

Justice Department and DHHS affirm ADA applies to child welfare

In a groundbreaking "joint letter" the U. S. Department of Justice (DOJ) and the U. S. Department of Health and Human Services (DHHS) affirmed in late January 2015 that federal law entitles parents with developmental disabilities to special child welfare accommodations and services. Their rights arise under the Americans with Disabilities Act (ADA) and the Rehabilitation Action (Title II and Section 504). The civil rights divisions of both federal agencies conducted a joint investigation that found disabilities rights violations by the Massachusetts Department of Children and Families (DCF) as outlined in the letter from the two federal agencies on January 29, 2015.

The Massachusetts child welfare agency was found to have violated the ADA and Section 504 by denying a mother with developmental disabilities the opportunity to benefit from supports and services. The agency removed her two-day-old infant from the hospital, and she waged a two-year battle in an unsuccessful effort to reunify with her daughter. An important element of the mother's success in this case came from her ability to obtain a "competence based family assessment" from an expert qualified in developmental disabilities and parenting. Dr. Nicole Brisson (Sage Haven Associates, Vermont) not only assessed the mother's capacity to parent with supports, but also was able to establish that the child welfare agency's insistence upon the mother's submitting to a neuropsychological evaluation was inappropriate and misguided. DOJ and DHHS made special note of Dr. Brisson's finding that neuropsychological evaluations are often not conducted by individuals with specialized knowledge of parents with disabilities, they are standardized against a population that does not include appropriate norms or accommodations for parents with disabilities, and they often lead to improper conclusions. As Dr. Brisson explained: "Parenting is a complex set of variables that cannot be reduced to simply tests. Instead the parents' learning style/ability is better evaluated through direct clinical observation."

In violation of their obligations under ADA and Section 504, the child welfare agency relied upon "discriminatory assumptions and stereotypes" about the mother's disability "without consideration of implementing appropriate family-based support services." They found that the agency continued to deny the mother "access to appropriate family-based support services it makes available to parents to successfully achieve reunification and has failed to reasonably modify its policies, practices, and procedures to accommodate (her) disability." Instead they "assumed that the mother was unable to learn how to safely care for her daughter because of her disability, and, therefore, denied her the opportunity to receive meaningful assistance from her mother and other service providers during visits." The child welfare workers supported a change in the permanency goal to adoption and sought to terminate the mother's parental rights on the basis of her disability. The letter of findings asks the child welfare agency to "immediately implement services and

supports for an appropriate amount of time to provide the mother a full and equal opportunity to pursue reunification with the child, in consideration of two years of denials, and the "evaluations of the professionals that have opined on this case." In addition, they awarded damages to the parent, and mandated training for DCF personnel. The joint Letter of Findings is available on ADA.gov.

For more general information on the Americans with Disabilities Act visit ADA.gov, or call the toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).