



## Protecting the Rights of Disabled Parents Involved with Child Welfare Systems

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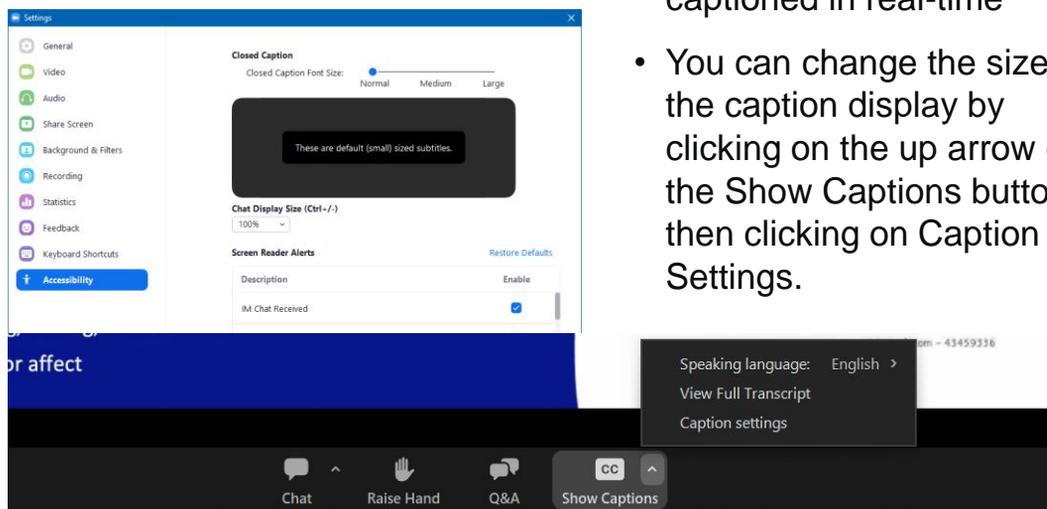
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## About Your Hosts...

### TransCen, Inc.

- Improving the lives of people with disabilities through meaningful work and community inclusion



### Mid-Atlantic ADA Center, a project of TransCen

- Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services

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## ADA National Network

- Ten regional centers provide guidance, training, and materials on the ADA
  - **1-800-949-4232**
  - [ADAta.org](http://ADAta.org)



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**COLLEGE OF LAW**  
*The UNIVERSITY of OKLAHOMA*

## PROTECTING THE RIGHTS OF DISABLED PARENTS INVOLVED WITH THE CHILD WELFARE SYSTEM

Robyn M. Powell, PhD, JD

August 23, 2023

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### NATIONAL RESEARCH CENTER ON PARENTS WITH DISABILITIES AND THEIR FAMILIES

- Across-disability initiative guided by the ethos of the disability community, “nothing about us without us.”
- Through services, research, and advocacy, the Center provides instruction and information about health and parenting services for parents with disabilities and their families.
- Support provided by the grant #90DPCP0012, from the National Institute for Disability, Independent Living, and Rehabilitation Research (NIDILRR), US Department of Health and Human Services, and the Lurie Institute for Disability Policy.

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## OVERVIEW OF PRESENTATION

- ADA definitions and identifying disabilities
- Disability law and child welfare
- Systemic barriers
- DOJ/HHS enforcement and recent decisions
- Strategies and solutions for advocacy
- Questions & answers

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## WHO IS A PERSON WITH A DISABILITY UNDER ADA AND SECTION 504?

- Three ways to meet definition:
  - Physical or mental impairment that substantially limits one or more major life activities;
  - A record of such an impairment; or
  - Being regarded as having such an impairment

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## WHO IS PROTECTED BY THE ADA?

- Physical disabilities
- Sensory disabilities
- Intellectual and developmental disabilities:
  - Disability categorized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior (range of everyday social and practical skills)
  - Originates before age 21
  - IQ test: major tool measuring intellectual functioning
  - Parents with ID: most parents with an ID label have mild to borderline cognitive impairments (IQ  $\leq$  80) (IASSID SIRG, 2008)
- Psychiatric and mental health disabilities:
  - Can include impairments such as depression, anxiety, PTSD, bipolar disorder, or schizophrenia, psychotic disorder
  - Impairment substantially limits major life activity such as parenting or social functioning, or impacts major bodily function – regulating mood or decision-making
- Substance use: drug/alcohol addiction is a disability under the ADA
  - But current and illegal use of drugs limits protection; and completion of or participation in rehabilitation program (if not using)  $\neq$  disabled
  - Title II prohibits discrimination against people with substance use disorder based solely on fact that they previously used
  - Argument: relapse is part of recovery, so still considered disabled

Source [https://aaid.org/intellectual-disability/definition/faqs-on-intellectual-disability#.V\\_zybTu7z18](https://aaid.org/intellectual-disability/definition/faqs-on-intellectual-disability#.V_zybTu7z18) ; Source re: SUD: The Americans with Disabilities Act, Title II Technical Assistance Manual available <http://www.ada.gov/taman2.html>

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## WHO ARE PARENTS WITH DISABILITIES AND THEIR CHILDREN?

- Estimates vary:
  - 4.1 million parents (6.2%) with reported disabilities in the United States have children under age 18 (Kaye, 2012)
  - Estimates indicate 6.1 million (10%) children in the U.S. have parents with disabilities (Kaye, 2012)
  - 2.9 million parents in the United States have a disability (Li, et al., 2016)
  - 10.3% of parents in the United States have a disability (Sonik, et al., 2018)
  - 2.7 million parents (3.8%) have a serious mental illness, 12.8 million (18.2%) have some type of mental illness (Stambaugh et al., 2016)

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## PARENTING WITH A DISABILITY TODAY

- Removal rates of parents with intellectual or psychiatric disabilities are as high as 70-80% (NCD, 2012)
- Extremely high removal rates and loss of parental rights for parents with sensory or physical disabilities
- 19% of children in foster care have a parent with a disability; parents with disabilities have 22% higher odds of TPR (DeZelar & Lightfoot, 2018)
- Disability is considered when determining the best interest of a child for purposes of a custody determination in family or dependency court

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## THE CHILD WELFARE SYSTEM & PARENTS WITH DISABILITIES

### Recurring barriers include:

- State statutes that include disability as grounds for TPR
- Disparate impact of certain provisions of the ASFA
- Perceived limits on the application of the ADA, especially for the termination

### Systemic barriers – significant for psychiatric/intellectual disabilities:

- Barriers to legal representation
- Access barriers
- Attitudinal barriers: bias and speculation
- Lack of disability awareness & skill in courts (lack of training)
- Training & skills of clinicians

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## DISABILITY LAW & CHILD WELFARE

- The ADA and Section 504 of the Rehabilitation Act (for agencies receiving federal funding) apply to the child welfare system
- Title II of the ADA applies to public entities, which include state and local governments, and their departments and agencies
- This includes the courts!

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## THE ADA REQUIREMENTS

Child welfare agencies must...

- Provide parents with disabilities an **equal opportunity** to participate in programs, services, and activities, including **reasonable modifications**, unless such modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b).
- Administer services, programs, and activities in the **most integrated setting** appropriate to the needs of qualified parents with disabilities. 28 C.F.R § 35.130(d).
- **Not impose or apply eligibility criteria** that screen out or tend to screen out any parents with a disability from fully and equally enjoying any service, program, or activity...28 C.F.R. § 35.130(b)(8).

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## THE ADA REQUIREMENTS (cont'd)

Child welfare agencies must...

- Furnish **auxiliary aids and services** when necessary to ensure effective communication. 28 C.F.R. § 35.160(a)(1),(b)(1), 28 C.F.R. § 35.164.
- Provide, as needed, benefits, services, or advantages **beyond those required by the regulation**. 28 C.F.R. § 35.130(c).
- **Not impose surcharges** on parents with disabilities to cover the costs of measures to ensure nondiscriminatory treatment. 28 C.F.R. § 35.130(f).
- **Not deny** the benefits of programs, activities, and services to parents with disabilities because entities' facilities are inaccessible. 28 C.F.R. § 35.149.
- Provide services, programs, and activities that, when viewed in their entirety, are **readily accessible to and usable** by parents with disabilities. 28 C.F.R. § 35.150.

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### ADA AND CHILD WELFARE SERVICES

Two principles that are fundamental to Title II of the ADA are: (1) individualized treatment; and (2) full and equal opportunity.

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## INDIVIDUALIZED TREATMENT

- Disabled parents must be treated on a case-by-case basis consistent with facts and objective evidence. 28 C.F.R. § 35.130(b); 28 C.F.R. pt. 35, App. B
- Disabled parents may not be treated based on generalizations or stereotypes. 28 C.F.R. § 35.130(b); 28 C.F.R. pt. 35, App. B
- Examples of prohibitions:
  - Removing a child from a parent with a disability based on the stereotypical belief, unsupported by an individual assessment, that disabled parents are unable to safely parent their children
  - Denying a person with a disability the opportunity to become a foster or adoptive parent based on stereotypical beliefs about how the disability may affect the individual's ability to provide appropriate care for a child

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## FULL AND EQUAL OPPORTUNITY

- Disabled parents must be provided opportunities to benefit from or participate in child welfare programs, services, and activities that are equal to those extended to nondisabled parents. 28 C.F.R. §§ 35.130(b)(1)(ii)-(iv), (vii), (b)(7); 45 C.F.R. § 84.4(b)(1)(ii)-(iii); see also 28 C.F.R. § 42.503(b)(1)(ii), (iii)
- Can require the provision of aids, benefits, and services different from those provided to other parents where necessary to ensure an equal opportunity to obtain the same result or gain the same benefit, such as family reunification. 28 C.F.R. § 35.130(b)(1)(ii)-(iv)

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## INDIVIDUALIZED TREATMENT AND FULL AND EQUAL OPPORTUNITY

- Does not mean lowering standards for disabled parents; rather, services must be adapted to meet the needs of parent to provide meaningful and equal access to the benefit
- May mean ensuring physical or programmatic accessibility or providing auxiliary aids and services to ensure adequate communication and participation (e.g., child welfare agency must provide an interpreter for a father who is Deaf when necessary to ensure that he can participate in all aspects of the child welfare interaction)
- May mean making reasonable modifications to policies, procedures, or practices (e.g., if a child welfare agency provides classes on feeding and bathing children and a mother with an intellectual disability needs a different method of instruction to learn the techniques, the agency should provide the mother with the method of teaching that she needs)
- Source: DOJ/HHS Technical Assistance

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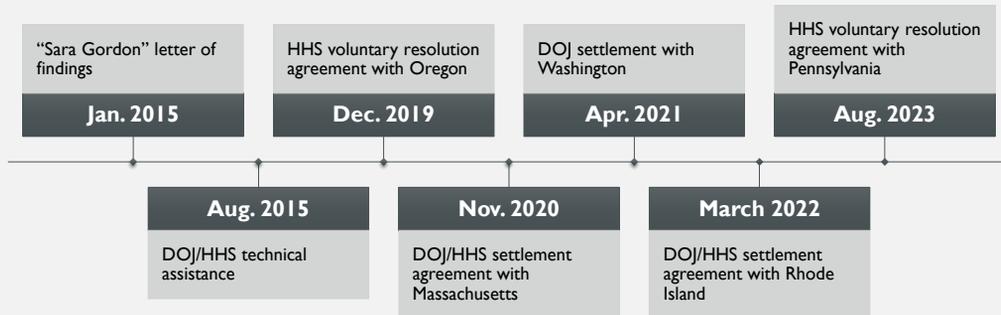
DIRECT  
THREAT/LEGITIMATE  
SAFETY REQUIREMENTS

### EXCEPTIONS/DEFENSES

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## DOJ/HHS ENFORCEMENT



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### DOJ/HHS LETTER OF FINDINGS ("SARA GORDON" CASE)

- January 29, 2015, Letter of Findings to DCF
- Mother with I/DD, lost custody of newborn
- State violated ADA and Section 504
- State must provide mother appropriate supports and opportunity to demonstrate fitness
- Available at [US DOJ Letter](#)
- Family was reunited after 2 years, 3 months, and 12 days!

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## DOJ/HHS TECHNICAL ASSISTANCE

- August 10, 2015
- Overview of the issues and application of ADA and Section 504
- Answers to specific questions and implementation examples for child welfare agencies and courts
- Resources to consult for additional information
- Available at [DOJ/HHS Technical Assistance Letter](#)

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## IN RE HICKS/BROWN, 893 N.W.2D 637 (MICH. 2017)

- Mother with intellectual disability, never provided reasonable accommodations
- Reversed TPR: agency and the court have responsibility to ensure a parent's disabilities are reasonably accommodated if they know of or should know of the disabilities
  - Places the responsibility on the courts and agency to ensure that the parent's disability is properly evaluated and accommodated
  - Before, the parent had to raise the ADA or its protections were deemed waived

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**PEOPLE EX  
REL. C.Z.,  
2015 COA  
87, 360  
P.3D 228**

- Mother with psychiatric disability:
  - “unwilling” to comply with mental health treatment
  - father also has psychiatric disability
- Parents had TPR with older children
- Trial court found no appropriate treatment plan could be devised to address parents’ “unfitness” due to their disabilities
- Parents appealed TPR
- Though unsuccessful, the appeals court finds that although ADA does not limit the court’s authority to terminate a disabled parent’s rights when the parent is unable to meet his or her child’s needs, **the ADA applies** to the provision of assessments, treatment, and other services that a department provides to parents **through a dependency and neglect proceeding prior to the TPR hearing**

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**PEOPLE EX.  
REL. S.K.,  
2019 COA  
36, 440 P.3d  
1240**

- Mother with intellectual and psychiatric disabilities, infant child
- Juvenile Court concluded parent’s disabilities severely limited their ability to care for the child
- Parents appealed – contended Department did not make reasonable efforts to reunify them with the child, or to rehabilitate them in light of the ADA and section 504
- Appeal unsuccessful, but Court said must consider if reasonable efforts were made to rehabilitate the parents – standard is met when services are provided (assessments, case plans, referrals to assistance resources, etc.); the Department and Juvenile Court must account for and make reasonable accommodations for the parent’s disability when making a treatment plan

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*I represent a parent  
with a disability...  
What do I do?*



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## **TIPS FOR REPRESENTING PARENTS WITH DISABILITIES**

- Screen every client for disability
  - Did you have an IEP in school?
  - Do you receive SSI or SSDI?
  - Do you have trouble learning new things?
  - Do you use pain medication on a regular basis?
  - Are you able to work? If not, why?
  - Are you able to walk up stairs?
- Ask specifically about the allegations against them – even if they aren't true

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## TIPS FOR REPRESENTING PARENTS WITH DISABILITIES (CONT'D)

- Connect the parent with appropriate disability services that can provide assistance with housing, employment, transportation, personal assistance services, and financial or health benefits (CILs, The Arc, peer supports)

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## STRATEGIES FOR ADVOCACY

- Make sure the parent receives an adapted parenting assessment by someone with *experience* evaluating parents with disabilities
  - Evaluations that are specialized for individuals with ID
  - Knowledge of supportive services, adaptive equipment
- Ensure parenting assessments is *appropriate measure* to assess parenting
- Observation in the home setting is crucial during evaluation!
  - Functioning of the parent and parent-child dyad can be profoundly affected by being in an unfamiliar environment, without typical adaptations and home modifications
- ADA and Rehabilitation Act require evaluations be accessible, including modifications
- IQ score does not correlate with parenting ability

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## STRATEGIES FOR ADVOCACY (CONT'D)

- Ensure the ADA is followed at every juncture of the case, and courts make required rulings throughout a case
- File complaints with DOJ & HHS
- Know your client's disability
  - Understand your client's diagnosis, symptoms, medications, side effects
  - Know your client's mental health history, recovery process, functioning
- Communicate with providers and support systems; obtain referrals – skill-building services, groups, classes, education, etc.
  - Obtain clinical perspective on your client's symptoms and functioning – also can assist in navigating attorney-client relationship
  - Encourage providers to be *appropriate* advocates for parents
  - Providers can help to reinforce/explain/translate legal advice

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## STRATEGIES FOR ADVOCACY (CONT'D)

- Know your client's strengths/abilities – particularly when advocating for specific services and accommodations in services
  - Focus the court on recovery process and supports your client is utilizing
- Analysis of individual parenting abilities (strengths or gaps) in relation to the individual child in the case – functioning and capacity – not disability alone!
  - Educate the court about recovery process and alternatives to medical model
  - Acknowledge setbacks and credit efforts
  - Creativity and practicality around accommodations and solutions
- Know your evidentiary and legal standards around mental health records, privilege, evaluations/assessments, competence and capacity

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## BIASES AGAINST PARENTS WITH DISABILITIES

- Presumptions that IQ correlates with parenting abilities
- Presumptions that parents with intellectual disabilities cannot learn and maintain parenting skills
- Presumptions that parents with psychiatric disabilities are inherently dangerous
- Presumptions that language development for children of Deaf parents will be delayed
- Presumptions that blind parents cannot safely supervise their children
- Presumptions that parents with physical disabilities cannot care for their children

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## EXPERT ASSESSORS

- Reliance on clinical assessments
- Focus on medical model for treatment
- Use of inappropriate measures? (e.g., IQ tests)
- Influence of attitudinal bias – even with “experts”?
- Generic approach by child welfare system

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## THE IQ MYTH

- IQ tests not a valid measure for prediction in most instances; no reliable correlation between IQ scores and parenting skills until the IQ was below 50. (IASSID SIRG, 2008).
- “A parent’s IQ level is not indicative of her/his parenting abilities unless associated with other environmental, familial, or individual factors such as poverty, a poor social network, poor mental and physical health, and a great number of children.” (Aunos, Goupil & Feldman, 2005)
- Various research has shown that parents with ID can learn and maintain parenting skills – use of modeling of skills, verbal instructions and feedback of performance; or learning parenting skills informally

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## AMERICAN PSYCHOLOGICAL ASSOCIATION GUIDANCE

[Guidelines for Psychological Evaluations in Child Protection Matters](#)

[Guidelines for Assessment of and Intervention with Persons with Disabilities](#)

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## EXAMPLES OF REASONABLE MODIFICATIONS

- Increase frequency/extend length of service provision
- Provide in-home parent modeling
- Links of parent with a co-parent or mentor, peer support
- Tailor parenting education to the needs of the parent
- Provide services at an individual's home or alternative accessible site
- Parent aide or coach
- Give frequent reminders for appointments/services
- Provide accessible transportation
- Provide all information in large print, audio tape, Braille, or digital format
- Offer note-taking or transcriptions of meetings and court activities
- Assist in reading materials
- Provide interpreters or other informal processing assistance

See University of Minnesota, Center for Advanced Studies in Child Welfare, *Guide for Creating Legislative Change: Disability in the Termination of Parental Rights and Other Child Custody Statutes* (2007).

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## EXAMPLES OF REASONABLE MODIFICATIONS (CONT'D)

- Day care services
- Respite care
- Family or informal support networks (church, neighbors)
- Parent helper/child care assistant
- Aide or personal assistant
- Supported housing
- Pictorial representation or reminders of tasks (step by step)
- Housekeeping services
- Adaptive equipment (e.g. adaptive cribs and child care equipment, communication devices, specialized computer software, cooking/feeding equipment)
- Adaptation to physical environment (e.g. ramps, lower counters, level handled door knobs)

See University of Minnesota, Center for Advanced Studies in Child Welfare, *Guide for Creating Legislative Change: Disability in the Termination of Parental Rights and Other Child Custody Statutes* (2007).

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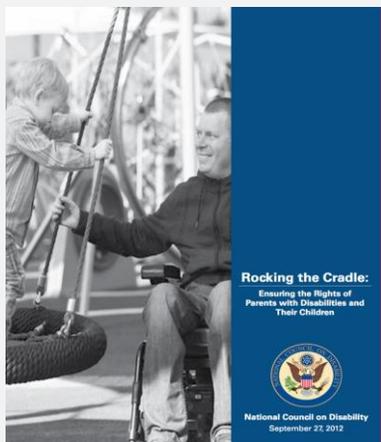
## ADDITIONAL RESOURCES

- [National Research Center for Parents with Disabilities](#)
- [National Disability Rights Network](#)
- [The Association for Successful Parenting](#)
- [Bazelon Center for Mental Health Law](#)

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## ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN



Available at the [National Council on Disability](#)

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**THANK YOU!**

Questions??



Robyn M. Powell

[rpowell@ou.edu](mailto:rpowell@ou.edu)

[www.centerforparentswithdisabilities.org](http://www.centerforparentswithdisabilities.org)

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