

Civil Rights Protections for Persons with Disabilities Involved in the Child Welfare System





HHS Law Enforcement Agency

8 Regional Offices

Headquarters (Washington, DC)

Enforcement, Technical Assistance

Training, Outreach

Policy and Regulations

Agenda

- Discrimination in the Child Welfare System
- Protected Individuals, Covered Entities, and Covered Programs and Services
- Federal Disability Rights Laws
- Qualified Individuals with a Disability

Complaints About the Child Welfare System



Examples of Prohibited Conduct

- ❑ Covered entity failed to provide a parent with an intellectual disability individualized and tailored reunification services;
- ❑ Covered entity denied a prospective parent the opportunity to become a foster parent based on assumptions and stereotypic beliefs about the individual's disability.

Protected Individuals



Children and Parents
Relatives / Kin / Caregivers

Legal Guardians

Foster Parents, Adoptive
Parents

Prospective Foster / Adoptive
Parents

Entities Covered by Federal Disability Rights Laws

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

Covered Child Welfare Programs, Activities & Services

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



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



Federal Disability Rights Laws

Section 504 of the Rehabilitation Act of 1973

Title II of the Americans with Disabilities Act of 1990

Federal Disability Rights Laws

Federal disability rights laws require some determinations regarding individuals with disabilities to be individualized.

Section 504 of the Rehabilitation Act of 1973 29 U.S.C. § 794, 45 C.F.R. Part 84

“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...”

Section 504 of the Rehabilitation Act

- ❑ Section 504 extends to all the activities of State and local governments if they receive Federal financial assistance.
- ❑ Section 504 prohibits disability-based discrimination in all programs, services and activities of state federally assisted programs, including child welfare agencies and courts.

The Americans with Disabilities Act of 1990

42 U.S.C. § 12132, 28 C.F.R. Part 35

“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.”

Title II of the Americans with Disabilities Act

- ❑ Title II of the ADA extends to all the activities of State and local governments whether or not they receive Federal funds.
- ❑ Title II of the ADA prohibits disability-based discrimination in all programs, services and activities of state and local governments, including child welfare agencies and courts.



Under Both Section 504 and the ADA, Covered Entities Must Not

- ❑ Exclude a person with a disability from a program or activity;
- ❑ Deny a person with a disability the benefits of a program or activity;
- ❑ Afford a person with a disability an opportunity to participate in or benefit from a benefit or service that is not equal to what is afforded others;
- ❑ Provide a benefit or service to a person with a disability that is not as effective as what is provided others.

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

Section 504 and ADA Definition of Disability



Disability Means...

- ❑ A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- ❑ A record of such an impairment; or
- ❑ Being regarded as having such an impairment.

Physical or Mental Impairments Include

- Intellectual Disability
- Emotional or Mental Illness
- Specific Learning Disability
- Orthopedic, Visual, Speech, and Hearing Impairments
- Attention Deficit Disorder with Hyperactivity
- Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic)
- Drug Addiction and Alcoholism



Major Life Activities

Major life activities include:

- ❑ Caring for oneself, performing manual tasks, breathing, standing, lifting, speaking, learning, concentrating, eating or sleeping.
- ❑ Operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, neurological, endocrine, and reproductive functions.

“Actual Disability” Prong

Coverage requires a showing of a physical or mental impairment that, substantially limits, a major life activity which includes a major bodily function.

“Record of” Prong

An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities

“Regarded As” Prong

An individual is regarded as having a disability when he or she is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether the impairment limits or is perceived to limit a major life activity.

Consideration of Mitigating Measures

Disability rights laws prohibit any consideration of the ameliorative effects of mitigating measures (e.g. medication, medical supplies, equipment, etc.), when determining whether an individual's impairment substantially limits a major life activity. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.



A Qualified Individual With a Disability Is

An individual with a disability who,

- with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services,
- meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a covered entity.

Reasonable Modifications

Examples of Reasonable Modifications might include:

- Increased Frequency of Parent-Child Visits
- In-Home Parenting Skills Training
- Note takers or other Auxiliary Aids and Services

Fundamental Alteration

Public and private entities do not have to do anything that would result in a fundamental alteration in the nature of the program or service or would be an undue financial or administrative burden.



Direct Threat

28 C.F.R § 35.139, Sch. Bd. of Nassau Cty. v. Arline, 480 U.S. 273 (1987)

Child welfare agencies can exclude an individual with a disability from programs or take other adverse action against the individual if the individual poses a direct threat to the health or safety of others.

A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.



OCR Findings of Disability Discrimination

Massachusetts Department of Children and Families (2015)

OCR and DOJ entered into a Settlement Agreement resolving findings that for more than two years after the removal of Sara Gordon's two-day old infant, MA DCF denied her an equal opportunity to benefit from appropriate supports and services, including in-home services and her existing family supports. The agency also denied her numerous requests for disability-based accommodations, including hands-on demonstrations of the parenting skills DCF was requiring her to learn.

Georgia Department of Human Resources (2016)

OCR and Georgia DHR entered into a Settlement Agreement resolving findings that the child welfare denied an applicant with a disability the opportunity to become a Foster-Adopt parent in violation of Section 504 and Title II of the ADA. OCR found the child welfare agency failed to make an individualized assessment of the Complainant's ability to be a Foster-Adopt parent and instead improperly used disability as a criterion to make placement decisions. In addition, DFCS also failed to consider whether supportive services that are offered to other foster parents would have addressed their concerns and allowed the complainant to participate in the program.

**Thursday,
March 21, 2024**

11:00 – 12:00pm

***Civil Right
Protections – Part One***

**Carla Carter &
Beatriz Romero -
Escobar**



Civil Rights Protections for Individuals in Recovery from an Opioid Use Disorder





Alcohol Addiction

Do Federal disability rights laws protect individuals with alcoholism?

It depends.

Addiction to Drugs

Is an addiction to drugs an impairment? Yes.

Drug Addiction and Disability Definition

Is an addiction to drugs a disability? It depends.

- Does the addiction substantially limit a major life activity?
- Does the individual have a record of an addiction to drugs?
- Has the individual been subjected to a prohibited action because of an actual or perceived addiction?

An Individual With a Disability Does Not Include

Individuals who are currently engaged in the illegal use of drugs, when the covered entity acts on the basis of that use.

Medication Assisted Treatment



Illegal Use of Drugs Does Not Include

Illegal use of drugs does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individuals Who Are Not Excluded From Protection

An individual who meets the definition of disability is protected if the individual:

1. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
2. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
3. Is erroneously regarded as engaging in such use but is not engaging in such use.

Department of Health
BUREAU OF HEALTH FACILITIES AND SERVICE

DRUG TEST

Application for Accreditation of Drug Testing Laboratory

Name of Laboratory1 : _____

Address of the Laboratory . _____

No. & Street Barangay _____

City/ Municipality Province Reg. _____

Telephone/ Fax No. : _____

Name of Head of the _____



Drug Testing

Federal disability rights laws do not prohibit a covered entity from conducting drug testing.

Health and Drug Rehabilitation Services

Covered entities are prohibited from denying health services or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

What Is MAT?



Medication-Assisted Treatment (MAT)

MAT is the use of medications, in combination with counseling and mental health therapies, to provide a “whole-patient” approach to the treatment of substance use disorders. The medications prescribed for MAT operate to normalize brain chemistry, block the euphoric effects of the substances, relieve physiological and psychological cravings, and normalize body functions without the negative effects of the abused drug.

<https://www.samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions>

Medication-Assisted Treatment

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

- ❑ Methadone –long-acting opioid agonist taken once daily that prevents withdrawal and reduces drug craving while taking it; administered daily as a liquid dispensed only in federally and state regulated specialty clinics.
- ❑ Buprenorphine (BU-PRE--NOR-FEEN) – office-based opioid partial agonist that can blocks the effects of other opioids and prevents withdrawal; daily dissolving tablet or film taken sublingually, cheek film, long-acting once monthly injectable or 6-month implant under the skin.
- ❑ Naltrexone (NAL – TREX- OWN) – office-based, opioid antagonist medication that blocks the effects of other opioids; usually given as a monthly injection, but also available as a tablet taken daily.

An Individual's Receipt of MAT Is Not the Illegal Use of Drugs When ...

The individual takes MAT under the supervision of a licensed health care professional.

Disability Rights Laws and Qualified Individuals Receiving MAT

Federal disability rights laws protect some individuals receiving MAT.

- Is the person receiving MAT an individual with a disability?
- Is the person receiving MAT a qualified individual with a disability?
- Is the person receiving MAT engaged in the illegal use of drugs?

Examples of Covered Entities' Prohibited Conduct

- ❑ Persons receiving MAT are denied parent-child visits because the parent receives MAT for an opioid use disorder.
- ❑ Parents are required to step down their receipt of or discontinue the receipt of MAT as a condition of reunification.
- ❑ Parents who receive MAT have their children removed based on unfounded determinations related to the risk of relapse or assumptions about the illegal use of drugs.

MAT Voluntary Resolution Agreements

WV Department of Health and Human Services (2020)

OCR entered into a voluntary resolution agreement with WV to resolve allegations that an aunt and uncle who sought to adopt their young niece and nephew were denied this opportunity based on the uncle's being in recovery from opioid use disorder and his long-term use of physician-prescribed Suboxone as part of his medication-assisted treatment (MAT) program.

PA Department of Human Services (2023)

OCR entered into a voluntary resolution agreement with PA to resolve a complaint against a county-operated child welfare agency overseen by PA DHS that denied an individual the opportunity to apply to be a foster parent because she receives medication for the treatment of substance use disorder.

Resources

OCR Webpage

<https://www.hhs.gov/ocr/index.html>

HHS OCR Child Welfare Page

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

HHS and DOJ Technical Assistance on Disability Discrimination in Child Welfare

www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf

HHS and DOJ Technical Assistance on Race, Color, and National Origin Discrimination in Child Welfare

<https://www.hhs.gov/sites/default/files/title-vi-child-welfare-guidance-10-19-16.pdf>

National Council on Disability: Rocking the Cradle – Ensuring the Rights of Parents with Disabilities and Their Children

<https://www.ncd.gov/publications/2012/Sep272012>

National Center on Substance Abuse and Child Welfare <https://ncsacw.samhsa.gov>



Contact OCR



Email OCR: ocrmail@hhs.gov

Mailing Address:

Centralized Case Management Operations
U.S. Department of Health and Human
Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201



Call OCR:

Toll Free: (800) 368-1019

TDD Toll-free: (800) 537-7697

File a Complaint:

<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>

**Thursday,
March 21, 2024**

12:30pm – 1:30pm

***Civil Right
Protections – Part Two***

**Carla Carter &
Beatriz Romero -
Escobar**

