

Child Care—What Are My Child's Rights?

By CARRIE LUCAS

This article is written from the experience of a person with a disability, but also as a new parent who has been searching for daycare for my nine-year-old non-walking, non-verbal, non-potty trained daughter.

Disability discrimination is real, it happens to me everyday. Frankly I find it many areas, and this being among them, it is better to find out about their program first and tell about the disability later. At least you can find out the facts without the discrimination. This way it is really clear about the disability discrimination. If they have spaces open for a child when they didn't know about the disability, and then all of a sudden can't take a child who happens to have a disability, then it is discrimination, clear and simple.

Please remember that the ADA requires day care centers to make reasonable modifications in policies, practices, or procedures unless they can demonstrate that making the accommodation will fundamentally alter the nature of the daycare center. The Department of Justice has issued a bulletin about daycare center's obligations under the ADA and clarifies ways daycare centers must meet this mandate. Here is the URL for the DOJ bulletin: <http://www.usdoj.gov/crt/ada/childq%26a.htm>

Our kids have a civil right to have access to daycare programs. Not allowing our kids in is just as bad as having a sign on the door saying they don't take kids of color.

In searching for daycare for my daughter the first thing I ask is whether the center is wheelchair accessible. I explain that I use a wheelchair. I do not make any mention of the fact that my daughter does. The fact that I use a chair does not usually raise red flags for them. Most of them have never pictured a person with a disability being a parent, let alone parenting a child with a disability. The need for wheelchair accessible facilities virtually eliminates family daycare options for us.

The next question I have to ask is what ages the center takes. If a child care center does not deal with diapers (as in if they don't take infants and toddlers) they may not think they have to deal with her diapers. I called the state, and spoke to a licensing specialist. The licensing specialist said every child care center should have arrangements to deal with toileting issues, even in older kids. They apparently require every center to be equipped to deal with diapers, at least with a mat and disinfectant. As the licensing specialist told me, "even school aged kids have accidents." This guy said that when centers claim that they don't take kids with diapers, he asks, "What about handicapped children?" He stated, unequivocally that taking a child who uses diapers would not effect their license at all in the state of Colorado. This effectively means that any center should take any child with a disability, regardless of toileting issues.

Many centers will tell you that staffing ratios do not allow them to take a child to the to get a diaper changed. Occasionally this is the case, but usually not. Any staff member in the center can take her to get her diaper changed. This is a common way centers will try to not take kids with disabilities. Ask them, "what do you do when a child is injured?" They should have a mechanism for staff members to leave a group of children. It would be the same for a child needing to be taken for a diaper change. The person who answers the phone can be the one who takes a child to get their diaper changed.

A center also cannot prevent a child from staying with their age appropriate peers because of a disability. The DOJ specifically addresses this issue in their bulletin.

After I have determined that a center can provide the services I need, and has openings, then, and only then, do I mention that my daughter has a disability. The centers I have called haven't said flat out that they won't take her, but they say things

like, "we would have to leave children unattended to do what she needs," (which is rarely true), or "she need individualized attention, and we don't do that" (and I always tell them that

they should not be in business if they never give kids individualized attention), or other things like this. There is no reason for a center to not take a child with a g-tube, needing diabetes monitoring, with epilepsy, or a child who might need an epinephrine shot etc. If you find a center who refuses to take your child with a disability, please, please call CCDC. We are preparing to file suit against one daycare provider who refused to accommodate a parent with a disability. Several large, nationwide centers are under consent decrees with the Department of Justice (Kinder Care and LaPetite, and I think Children's World has been . If a daycare center or preschool is run by a church as a program of a church (as

opposed to a separate entity that uses the church building) it does NOT have to comply with the ADA. These programs are exempt. But, don't automatically rule them out. The church programs that I have called are for the most part willing to take my daughter.

One last thing, document, document, document. Most of the time, the only way to ensure ADA compliance is to file a complaint with the DOJ or to sue. The only way to get this done is to have documentation of what happened. I get calls at my job every day from people who experience disability

discrimination, but we are unable to do anything about it because they have kept no records about the problem. All you need to do is write down where you called, who you talked to (if can get that info), and when you called. And, you need to make a note of what you were told.

Even if you don't want to take any action yourself, you may hear of someone else down the line who is, and that information may help them make their case. Lastly, we have gotten complaints about Mile High Child Care Association. If anyone has had any problems with them can you please call me at the Colorado Cross Disability Coalition (CCDC)? If anyone else has been having problems and wants to do something about it, please call CCDC (303-839-1775).