



# REPRESENTING PARENTS WITH DISABILITIES IN CHILD WELFARE CASES

Robyn M. Powell, Esq.

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# Agenda

- Parenting with a Disability: Past & Present
- Disability Law & Child Welfare
- DOJ/HHS Letter of Findings (“Sara Gordon” case)
- DOJ/HHS Technical Assistance
- Representing Parents with Disabilities: Strategies & Solutions
- Q & A



# *Buck v. Bell*, 274 U.S. 200 (1927)

- *“It is better for the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind... Three generations of imbeciles are enough.”*



# Parenting with a Disability Today: The Eugenic Movement's Backdoor?

- 25 years after the passage of the ADA...
- *Buck v. Bell* has never been overturned
- Several states still have some form of involuntary sterilization laws on their books
- Women with disabilities contend with coercive tactics designed to encourage sterilization or abortions because they are deemed not fit for motherhood
- Pervasive myth that people with disabilities are either sexually unwilling or unable

# Parenting with a Disability Today

- Removal rates of parents with psychiatric disabilities are as high as 70-80%
- Removal rates of parents with intellectual disabilities are as high as 80%
- Extremely high removal rates and loss of parental rights for parents with sensory or physical disabilities
- More than two-thirds of dependency statutes include disability as grounds for termination of parental rights (TPR)
- In every state, disability may be considered when determining the best interest of a child for purposes of a custody determination in family or dependency court

# Parenting with a Disability Today

- Parents with disabilities are more likely to lose custody of their children after divorce
- Prospective adoptive parents with disabilities regularly encounter barriers erected by discrimination and bias
- People with disabilities face significant barriers to receiving assisted reproductive technologies



# Who are Parents with Disabilities and Their Children?

- At least 4.1 million parents with reported disabilities in the United States have children under age 18; meaning that at least 6.2 percent of American parents who have children under age 18 have at least one reported disability.
- Estimates indicate 6.1 million children in the U.S. have parents with disabilities – Nearly 1 in 10, almost 10% of the population.



Source: Kaye, H. Steven. (2012). *Current Demographics of Parents with Disabilities in the U.S.* Berkeley, CA: Through the Looking Glass.

# 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 at the termination phase*
  - *Bias and speculation*
  - *A lack of training regarding parents with disabilities*

# Disability Law & Child Welfare

- Both the ADA and Section 504 of the Rehabilitation Act (for agencies receiving federal funding) apply to the child welfare system.
- The ADA was passed with the intent of ensuring “full and equal opportunity” for Americans with disabilities.



# Rehabilitation Act (Section 504) – 29 U.S.C. § 794

- “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” 29 U.S.C. § 794(a).

# Americans with Disabilities Act (ADA)

- Title II applies to public entities, which include state and local governments, and their departments and agencies  
42 U.S.C. § 12131(1)
- Accordingly, the child welfare system must comply with Title II's mandate: "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12131 *et seq.*

# The ADA, Continued...

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).

# The ADA, Continued...

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.

# What are “services, programs, and activities” and “aids, benefits, services?”

Virtually anything a public entity does, including “family preservation services” and “family support services” under 42 U.S.C. § 629a:

- Investigations
- Removals
- Referrals to services
- Service planning
- Visitation
- Meetings
- Reunification
- Adoption
- Guardianship
- Foster care
- Communications
- Safety planning
- Mentoring and teaching
- Assessments
- Pre-placement services
- Counseling
- Domestic violence assistance
- Temporary child care/respite
- Therapeutic services for families
- Peer-to-peer mentoring
- Support groups
- Transportation
- Follow-up support after reunification

# The ADA: Limits and Lessons

- Discrimination against parents with disabilities was an issue documented during congressional hearings on the ADA at passage.
- Almost every case has found that the ADA is not a defense to TPR.
- There seems to be a misconception that Title II does not therefore apply to child welfare practice.
- Reasonableness: “Agencies must make reasonable modifications in policies, practices, or procedures, unless such modifications would fundamentally alter the nature of the service, program or activity.” 28 CFR § 35.130(b)(7). Onus on the state to show why not reasonable.
- Equal Access: Also must provide people with disabilities an equal opportunity to participate in programs, services and activities.” 28 CFR § 35.130(b).
- Broadness: “The ADA’s broad language makes no exception for activities that implicate strong state interests.” *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 2006 (1998).

# 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 [http://www.ada.gov/ma\\_docf\\_lof.pdf](http://www.ada.gov/ma_docf_lof.pdf)
- Family was reunited after 2 years, 3 months, and 12 days!



# 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 [http://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](http://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf)

# How to File Complaints with DOJ & HHS

- DOJ – Civil Rights Division, Disability Rights Section
  - [http://www.ada.gov/filing\\_complaint.htm](http://www.ada.gov/filing_complaint.htm)
- HHS – Office for Civil Rights
  - <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>

*I represent a disabled  
parent...*

*What do I do?*

# Tips for Representing Parents with Disabilities

- Screen every client for disability.
- Connect the parent with appropriate disability services (e.g., local Center for Independent Living) that can provide assistance with housing, employment, transportation, personal assistance services, and financial or health benefits.
- Make sure the parent receives an adapted parenting assessment by someone with experience evaluating parents with disabilities.
- Help the parent make a claim under the ADA as soon as possible. A parent may make an ADA claim by demonstrating that he or she is a qualified person with a disability who requires a reasonable accommodation of that disability by a public entity.

# Tips for Representing Parents with Disabilities, Continued...

- Consider appealing and/or filing an ADA complaint in the federal court if:
  - *the removal was based solely on the parent's disability;*
  - *the court will not order accommodations of hearings, meetings, or services;*  
*or*
  - *a decision of the court to continue jurisdiction over the child is not reasonable based on witness and expert testimony and other evidence.*
- Also, if the parent is denied a reasonable accommodation, be prepared to file a complaint with the departmental, state, or federal agency empowered to investigate discrimination by the court or child welfare agency.
  - *At the federal level, a complaint can be filed with the U.S. Department of Justice (DOJ) as well as the U.S. Department of Health and Human Services (HHS) Office for Civil Rights.*

# Tips for Representing Parents with Disabilities, Continued...

- Know your client's disability
- Communicate with providers and support systems; obtain referrals – skill-building services, groups, classes, education, etc.
- Know your client's strengths/abilities – when advocating for accommodations in services, and the kind of services
- Encourage providers/peers to be advocates for a parent!
- Evidentiary and legal standards around mental health records, privilege, evaluations/assessments, competence and capacity
- Be creative and practical to reach solutions
- **BE A ZEALOUS ADVOCATE!**

# Parenting Assessments

- Often crucial in child welfare proceedings
- Evaluators may harbor their own biases regarding parents with disabilities
- Evaluators often have no training or experience assessing parents with disabilities and are unaware of supports and the use of adaptive equipment
- Parenting assessments are often inaccessible
  - *Observation in the home setting is crucial during evaluation of parents with disabilities, because the functioning of the parent and the parent-child dyad can be profoundly affected by being in an unfamiliar environment, without the adaptations and home modifications that are normally used*
- ADA and Rehabilitation Act require evaluations to be accessible, including modifications
- Inappropriate reliance on IQ testing
  - *Researchers have consistently found that there is no clear relationship between parental fitness and intelligence (Booth & Booth, 1993; Dowdney & Skuse, 1993; Tymchuk & Feldman, 1991)*

# American Psychological Association Guidance

- Guidelines for Psychological Evaluations in Child Protection Matters (<http://www.apa.org/practice/guidelines/child-protection.aspx>)
- Guidelines for Assessment of and Intervention with Persons with Disabilities (<http://www.apa.org/pi/disability/resources/assessment-disabilities.aspx>)

# 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
- Tailor parenting education to the needs of the parent
- Provide services at an individual's home or alternative accessible site
- 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

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).

# Examples of Reasonable Accommodations

- 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)

# Resources

- Disabled Parenting Project ([www.disabledparenting.com](http://www.disabledparenting.com))
- Through the Looking Glass ([www.lookingglass.org](http://www.lookingglass.org))
- Center for Rights of Parents with Disabilities ([www.disabledparentrights.org](http://www.disabledparentrights.org))
- Bazelon Center for Mental Health Law ([www.bazelon.org](http://www.bazelon.org))
- The Association for Successful Parenting ([www.achancetoparent.net](http://www.achancetoparent.net))

# Thank You!

Robyn M. Powell, Esq.

508.203.6857

[robyn@robynpowell.com](mailto:robyn@robynpowell.com)

[www.robynpowell.com](http://www.robynpowell.com)