

The Role of OCR in Advancing Rights for Disabled Parents: Safeguards in Child Welfare Cases

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Brandeis

THE HELLER SCHOOL
FOR SOCIAL POLICY
AND MANAGEMENT
Lurie Institute
for Disability Policy



National Research Center for
Parents with Disabilities

Centro Nacional de Investigación para
Padres con Discapacidades

Welcome!

- ASL & Closed Captioning
- Recording
- Questions & Answers
- Resources
- Your Feedback



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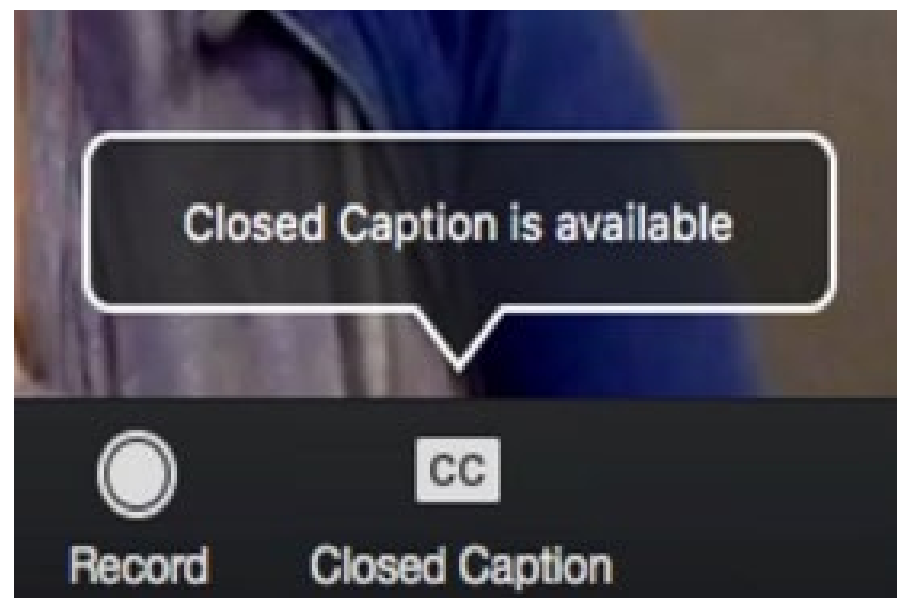


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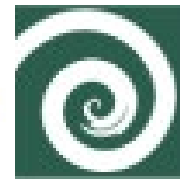
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Our Speakers



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Facilitator

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National Research Center for Parents with Disabilities

The National Research Center for Parents with Disabilities is a cross-disability initiative guided by the ethos of the disability community, “nothing about us without us.” Through services, research, and advocacy, the Center provides information and support for parents with disabilities and their families. The Center is part of the Lurie Institute for Disability Policy at Brandeis University, and is supported by the National Institute for Disability, Independent Living and Rehabilitation Research.



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Resources



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Parenting with a Disability: Past & Present

History

- Institutionalization, sterilization, and marriage restrictions (Braddock & Parish, 2001)

Today

- Increasingly, people with disabilities are becoming parents (NCD, 2012)
- Prevalence estimates range from 5% to 10% (Kaye, 2012; Li, Parish, Mitra, & Nicholson, 2016; Sonik, Parish, Mitra, & Nicholson, 2018)



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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)
- Cases with disabled parents are more likely to be substantiated and less likely to receive family preservation or reunification services compared to nondisabled parents (Lightfoot & DeZelar, 2016)



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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

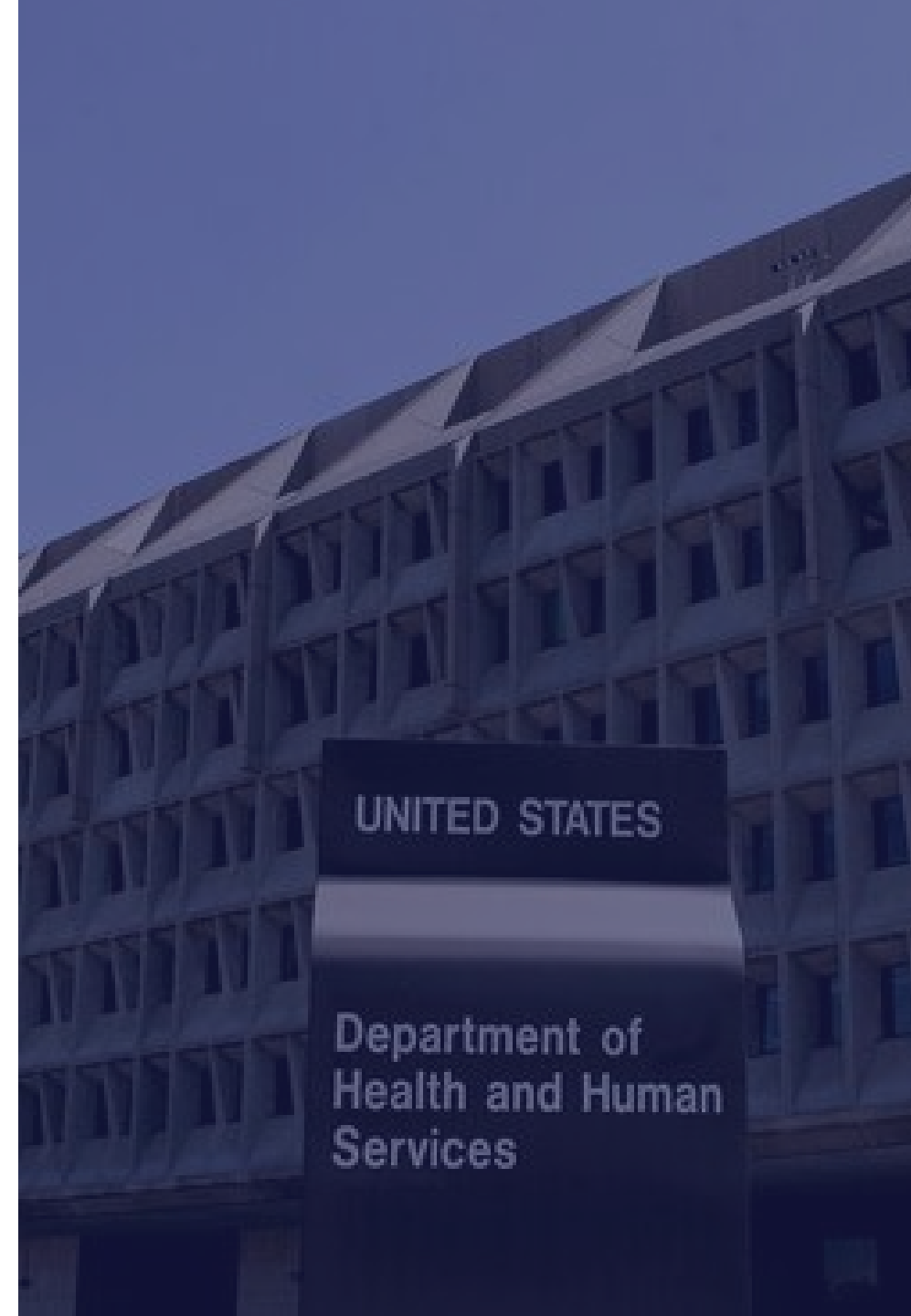
Systemic barriers – significant for psychiatric/intellectual disabilities:

- 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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Carla Carter, J.D.
Associate Deputy Director,
Enforcement Division



What is OCR?

OCR enforces civil rights, conscience and religious freedom, and health information privacy rights laws for HHS through:



Complaints



**Compliance
Reviews**



**Voluntary
Correction**



**Technical
Assistance**



**Public
Outreach**



**Guidance &
Regulations**



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What laws does OCR enforce?

- ❑ Title VI of the Civil Rights Act
- ❑ Title IX of the Education Amendments Act
- ❑ Section 504 of the Rehabilitation Act
- ❑ The Age Discrimination Act
- ❑ Multiethnic Placement Act /Removal of Barriers to Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (Section 1808)
- ❑ Title II of the Americans with Disabilities Act
- ❑ Section 1557 of the Affordable Care Act



Protected Individuals



- Children and Parents
- Relatives/Kin
- Legal Guardians, Caregivers
- Foster Parents, Adoptive Parents
- Prospective Foster/Adoptive Parents



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Covered Entities

- State and County Child Welfare Agencies
- Private and Non-Profit Child Placing Agencies
- Day Care Providers
- Mental Health Providers
- Parent Education Providers
- Counseling Providers
- Anger Management Providers
- Substance Use Disorder Treatment Providers
- State Court Systems



Covered Child Welfare Programs and Activities

All child welfare-related activities and programs are covered, including, but not limited to investigations, assessments, child removals, child placements, case planning, witness interviews, family time, reunification, foster care and adoption program activities, guardianship, and some aspects of Court proceedings.



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Section 504 of the Rehabilitation Act of 1973

“No otherwise qualified individual with a disability in the United States,... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency...”

29 U.S.C. § 794, 45 C.F.R. Part 84



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The Americans with Disabilities Act of 1990

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

42 U.S.C. § 12132, 28 C.F.R. Part 35



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Section 504 and the ADA Require that Covered Entities

Provide effective and meaningful access to programs, benefits or services by:

- Providing appropriate auxiliary aids and services, at no cost, and/or
- Making reasonable modifications, as needed



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Reasonable Efforts

- ❑ Actions federally funded agencies must make to prevent the necessity of removal of a child from the child's home
- ❑ Actions federally funded child welfare agencies must make to reunify children with their families



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Enforcement and Compliance Activities

- Complaint Investigations
- Compliance Reviews
- Voluntary Resolution Agreements
- Formal Enforcement – Letter of Findings, Suspension of Funds or other action



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Filing a Complaint

There are four options for filing an ADA/504 complaint:

Your complaint must:



- Be filed in writing by mail, fax, e-mail, or via the [OCR Complaint Portal](#)



- Name the health care or social service provider involved, and describe the acts or omissions, you believe violated civil rights laws or regulations



- Be filed within 180 days of when you knew that the act or omission complained of occurred. OCR may extend the 180-day period if you can show “good cause”



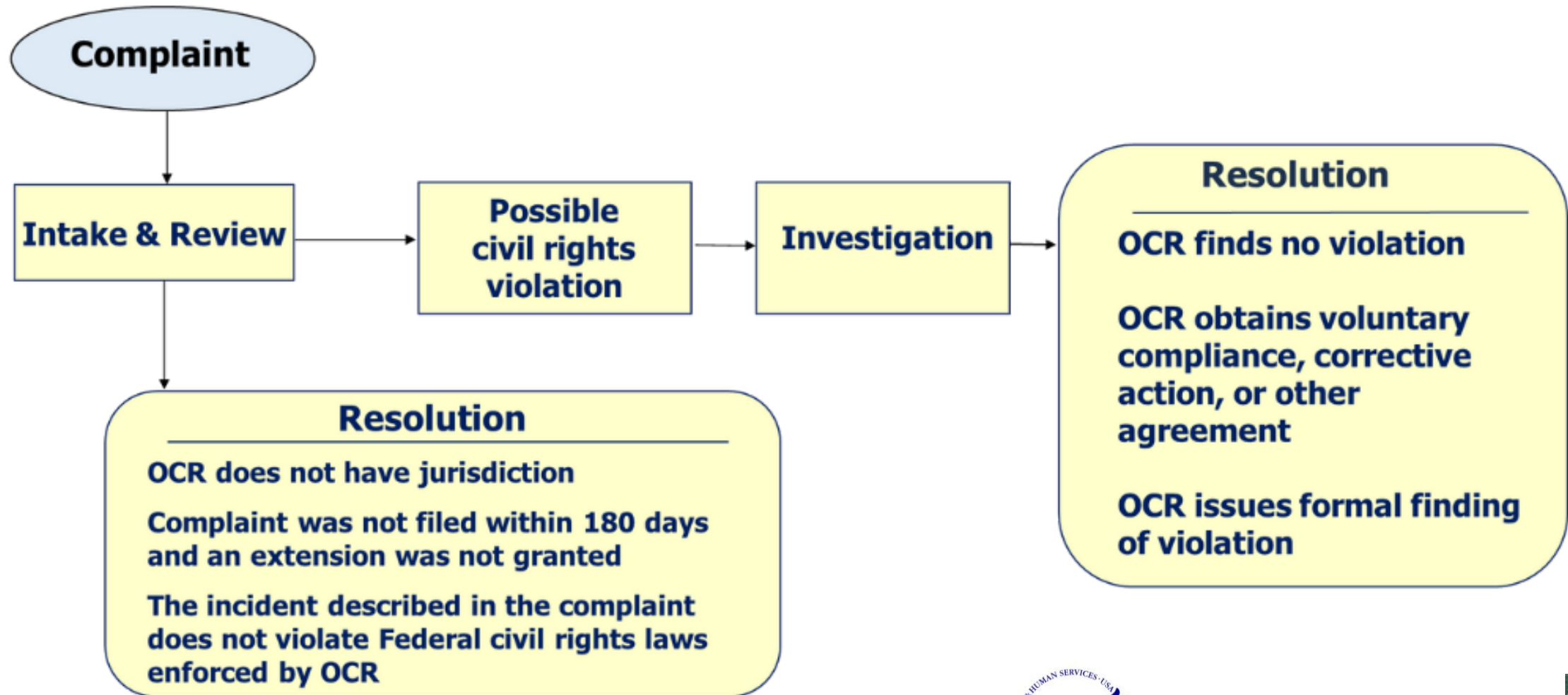
- Information available at: <https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>



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Complaint Process



Civil Rights Investigations

Between 2015 and 2021 –

- ❑ OCR received over 300 complaints from parents with disabilities and advocates alleging disability discrimination in 34 state child welfare systems.

Complaint examples include -

- ❑ Removing infants from parents with intellectual disabilities based on stereotypes and bias
- ❑ Denying parents with communication disabilities sign language interpreters
- ❑ Prohibiting parents from receiving assistance with childcare responsibilities from professional and natural supports



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Enforcement

Parents with Intellectual Disabilities

- Massachusetts Department of Children and Families
- Oregon Department of Human Services
- New Jersey Department of Children and Families
- North Carolina Department of Health and Human Services

Parents with Communication Disabilities

- Rhode Island Department of Children, Youth and Families

Persons in Recovery from Substance Use Disorders and Receiving MAT

- West Virginia Department of Health and Human Resources
- Pennsylvania Department of Human Services



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Policy

- ❑ 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 (2015)
- ❑ Title VI Child Welfare Guidance (2016)



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Regulations

- Notice of Proposed Rulemaking: Discrimination on the Basis of Disability in Health and Human Service Programs or Activities
- **Defines** - Parents, caretakers, foster parents, companions, and prospective parents
- **Clarifies**
 - Qualified person with a disability includes a person with a disability who meets the essential eligibility requirements of the child welfare program or activity
 - Program or activity includes all operations of child welfare
 - Nondiscrimination requirements related to child welfare decision making



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HHS Resources

HHS OCR Child Welfare Page

<https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html>

HHS Opioids Page

<https://www.hhs.gov/opioids/>

HHS OCR Opioids Page

<https://www.hhs.gov/civil-rights/for-individuals/special-topics/opioids/index.html>

HHS ASPE Reports

<https://aspe.hhs.gov/reports>

HHS SAMHSA

<https://www.samhsa.gov/medication-assisted-treatment>

National Center on Substance Abuse
and Child Welfare

<https://ncsacw.samhsa.gov/ncsacw.samhsa.gov/topics/medication-assisted-treatment.aspx>



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Contact us!



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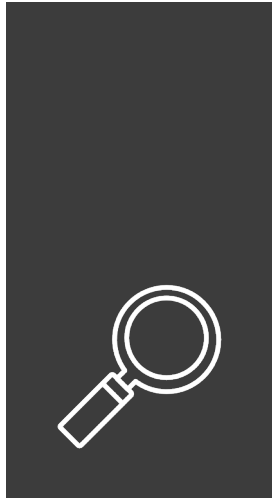


Voice: (800) 368-1019
TDD: (800) 537-7697
Call Center: (877) 696-6775



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Washington, D.C. 20201

Resources



- **National Research Center for Parents with Disabilities**
<http://heller.brandeis.edu/parents-with-disabilities/index.html>
- **Disabled Parenting Project** <https://www.disabledparenting.com/>
- **Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Families** <https://ncd.gov/publications/2012/Sep272012>
- **Child Welfare Information Gateway** <https://www.childwelfare.gov/>
- **The Association of Successful Parenting** <http://achancetoparent.net/>
- **Bazelon Center for Mental Health Law** <http://www.bazelon.org/our-work/mental-health-systems/parental-rights/>



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Questions & Answers

COMING UP!

KEEPING FAMILIES TOGETHER: DISABILITY LAW TRAINING FOR PARENT ATTORNEYS

MARCH 13TH AND MARCH 20TH, 2024
2-3 P.M. EST

VOLUNTARY & NO COST
1/75 CHANCE OF WINNING A \$50 GIFT CARD

[Register Here](#)

Questions?

CONTACT: Taylor Merk at taylor.merk@umassmed.edu



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National Institute on Disability, Independent Living,
and Rehabilitation Research

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