

The Americans With Disabilities Act and Juvenile Dependency Court

A disabled parent finds herself in juvenile dependency court. Her child has been removed from her care for several reasons including her drug addiction, her mental illness, and her learning disabilities. All of these conditions make it difficult for her to fulfill the conditions of the service plan she must complete in order to regain custody of her child.

Her attorney asks the court to order the Department of Children's Services to provide services that make reasonable modifications in their policies, practices, and procedures so that the parent can complete the services stated in the service plan. The attorney refers the court to Title II of the Americans With Disabilities Act (ADA) which describes what child welfare agencies must do for qualifying persons with disabilities.

The attorney points out that the civil right protections provided by the ADA offer comprehensive protections for individuals with disabilities. An "individual with a disability" is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities, or
- Has a record of such an impairment, or
- Is regarded as having such impairment.

According to Title III of the ADA, some examples of physical or mental impairments include, but are not limited to, contagious and non-contagious diseases and conditions, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV, tuberculosis, drug addiction, and alcoholism. Furthermore, the ADA defines a "major life activity" to include such functions as caring for oneself, performing

manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

While appellate courts have not found that a disability is a defense to a termination of parental rights action, there is general agreement among state courts that ADA claims may be brought when services provided by the child welfare agency are so inadequate that they discriminate against parents with disabilities. Several of these courts conclude that the ADA requirements are similar to the 'reasonable efforts' requirements of federal and state law.

In fact, the Department of Justice regulations for Title II which use language drawn from equal protection jurisprudence, suggest that Title II's provisions are to be read broadly: Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.

California law and practice are consistent with this analysis; however, the appellate courts have not relied upon the ADA in their analysis. See *In re J.P.*, 14 Cal. App. 5th 616 where the Burmese speaking father was not provided translation services for a portion of his case plan. The appellate court reversed the termination of parental rights but made no mention of the ADA.

One conclusion for practitioners in juvenile court is that the court should ensure that the social services enforce the ADA's mandate that child welfare services provide parents with disabilities an equal opportunity to participate in programs, services, and activities. To this end, agencies must make reasonable modifications in their policies, practices, or procedures, unless such modifications would fundamentally alter the nature of the service, program, or activity.

For further information about the ADA and how it applies to mentally ill parents, see *Olmstead v. L.C.*, 527 U.A. 581 (1999).



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