some of those characteristics that could be associated with ADHD. Well, if you are going to name a child as your ADHD child, which, of course, is not person first language

Correct.

And then decide that that child is going to be expelled based on their high activity level, then you could be regarding that child as having a disability and then discriminating against them, even though actually they didn't even have any kind of diagnosis. So that's where that one is very broad and something they need to think about.

Right. And really interesting and common. I think in a lot of cases that are saying the same thing about a child who's on the spectrum, we hear that a lot, I think that child is on the spectrum, but the child hasn't had any evaluation done or no diagnosis child's not on IEP, but the fact that their behaviors are creating these red flags and you're labeling it as something that's a diagnosable, special need might affect how you care for that child. And also, you may some in some cases, children have been expelled based on some of those behaviors.

Right. And this goes to something that we believe strongly at the Center for Inclusive Child Care. And that is we don't label children. I mean, we're not the diagnosticians in the child care program. There are professionals who diagnose. So it's not up to the teacher to decide what a child has. And even when a child does come with an assessed label or a diagnosis, that's medical. And when I say the label, I'm referring to that categorical label under Disability Educational Disability law. Even with that label, that's not how we refer to that.

Correct? Yeah. It's just part of who they are. It's just a facet of their personality and their learning styles and all of those things they are a child first. So it's a little commercial for child first language.

Exactly. And I'm sure that those who are listening understand that.

Yeah.

So this is kind of just a primer on what the ADA is and letting people are listening know that the Americans with Disabilities Act does cover early childhood programs, family child care programs, and that people need to know about the law because they could inadvertently be discriminating against a child or a family. And there are consequences.

Again, as I said a little bit ago, the Department of Justice investigates what is what are called complaints. So the ADA is a complaint-driven law, and we don't want that. We don't want it for a number of reasons. We want children to be cared for in inclusive settings with developmentally appropriate practices. And we want providers to be aware of what their obligations and responsibilities are as professional business owners under the law. And so we're going to hopefully give a few tips in another podcast about this. But if people have questions, they can email us through info@inclusivechildcare.org anywhere from our website. There are lots of places they can click and email us or go directly to Ada.Gov and look around and email or call from there.

Yeah, they have great resources and tools, and that's a great place to start. And I'm looking forward to further conversation about this, Cindy.

Thank you. And, you know, on our website as well, we have a lot of resources.

Yes, we do.

Specific to child care, around the Americans with Disabilities Act, so I would encourage people to visit Inclusivechildcare.org too for more information.

So great.

Thank you, Priscilla.

Thanks, Cindy.

That's all for now.

See you next time.