



## The Legal Obligations of Child Welfare Agencies and Courts when Working with Parents and Prospective Parents with Disabilities

### Introduction

Parents with disabilities often encounter discrimination when involved with the child welfare system. Parents with disabilities are more likely to be referred to their state's child welfare agency and once involved are more likely to have their children removed. Moreover, the child welfare system sometimes speculates about a parent's parenting ability based solely on their disability. The child welfare system sometimes does not provide parents with disabilities and their families the appropriate supports and services. In addition, prospective parents with disabilities may be denied the opportunity to adopt children or become foster parents.

In August 2015, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Justice (DOJ) issued "[Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.](#)" This document describes the legal obligations of child welfare agencies and courts when working with parents and prospective parents with disabilities. In this brief, we will describe the legal duties of the child welfare system.

### Overview of the ADA and Section 504 of the Rehabilitation Act

Both Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) apply to child welfare agencies and courts. Both laws prohibit government entities, such as child welfare agencies and courts, from discriminating against parents and prospective parents with disabilities. Moreover, both the ADA and Section 504 require government entities to provide reasonable modifications to parents and prospective parents with disabilities. Adoption agencies have the same legal duties.

The ADA and Rehabilitation Act provide legal rights to qualified individuals with disabilities, such as children, parents, guardians, foster and adoptive parents. Both laws also protect people who are denied services and supports because they are associated with a person with a disability.

### Individualized Treatment

Both the ADA and Section 504 require child welfare agencies and courts to provide parents and prospective parents with disabilities with individualized treatments. In other words, child welfare agencies and courts must treat parents and prospective parents with disabilities on a case-by-case basis and cannot be treated on the basis of stereotypes or bias. For example, a child welfare agency cannot remove a child from a parent with a disability simply because they

have a disability. Instead, the agency must conduct an individualized assessment of the parent. Likewise, a foster care or adoption agency cannot deny a prospective parent with a disability based on assumptions about their ability to care for a child.

### **Full and Equal Opportunity**

Both the ADA and Section 504 require child welfare agencies and courts to provide parents and prospective parents with the opportunity to participate in programs and services equal to nondisabled parents and prospective parents. To do so, agencies and courts may need to provide reasonable modifications so that parents and prospective parents with disabilities are able to access services and supports. For example, child welfare agencies and courts may need to provide sign language interpreters to parents and prospective parents who are Deaf so that they are able to access services and supports.

### **Reasonable Modifications and Effective Communication**

Under both the ADA and Section 504, child welfare agencies and courts must make changes in practices, policies, and procedures to accommodate a parent or prospective parent with a disability. The only exception is if this change would result in a fundamental alteration to the program. An example of a reasonable modification is providing individualized parent education classes that meets the needs of parents with intellectual disabilities.

Similarly, child welfare agencies and courts must provide auxiliary aids and services, if necessary, to ensure that parents and prospective parents with disabilities are able to effectively communicate with the entities. Examples include sign language interpreters, documents in Braille, and documents in plain language. Child welfare agencies and courts should work with the parent or prospective parent to determine what auxiliary aid or service the parent needs.

Child welfare agencies and courts are not allowed to charge parents or prospective parents with disabilities a fee to provide reasonable modifications.

### **Assessments of Parents and Prospective Parents with Disabilities**

Both the ADA and Section 504 obligate child welfare agencies and courts to treat parents and prospective parents with disabilities on an individualized basis. Accordingly, any assessment being conducted to assess a parent or prospective parent's capabilities must be individualized. Similarly, child welfare agencies and courts may be required to provide reasonable modifications to ensure all assessments are accessible.

### **Services for Parents and Prospective Parents with Disabilities**

To avoid discrimination and comply with the ADA and Section 504, child welfare agencies and courts may need to obtain services for parents and prospective parents with disabilities outside of the agency as a reasonable modification. For example, a parent may need mental health

services that are provided by another agency.

### **Filing Complaints**

Parents and prospective parents with disabilities may file complaints with the US Department of Justice and Department of Health and Human Services if they feel that a child welfare agency or court has discriminated against them because they have a disability. Family members, attorneys, or advocates may assist parents or prospective parents with filing a complaint.

To file a complaint with the DOJ, visit [www.ada.gov/filing\\_complaint.htm](http://www.ada.gov/filing_complaint.htm).

To file a complaint with HHS, visit [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html).