Representing Parents with Disabilities: Best Practices
by Claire Chiamulera

A mother with cerebral palsy gives birth to a baby girl. Lacking information about parenting with cerebral palsy, a nurse reports the mother to child protective services. The child is removed from the mother’s custody and child protection proceedings begin. The mother is devastated.

In the United States, at least 4.1 million parents with documented disabilities have children under age 18, according to Robyn Powell, attorney advisor at the National Council on Disability in Washington, DC. Many of these parents can successfully raise their children with accommodations and supports. Too often, however, they experience bias and discrimination and lose custody or rights to their children because of their disabilities.

At an ABA webinar on November 13, 2014, Powell was joined by Ella Callow, legal programs director at the National Center for Parents with Disabilities in Berkeley, CA, and Katherine Nemens, supervising attorney, Clubhouse Family Legal Support Project, Mental Health Legal Advisors Committee, Boston, MA. They shared tips on representing parents with disabilities in dependency and family court cases.

Parenting with a Disability
Discrimination and unfair treatment of parents with disabilities can be traced to the early 1900s when many were denied parenthood through institutionalization or forced sterilization, according to Callow. Laws and policies shifted between the 1970s-1990s making it easier for parents with disabilities to be deemed unfit to parent and face automatic removals of their children.

Powell shared current removal statistics reported in the National Council on Disabilities’ recent report Rocking the Cradle (see box, p. 22):

- Removal rates of children from parents with psychiatric disabilities are as high as 70-80%.
- Child removal rates from parents with intellectual disabilities are as high as 80%.
- Parents with physical or sensory disabilities (blind, deaf, hard of hearing, low vision, deaf-blind) face high removal rates and loss of parental rights.

Automatic bypass of family reunification services and streamlined efforts to terminate rights of parents with disabilities are also common. State laws have helped shaped these trends, said Powell. More than two-thirds of dependency statutes include disability as a ground to terminate parental rights. And in every state, parental disability may be considered when determining the best interests of a child in a family or dependency court case, she said.

Bias and stigma by judges and attorneys lacking knowledge or understanding of disabilities and mental health issues for parents also lead to poor outcomes for many parents with disabilities.

Legal Barriers
Across family and juvenile dependency courts, parents with disabilities face challenges. Powell highlighted barriers in family court while Callow covered those in dependency court.

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CASE LAW UPDATE

State Constitution Prohibits Automatic Registration of Juvenile Sex Offenders

In re J.B., 2014 WL 7369785 (Pa.).

State Sex Offender Registration and Notification Act, which provides for automatic registration of youth found delinquent for certain sex offenses violated due process under state constitution because it failed to allow for individual determination of a youth’s risk to reoffend and was based on false assertion that youth sex offenders had a high recidivism rate.

Seven youth were adjudicated delinquent for sex offenses. The youth appealed, challenging provisions of the state Sex Offender Registration and Notification Act (SORNA). Two trial courts had found the lifetime registration provision unconstitutional as applied to the juveniles.

The Pennsylvania Supreme Court first reviewed the SORNA. The SORNA was enacted in response to the Federal Adam Walsh Act, which required states that accepted certain grants to require registration of juvenile sex offenders. The SORNA also aimed to protect the community by having oversight over sex offenders.

The act was limited to juveniles 14 and older who were found delinquent under the elements of rape, involuntary deviate sexual intercourse, aggravated indecent assault, or attempts, solicitations or conspiracies to commit those offenses. Further, the act applied retroactively if a juvenile still remained under juvenile court jurisdiction.

Juveniles registered under the act are subject to annual or more frequent reporting requirements, depending on the offense type. Photos are taken when they report into the registry. Though Pennsylvania does not publish the photos publicly, it distributes them to other law enforcement agencies that may post them publicly.

Next the court reviewed the two trial courts’ analyses. It noted the York trial court emphasized the state juvenile code’s goal was restorative justice, not punishment. It also had reviewed U.S. Supreme Court precedent finding juveniles constitutionally situated differently than adults. In particular, prior cases found juveniles, due to immaturity, were more impulsive, more vulnerable to external influences, and their behaviors/personalities were still developing. Their lower recidivism rates were shown through research. The trial court ultimately found the SORNA did not adequately account for the differences regarding juveniles’ lessened culpability and great potential for rehabilitation.

Further, both trial courts found the irrebuttable presumption that a juvenile had a high recidivism rate and should be registered violated due process by failing to consider individual characteristics of each youth.

On appeal, the state relied on prior precedent finding an irrebuttable presumption in sex offense cases was not unconstitutional. The court reasoned that registration does not deprive an individual of life, liberty, or property. However, the court noted, the Pennsylvania Constitution provides further protection for less tangible deprivations including reputation.

In contrast, the juveniles argued on appeal that a registration...
requirement should be conditioned on an individualized assessment of the youth’s likelihood to reoffend. They also contended the automatic registration is contrary to the purpose of the juvenile code’s rehabilitation goals since a registered offender will have difficulty obtaining employment, education, and housing.

The Pennsylvania Supreme Court agreed with the juveniles. While reputation may not be a right under federal law, it is under the Pennsylvania Constitution. The court also found the research compelling. It noted that recidivism rates for juvenile sex offenders were similar to those of other juveniles found delinquent for nonsexual crimes. Last, there is a reasonable alternative that will protect society — that youth can be individually assessed for their risk of repeat sexual violence.

For those reasons, the Pennsylvania Supreme Court held the irrebuttable presumption violated the youths’ rights to due process under the state constitution.

Transfer to Tribal Court Was Properly Denied Due to Delay in Request for Transfer
In re S.B.C., 2014 WL 7403958 (Mont.).

Where tribe waited for over a year to ask for transfer of case to tribal court and child’s case was close to termination and adoption in the only home he knew, good cause existed to deny transfer of the case. Also, qualified expert witness was not required for termination where father never had custody per Adoptive Couple v. Baby Girl.

A child came to the attention of child protective services (CPS) when law enforcement notified CPS of the older sibling wandering in the streets naked. Both children had been left unsupervised by their mother. Their father, an enrolled member of the Blackfeet tribe, knew of the removal, but did not seek custody of his child.

The state agency placed the children back with the mother briefly in a shelter, but she left because they had rules she refused to follow. She was later arrested for her fourth DUI. The agency again asked the father to take custody of his child, but he declined. He also questioned his paternity. The agency set up appointments for him to get tested. He missed the appointments.

The child was placed with several foster parents and eventually the agency found a Native American foster parent.

The father was then ordered by the court to submit to paternity testing. The test confirmed he was the father. He did not seek visitation or request to have custody for nine months after paternity was confirmed.

The Blackfeet tribe intervened and approved the placement of the child. The initial plan was for reunification with the mother. She completed some services but was asked to leave a treatment center for rule violations. The agency moved to terminate her parental rights.

The tribe then moved to transfer jurisdiction to the Blackfeet tribal court. It also indicated it supported placement with the father, whom they believed could care for the child with his mother’s assistance. The tribe indicated its laws and customs opposed terminating parental rights. Further, it questioned the ability of the foster mother to adequately provide for the child due to differences in her tribe and Blackfeet tribal cultures.

The trial court denied the transfer. It noted the request was made after the child had been in the current foster home for 547 days, the foster mother’s home was the only home he knew, and that adoption was imminent. Accordingly, it found good cause to deny transfer.

The court terminated both parents’ rights and the parents and tribe appealed.

The Montana Supreme Court affirmed. On appeal, the Montana Supreme Court first reviewed exclusive and transfer jurisdiction provisions under the Indian Child Welfare Act (ICWA). For the latter, tribes have presumptive jurisdiction when Indian children do not reside on tribal lands. This can be overcome by a showing of good cause to the contrary. Under state precedent, the courts follow a jurisdictional best interests test, which differs from best interests findings in other contexts. Here, the state must show by clear and convincing evidence that a child’s best interests will be injured by transfer.

There was no apparent reason why the tribe waited to request transfer. At the beginning of the case, when the tribe intervened, there was a concurrent plan of adoption and the father was not cooperating with his plan. The child was placed much earlier in a foster home with a member of a different tribe. Further, the testimony at trial indicated it would be traumatic for the child to leave that home. It was the only one he remembered at that point.

The tribe also asserted on appeal that the court improperly relied on financial issues of the tribe in denying transfer. The Supreme Court found the trial court made unnecessary and inappropriate comments including that the tribe “chose to sit on its hands and delay seeking jurisdiction over [the child] for tribal financial reasons,” and that the tribe considers its children sacred “only when it is in its best financial interests to do so.” However, the court noted, none of these comments directly questioned the ability of the tribal court to make sound decisions, so they were insufficient to overturn the order.

Given the above, the trial court did not err in denying transfer to the Blackfeet court.

Next the court considered the father’s argument that the termination was invalid because the court did not hear from a qualified expert witness

(Cont’d on p. 29)
Alaska
Record supported decision to place child with foster family rather than with great-grandmother after mother’s parental rights were terminated. Great-grandmother had been previously considered for placement of mother’s other children and was denied based on home safety concerns, which were ongoing. Great-grandmother also did not recognize extent of child’s special needs or mother’s limitations as a parent.

California
In re Jose O., 180 Cal. Rptr. 3d 804 (2014). DELINQUENCY, SUFFICIENCY OF EVIDENCE
Evidence was insufficient to support determination that juvenile caused or contributed to delinquency of a minor, his girlfriend, who ran away from her father as he tried to locate her. When they saw her father approach them, both juvenile and minor ran. There was no indication that juvenile said anything or made any gestures encouraging minor to run or that he aided her flight in any way. It was not reasonable to infer that minor fled from her father only because juvenile also ran away.

District of Columbia
Child victim’s video statement from child advocacy center forensic interview was improperly admitted as nonhearsay substantive evidence. Video, rather than live testimony, provided only substantive evidence supporting count of indictment regarding that victim. Admission of video recording was harmless as to counts of child sexual abuse involving other victims.

Idaho
In re Doe, 2014 WL 7184050 (Idaho). TERMINATION OF PARENTAL RIGHTS, SUFFICIENCY OF EVIDENCE
Evidence was sufficient to support termination of father’s parental rights to two minor children based on neglect. Father was unable to provide for children’s medical, educational, mental health, and other daily needs and did not identify children’s mental health and behavioral issues as significant. He had little to no involve-

Illinois
In re Edgar C., 2014 WL 7450764 (Ill. App. Ct.). DELINQUENCY, LEGAL REPRESENTATION
Juvenile adjudicated delinquent for committing robbery, theft, and battery failed to establish inefective assistance of counsel at trial for failing to challenge Terry stop (an officer must have a reasonable, articulable suspicion that someone was involved in criminal activity or is armed and dangerous in order to seize that person). It was unclear which of two officers actually conducted the stop and impossible on appeal to determine the totality of facts and circumstances known to that officer and which facts contributed to his suspicion.

Indiana
Father’s due process rights were violated when child was adjudicated dependent despite his challenge to allegations in the petition and without prior fact-finding hearing. Child’s mother admitted allegations but father did not, and due process requires that juvenile court conduct a fact-finding hearing prior to adjudication.

Iowa
In re J.C., 2014 WL 7338505 (Iowa). TERMINATION OF PARENTAL RIGHTS, PATERNITY
Established father who raised child as his own while mother was incarcerated was not child’s parent within meaning of juvenile code. He was neither her biological nor adoptive father and, at time he was dismissed from proceedings, was not child’s guardian, custodian, guardian ad litem, or the petitioner. Fact that established father was served with original notice and petition for termination of parental rights and was appointed counsel did not make him a necessary party.

Louisiana
Admission to delinquency petition containing juvenile’s rights and signed by juvenile, juvenile’s attorney, trial judge, and juvenile’s mother was insufficient to satisfy statute requiring trial court to advise juvenile of his rights. Written admission to petition, which did not refer to any particular offense or recite any factual basis for offenses charged, was insufficient to support trial court’s findings.

Massachusetts
Court found evidence did not support determination that mother was unfit and child was in need of care and assistance. Parent must place child at serious risk of peril from abuse, neglect, or other activity harmful to the child. Mother’s cognitive disabilities, her failure to monitor child’s asthma treatment, and her occasional use of tobacco in child’s presence, as well as child’s expressed preference to live with foster family, were not sufficient.

Montana
In re B.J.T.H., 2015 WL 72210 (Mont.). TERMINATION OF PARENTAL RIGHTS, REASONABLE EFFORTS
Cover letter by permanency specialist with child welfare agency failed to include number of hours of counseling and topics covered with mother who voluntarily relinquished her parental rights. Deficiency was harmless and did not override best interests of children, particularly permanency. Mother received required amount of counseling regarding all necessary topics and was capable of knowingly relinquishing her parental rights.

New Jersey
Evidence supported finding that child was abused or neglected when mother, while under the influence of drugs, injured seven-week-old infant while co-sleeping. Father knowingly allowed sleeping arrangement even though he knew mother was under influence of drugs, and a witness testified that he saw mother roll over child.

Trial court was not required to consider whether child welfare agency’s alleged failure to provide reasonable efforts to
prevent placement and achieve reunification with mother’s three children was a direct result of an earlier failure to provide adequate services to her when she was a minor and under agency’s supervision.


Mother’s single admission to smoking marijuana while caring for child was insufficient to establish neglect or abuse, even considering mother’s status as parolee. Evidence did not establish that baby was solely in her mother’s care when she was intoxicated or that no one was available to attend to child’s needs. The magnitude, duration, or impact of mother’s intoxication also could not be determined.


Evidence was insufficient to establish that mother abused or neglected her children by exposing them to substantial risk of harm when she took them to park where she met with former boyfriend, who later followed mother home and raped her in front of them. There was no history of violence between mother and former boyfriend and no evidence that the children suffered any emotional harm as a result.

**New York**


On issue of first impression, juvenile’s theft and possession of his grandfather’s debit card number, and not debit card itself, was insufficient to support delinquency adjudication. He did not steal or possess a “debit card” merely by using the card numbers to buy sneakers. His acts violated provisions of the criminal law, just not the ones charged in the petition.


Family court did not abuse its discretion in denying juvenile’s recusal motion in delinquency proceedings. Court was presumed capable of making fair fact-finding determination based on evidence presented and relevant burden of proof, even though court had presided over other hearings and made findings of fact on issues other than juvenile’s guilt or innocence.

**North Carolina**


Mother knowingly and voluntarily waived right to counsel and chose to represent herself in termination of parental rights proceeding despite clerical error indicating otherwise. Mother repeatedly provided cogent answers to trial judge’s questions of why she wanted to represent herself. She also read and signed a waiver of counsel form that stated she had been told she had right to have lawyer represent her.

**Ohio**


Trial court abused its discretion when it released guardian ad litem (GAL) from child custody case. Parents were never given deadline for GAL’s evaluations and were never told that court would release GAL if she was unable to conduct evaluations by certain date. Court never gave parties notice of what, if any, consequences they might face if they failed to either pay their portions of GAL’s expenses or schedule evaluations in timely manner.

**Oregon**

*In re A.M.,* 2014 WL 7404581 (Or. Ct. App.). DEPENDENCY, ADJUDICATION

Court cannot assert jurisdiction over children based on mother’s prior stipulation that she needed assistance to access services to address child sexual abuse committed by father, who contested jurisdiction despite his conviction. Conditions that give rise to jurisdiction must exist at time of hearing, and children presented evidence that mother was actively involved in counseling and that continued court and agency involvement would impede mother’s and children’s recovery.

**Pennsylvania**

*In re N.C.,* 2014 WL 7090617 (Pa.). DELINQUENCY, CONFRONTATION CLAUSE

Trial court’s admission of video-taped forensic interview with minor victim during delinquency adjudication hearing violated juvenile’s rights under Confrontation Clause. Court improperly deemed uncommunicative four-year-old victim available for cross-examination when it admitted her recorded statements, which were testimonial in nature, into evidence without juvenile’s prior opportunity to cross-examine her.

**South Dakota**


Father was arrested for driving at high speed and under influence of alcohol with three young children in car and charged under statute prohibiting exposing a minor in manner not constituting aggravated assault. Statute was not unconstitutionally vague, even though it did not define what “expose” meant or elaborate what child had to be exposed to. Dictionary definition that to “expose” was “to subject to needless risk” was sufficient.

**Washington**


In termination of parental rights proceeding, father appealed denial of his motion for a continuance at outset of trial so he could consider and negotiate open adoption of the children. Denial of the motion did not violate father’s right to due process, and his right to legal representation in possible open adoption did not require court to grant motion for continuance.

**State v. A.G.S.,* 2014 WL 7446125 (Wash.). DELINQUENCY, CONFIDENTIALITY

Juvenile’s special sex offender disposition alternative (SSODA) evaluation did not belong in the official juvenile court file. Evaluation was confidential and not subject to release to victims’ parents. SSODA evaluation did not fall within statutory definition of official juvenile court file and making it open to public would be contrary to legislative intent.

**Wyoming**

*Thomas v. Sumner*, 2015 WL 128050 (Wyo.). LIABILITY, CHILD WELFARE AGENCIES

Social worker had reasonable suspicion of child abuse and was entitled to immunity from father’s defamation claim under child protective services statute. Immunity provision provides statutory presumption that report of child abuse is made in good faith, and burden is on party attempting to rebut presumption to present admissible evidence sufficient to show bad faith.
a bond with his child. In that case the court held the father’s disability should not be considered in the custody determination. However, this view has not been consistently enforced, said Powell, and many parents with disabilities continue to experience discrimination in child custody or visitation matters.

Powell contrasted Carney with Holtz v. Holtz, 595 N.W.2d 1 (N.D. 1999). In that case, the North Dakota Supreme Court held it was in a child’s best interests to award custody to the father over the mother who suffered from an intellectual disability. Although the father had a history of anger issues and had had little contact with his child, the court weighed the mother’s disability and found it would be in the child’s best interests for the father to receive custody.

The cases, decided 20 years apart, reflect ongoing uncertainty about how parental disability factors into best interests decisions in family law cases, said Powell.

**Dependency courts**

Callow explained how parents with disabilities fare in civil dependency courts, noting that parenting is a civil right long established in U.S. jurisprudence. She added that several U.S. Supreme Court cases have held that states may intervene to protect children only if the parent is unfit. Although every state recognizes this standard, Callow said 37 states explicitly allow parental disability as a ground for removal, termination of parental rights, and/or automatic bypass of reunification services. These grounds are allowed because of the belief that courts never intervene without a nexus between the parent’s disability and the child’s safety. In practice, the nexus is often not there, said Callow.

**ADA Protections and Limits.** Among the ADA’s protections for parents in dependency cases, agencies must make reasonable accommodations for people with disabilities in their practices, policies, and procedures, said Callow. Equal access to programs, services, and activities must also be provided to people with disabilities.

Among the ADA’s limits, most courts have held the ADA is not a defense to termination of parental rights. This has led to a misconception that Title II of the ADA requiring accommodations for people with disabilities does not apply to child welfare cases. Another challenge is that the ADA did not fix a 1985 U.S. Supreme Court ruling in Cleburne v. Cleburne, 473 U.S. 432, requiring no strict scrutiny of discriminatory state disability laws.

**ASFA Protections and Limits.** The 1997 federal Adoption and Safe Families Act (ASFA) governing child welfare proceedings also protects parents with disabilities in dependency cases but has some limitations, said Callow. An example is ASFA’s requirement to provide parents reasonable services to address their parenting issues, which conflicts with its provision allowing bypass of reunification efforts based a parent’s disability. Callow explained that ASFA lists mental disability and mental illness as aggravated circumstances allowing for bypass of reunification services.

ASFA’s shortened permanency
timelines also set unrealistic expectations for parents with disabilities and conflict with the ADA by not providing accommodations and flexibility for these parents. Most parents with disabilities need to start services earlier, receive them more often, and use them for a longer period to address their issues and successfully reunify with their children, said Callow. She cited an exception to the ASFA timeline in 32 states to file for termination of parental rights when the parent has not been provided reunification services required in the case plan. She urged practitioners in these states to get the proper accommodations and services into the parent’s case plan early to create flexibility around TPR filings.

**Strategies and Solutions**

Lawyers need to be creative when representing parents with disabilities. The panelists offered the following guidance to address common barriers and ensure parents with disabilities are given a fair chance to raise their children.

1. **Seek modifications and accommodations.**

Lack of accommodations for parents’ disabilities create hurdles that are hard for many parents to overcome. “You need to be able to show that the parent is successful at being able to use and benefit from services and accommodations,” said Powell. She offered the following strategies in dependency and family court matters:

**Dependency courts**

*Show the parent is successful at using a service.* When the state is providing accommodations for the parent’s disabilities, show how the parent is succeeding and benefitting from these services. This can counter arguments related to the parent’s fitness.

*Identify services or accommodations that are not being provided.* At permanency hearings, draw the court’s attention to missing services that would benefit the parent. If the case proceeds to termination and you can show services or accommodations were not provided it can help show that termination is premature.

*Make sure accommodations get into the service plan early.* You can question the case plan. Make written comments on the service plan, and ask for specific accommodations you believe will help the parent succeed.

*Challenge decisions not to provide accommodations.* If the state is not providing or paying attention to accommodations, file a grievance with the child welfare agency. If that doesn’t work, consider filing a motion for an abuse of discretion with the court. These motions may not succeed, but in the interest of using accommodation issues at trial, it’s worth pursuing them early in the case to draw attention to the fact that the state is not providing them to your client.

*Question the state agency decision maker* (e.g., social worker’s supervisor) on their decision not to provide a service or accommodation. *Ask:* How did you decide a requested service or accommodation didn’t need to be provided?

**Family courts**

In family courts, there is no specific requirement that anyone provide accommodations to parents with disabilities, said Powell. The state is not a party to the proceedings in the way it is in child dependency proceedings, there is no duty by the state to provide reasonable efforts to reunify the parent and child, and the case involves the best interests of the child standard. Therefore, it is harder to argue for accommodations. Two

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**Checklist: Representing Parents with Disabilities**

**Seek modifications and accommodations.**

*Dependency court*

✓ Show the parent’s success at using a service.
✓ Identify services/accommodations not being provided.
✓ Ensure accommodations are in the service plan early.
✓ Ask the caseworker why services and accommodations are not being provided.

*Family court*

✓ Focus on the parent’s ability to mitigate harm to child.
✓ Seek court-related accommodations.

**Be a zealous parent advocate.**

*Know your client.*

✓ Know what medications your client is taking.
✓ Know your client’s providers and support networks.
✓ Encourage providers and supportive people to advocate for the parent.
✓ Focus on parenting strengths and abilities, not the parent’s disability alone.

**Ensure quality parent evaluations are used.**

✓ Be wary of parent IQ testing.
✓ Scrutinize parent evaluations and assessments.
✓ Ensure based parent assessments are evidence-based.
✓ Ensure parent evaluators have experience and specialized training.
arguments to make:

Focus on the parent’s ability to mitigate the harm or potential harm that’s being alleged to the child in connection with the parent’s disability. Pay attention to the evidence that you can create when advocating for your client, connecting them with the right services, and pushing the court to focus on parenting ability not just the existence of a disability.

Seek court-related accommodations. Courts can provide accommodations to ease the court process for parents. These include accommodations around parents’ responses to discovery, the time of day a court hearing will occur, transportation to court, and courtroom modifications such as accessibility improvements, interpreters, support people, etc.

2. Be a zealous parent advocate. Nemens encouraged advocates to focus on their relationship with and understanding of their parent clients’ specific disabilities, needs, and parenting capacities.

Know your client well. Particularly when dealing with a psychiatric disability, you need to know the specifics of your client’s diagnosis. You can look it up in the Diagnostic Statistical Manual V to get information on the diagnosis. It’s important to know the specifics for your client:

- What do the symptoms look like for the parent?
- What are some triggers?
- What individual challenges does the parent have and what services can be put in place to alleviate those challenges relating to their parenting?

Know what medications your client is taking, the side effects, and how they may affect parenting. Many medications cause as much damage to the people who take them as they help. The side effects can be brutal, yet a wide range of side-effects are considered acceptable for many medications. Be aware of them and ensure they are not misinterpreted (e.g., an assumption that slurred speech means the parenting is using again).

Know who your client is working with—their providers, and their peer and professional support systems. Peers can play an important role serving as mentors to parents as they go through the child welfare system or a highly contested custody case. It’s important to use provider and peer support networks for referrals to other services to assist your client, parenting groups, and education opportunities.

Focus on your client’s parenting strengths and abilities. Identify how services and supports that are in place for the parent can be supplemented or highlight the parent’s strengths and abilities. For example, rather than dwelling on a client’s mental health diagnosis, focus on parenting ability. Ask: Does the parent have the capacity to spend time with her child in an appropriate manner?

Encourage providers and peers to be advocates themselves. Service providers and peer supports can assist in the legal case as long as they don’t overstep their bounds and focus on their area of expertise. It’s important to know the evidentiary standards around mental health records and psychotherapist-patient privilege. Also know the rules and case law around addressing evaluations and assessments, competence, and capacity.

3. Understand what makes a quality parent evaluation. Courts often base decisions about parents’ ability to care for and

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<th>Accommodations for Parents with Disabilities</th>
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<td>Advocates can request the following modifications and accommodations for parents with disabilities:</td>
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<tr>
<td>■ Increase the frequency or length of service provision.</td>
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<td>■ Ensure the service provider has experience working with parents and the specific disability at issue in the case.</td>
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<td>■ Provide services at a parent’s home or alternate accessible site. If the parent uses a wheelchair, make sure the parent can enter the location where the service is provided.</td>
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<td>■ Give the parent frequent reminders for services.</td>
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<td>■ Provide accessible transportation to services.</td>
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<td>■ Provide information about services in an accessible format (large print, audio tape, braille, digital format).</td>
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<td>■ Offer note taking of meetings and court activities, especially for parents who are deaf or hard of hearing.</td>
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<td>■ Provide assistance with reading materials and interpreters if needed.</td>
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<td>■ Provide day care and respite care services, particularly for parents with psychiatric disabilities who may need to be hospitalized for medication changes.</td>
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<tr>
<td>■ Provide foster family or informal support networks (churches, family helper or child care assistant, aide or personal assistant).</td>
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<td>■ Arrange housekeeping services.</td>
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<td>■ Arrange adaptive equipment (ramps, lowered counters, adapted doorknobs).</td>
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raise their children on parenting assessments and tests that are not grounded in best practice or evidence, according to Callow. She explained the dangers when such tests are misused and urged advocates to ensure courts rely on evidence-based parent evaluations.

Know the pitfalls of IQ testing. IQ testing is often misused to argue that a parent with a disability cannot be a good parent. Callow cautioned that IQ testing is a “pseudoscientific approach,” meaning it pretends to be or resemble science but is not. “Twenty years of research have shown no correlation exists between IQ and parenting ability until the IQ score drops below 50,” said Callow. Despite this research, she noted that between 60-80% of parents with disabilities involved in the child welfare system lose their children. IQ testing is frequently relied on by courts in these cases.

Scrutinize parent evaluations and parent-child assessments. Many evaluations of parents with disabilities are not evidence-based (see box above) and do not meet best practice, said Callow. She cited a review of parent evaluations performed across the country that showed:

- **attitudinal bias** in 67% of evaluations (negative comments about parents, inappropriate terminology, assumptions, speculation and prejudice),
- deficiencies in the writing in 66% (poor English grammar and writing),
- use of inappropriate test measures in 71%,
- failure to observe the parent and child together in 69% (the “gold standard” of an effective parent-child evaluation).

The ADA and American Psychological Association guidelines set best practices for performing parenting evaluations and minimum competencies for those performing them, said Callow. She urged advocates to ensure evaluations meet these standards and to challenge them in court when they are not being followed.

Advocates can be the catalyst for parents with disabilities, ensuring their rights are protected and they are given a fair opportunity to raise their children. Through creative and early efforts to secure accommodations and modifications for individuals with disabilities, barriers to parenting can be overcome. Parent advocates can also help dismantle bias and speculation among professionals about parents with disabilities by challenging decisions, educating them on the law and parents’ rights, and sharing success stories involving parents with disabilities.


**Claire Chiamulera** is CLP’s editor.

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### What to Look for in a Parent Evaluation

What does an evidence-based parent assessment look like? Look for these characteristics:

- Unbiased in its approach
- Focus on strengths and weaknesses
- Comprehensive assessment of internal and external factors (cognitive abilities, family structure, level of poverty, health care availability, transportation problems, housing availability and suitability, internal and external stressors that affect families)
- Questionnaires that take into account literacy level
- Tests appropriate for people with cognitive limitations
- Direct observation of parenting skills and parent-child interactions using validated checklists that probe the parent’s ability to do specific things related to the child’s safety

**Source:** Ella Callow, legal programs director, National Center for Parents with Disabilities, Berkeley, CA.

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New model family foster home licensing standards make it possible for more relatives and nonrelated applicants to become licensed foster parents. A larger pool of safe and appropriate foster parents, in turn, will allow more children to live in licensed homes with supports, protections and access to the permanency option of guardianship, all of which they do not have in unlicensed homes.

This model addresses state barriers that prevent many suitable relatives and nonrelated applicants from becoming foster parents. Commonsense standards will lead to safe placements, rather than pose artificial barriers based on middle-class notions of what are appropriate homes and families. Gone are the rigid square footage requirements and obligations to own a vehicle. In their place are capacity standards based on home studies and provisions that other transportation methods, including public transportation, may be used.

Each model standard is approached in the same reasonable, clear way. The federal government will now be able to point to sensible requirements that consider community norms and cultural differences. The partners who created this model urge states to align their standards with it, and work with applicants to license safe and appropriate homes around the country.

Federal Law Flexibility on Family Foster Care Licensing

Federal law allows states a great deal of flexibility in creating family foster home licensing standards. The Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 671(a)(20)(A) and (B) (Adam Walsh), requires states to conduct child abuse and neglect and criminal background checks on all applicants who seek to become foster parents. The Social Security Act at 42 U.S.C. § 671(a)(10) also tells states that:

[A] State authority or authorities...shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter and provides that a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care.

Aside from these few requirements, the federal government leaves family foster care licensing to the states. Consequently, the standards differ dramatically around the country.

Research on State Licensing Standards

For many years, families have been reporting that state standards are posing unnecessary barriers to becoming licensed, so attorneys at Generations United and the ABA Center on Children in the Law embarked on a year-long project researching family foster care licensing standards in state codes and regulations for each state and the District of Columbia. When both the code and regulations were missing key licensing standards, the state child welfare policy manual was also reviewed. Research confirmed the families’ stories of barriers by...
exposing a variety of problematic standards, standards that had more to do with middle class ideals and the result of lawsuits. For example, prohibiting certain types of dogs and/or requiring that foster care applicants be no older than age 65.

**Purposes of the Model Licensing Standards**

Equipped with the state standards from all 50 states and the District of Columbia, the partners decided to create model licensing standards that:

- Fulfill the public policy intent behind licensing standards, which is to ensure that children in foster care have safe and appropriate placements.
- Fill the previous void in “national standards” by creating clear, practical, common standards that work to ensure that children, regardless of the state in which they live, will be placed in homes that have met the same safety standards.
- Facilitate the licensing of additional relative and nonrelative homes by recognizing and respecting related and nonrelated foster parents as caregivers who are performing an invaluable service.
- Reflect community standards and be flexible so children in out-of-home care are placed in the best homes for them.

**Elements of Model Licensing Standards**

The partners used model language from the states, while also considering language from the Child Welfare League of America and the Council on Accreditation to create reasonable and achievable safety standards for family foster home licensing.

The model standards cover all requirements necessary to license safe and appropriate family foster homes. They include 14 categories of criteria necessary to become a family foster home...

**Eligibility Standards**

As an example of how the model standards are written, consider the “eligibility” requirements. In many states, applicants must speak English, have high school diplomas, and have enough income and resources to cover the expenses of a foster child. Instead of creating barriers like these to applicants who otherwise might be very appropriate and suitable, the model standards require:

- Functional literacy or the ability to read and write at the level necessary to participate effectively in society. The means, for example, being able to follow written directions from a health care provider or child welfare agency, read street signs and medicine labels. “Society” is where the applicant lives and works. So, for example, if the applicant is in Little Havana in Miami, Spanish could be the language necessary to participate effectively.
- The ability to communicate with the child in his/her own language.
- The ability to speak to service providers and the child welfare agency, but this may occur through the use of family and friends as translators.

- “Income or resources to make timely payments for shelter, food, utility costs, clothing and other household expenses prior to the addition of child in foster care.” This standard addresses the public interest of not promoting applications from those who are only seeking foster children as income supplements, while also not limiting applications from only those wealthy enough to take on a child without monthly financial assistance to help meet the needs of that child.

**Living Space Standards**

The model standards contain similar common sense approaches to living space. Rather than requiring minimum, specific square footage, the model standards look at community standards and seek to ensure that the foster child has the same type of space as any other child in the home. A foster child cannot live in the dining room, when all the other children have their own bedrooms. But, if other children have similar spaces, a foster child could have a sleeping space that doubles as a sitting area during the day.

Homes will be assessed based on a comprehensive home study that looks at safety, but that does not judge the home based on 21st century building codes. The standards allow for the licensing of appropriate rural, urban, and suburban homes, provided they meet community standards and are safe. For example, if the home was built in the 19th century and is maintained according to community standards, the house will not be automatically excluded from consideration if it has lead paint or small bedrooms. The licensors will use the model standards, along with guidance in an accompanying interpretive guide, to determine suitability.
Criminal Background Standards

Another area that often acts as a barrier for licensing appropriate foster parents is criminal background checks. Felony convictions for child abuse and neglect, other crimes against children, spousal abuse, and crimes involving violence, such as rape and homicide, act as automatic barriers to licensing, as they should, under Adam Walsh.

However, other crimes, such as catching too many fish on a fishing license or writing bad checks, have prevented otherwise suitable relative and nonrelative applicants from becoming foster parents in many states. Consequently, the model standards strictly follow the Adam Walsh law. For other crimes, the model uses language from Illinois at 89 Ill. Adm. Code 402.13, which provides eight specific criteria—including type of crime and the relationship of the crime and the capacity to care for children—to use in assessing whether a crime should act as a barrier to licensure.

Next Steps

The model standards are clear, practical standards that are not case specific or the result of litigation or socioeconomic bias. They are the first step to facilitating the licensing of additional relative and nonrelative homes, so that children live in safe homes with child welfare and court oversight, receive monthly support to help meet their needs, and can access services, such as child care. By living in licensed homes, children who live in the many states and tribes that participate in the federal Guardianship Assistance Program (GAP) may also have access to the permanency option of subsidized guardianship.

The partners who created this model are working towards all states adopting it. Not all states will be able to implement the model in its entirety without any modifications, but the partners challenge states to use the model and an accompanying cross-walk tool to assess and align their standards with the model.

After adopting the standards, states should work with related and nonrelated caregivers and help them become licensed by providing support throughout the process. With improved standards and assistance throughout the process, more relatives and nonrelatives will be able to provide families to the many children around the country needing safe and appropriate homes.

Ana Beltran, JD, is a special advisor to Generations United’s National Center on Grandfamilies. For over 15 years, Ana has worked to support kinship families by advocating for supportive laws and providing training and technical assistance on child welfare, housing, legal relationships, and other issues impacting the families.

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Free Technical Assistance: The authors of this article are available to provide free technical assistance to states seeking to consider the model standards. Please contact Ana Beltran at abeltran@gu.org if your state is interested.

NEW IN PRINT

UNICEF Calls for Education Equity

In many countries around the world, significantly less public resources are used to educate children in the poorest 20% of society than their counterparts in the most affluent 20%, according to a new report issued by UNICEF. This difference can be as much as 18 times.

The Investment Case for Education and Equity says that on average 46% of public education resources in low-income countries directly benefit the 10% of students who are the most educated. In lower-middle income countries the figure is 26%. This imbalance disproportionately favors children from the most affluent households who typically attain the highest levels of education.

The report, the first in a series UNICEF is releasing this year with support from the Bill and Melinda Gates Foundation, strongly advocates for more equitable education spending. It calls on governments to prioritize the needs of the most marginalised children—the poor, girls, ethnic and linguistic minorities, children with disabilities and those living in conflict zones.

“There are approximately 1 billion primary and lower-secondary school-aged children in the world today. That’s 1 billion reasons for investing in education,” said Yoka Brandt, UNICEF Deputy Executive Director. “Too many of these children do not receive quality education because of poverty, conflict, and discrimination due to gender, disability and ethnicity. To change this we need to radically revise current practices by providing more resources and allocating them more equitably.”

The report also highlights a further serious crisis in education. Progress in increasing access to schooling has stalled—with 58 million primary school-aged children not in school, it is clear that Millennium Development Goal 2 (achieve universal primary education) will not be met. In addition, many of those currently attending classes are not actually learning. Data reveal that 130 million children who reach Grade 4 do not master the basics of reading and arithmetic.

View the report and recommended solutions: www.unicef.org/publications/index_78727.html
The Reuniting Immigrant Families Act: Reasonable Efforts

California’s Reuniting Immigrant Families Act (“SB 1064” or “the Act”), enacted September 30, 2012, is the nation’s first law addressing the reunification barriers faced by many immigrant families in the child welfare system. An overview of the Act appeared in the January 2015 CLP. This fact sheet provides information on the provisions of SB 1064 clarifying that reasonable efforts must be provided to prevent removal and achieve permanency, regardless of a family’s immigration status.

Reasonable Efforts Must Be Provided for Detained Parents

The Act recognizes that deported or detained parents may have limited access to services, barriers to visitation, or difficulty completing other case plan tasks required by the agency or court.1 SB 1064 requires that reasonable services must be provided to help reunify a family after the court and agency consider the particular barriers a detained or deported parent faces in accessing services and maintaining contact with the child.2

Reasonable Efforts Must Be Provided for Deported Parents

Among other efforts that may meet the family’s individual needs, the Act indicates that the agency’s reasonable efforts to assist deported parents in reunifying with their children may include:

- Helping deported parents contact their country’s child welfare authorities;
- Identifying services in their country that can assist them in meeting case plan goals;
- Documenting the parents’ participation in those services; and
- Accepting reports from local child welfare authorities regarding a parent’s living situation, progress, and participation in services.3

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Reasonable Efforts Must Be Provided for Detained Parents

The Act specifies that for detained parents, among other efforts, the agency should, where appropriate, facilitate:

- Phone calls between parents and children;
- Visitation;
- Transportation; and
- Services for family members who could care for the child.4

The Act adds that a detained parent may be required to “attend counseling, parenting classes, or vocational training programs”5 but only if they actually have access to the services in the facility where they are detained.

Noncustodial/Nonoffending Parents Entitled to Reasonable Efforts Regardless of Immigration Status

California law has long been clear that both parents are entitled to reunification efforts (if they are not given custody outright). Given SB 1064’s protections for custodial parents and relatives, no matter what their immigration status, it is clear that noncustodial/nonoffending parents are entitled to placement or reunification efforts regardless of their citizenship status or foreign residency.6

Endnotes

1 In re Mario C., 276 Cal. Rptr. 548, 603 (Cal. App. 1990).
3 Cal. Welf. & Inst. § 361.5(a)(3).
4 Cal. Welf. & Inst. § 361.5(e)(1).
5 Cal. Welf. & Inst. § 361.5(e)(1)(E).
6 Cal. Welf. & Inst. § 361.5(e)(1).
7 Ibid.
8 Cal. Welf. & Inst. § 361.2.
The number of reported child abuse incidents in South Korea is steadily rising—from 4,144 in 2001 to 13,076 in 2013. In Korea, child abuse is grouped broadly into four types: physical, emotional, sexual, and neglect. In 2013, 26.2% of the children were neglected, 16.2% psychologically or emotionally abused, 11.1% physically abused, and 3.6% sexually abused.¹

Only recently has child maltreatment become recognized as a serious societal issue in Korea.² Despite major upheavals in history, including Japanese occupation (1910-1945) and the Korean War (1950-1953), South Korea has achieved rapid, successful economic development since the 1960s. In the midst of this drastic economic, political, and social change, however, child abuse was largely ignored in society until the late 1990s.

Although the Child Welfare Act, the first legislation addressing children’s welfare, was implemented in 1961, it was mainly designed to rescue war orphans.³ Korea also ratified the United Nations Convention on the Rights of the Child in 1991, yet until the 2000 Amendment, child abuse was not defined or explained.⁴

Confucian Tradition
Scholars agree that the reason for delayed social awareness of child abuse in Korea is rooted in traditional Confucian teachings, the source of core values and standards of the Chosun dynasty (1392-1910 A.D.).⁵ Under Confucian tradition, children are considered possessions of parents, and parents are granted almost inviolable authority to raise and discipline their children.⁶ Corporal punishment has generally been accepted as a form of discipline rooted in parental love.⁷

Government & Families
Additionally, child-rearing practices were traditionally considered private family business beyond the control of the state, so government intervention was rare.⁸ Professor Kim Sang-yong explains that the reluctance of the government could be attributed to the following saying: “Law cannot jump over the family fence.”⁹ Although the National Child Protection Agency (NCPA) is the central organization that oversees all 50 local child protection agencies (CPA) in 17 regions, it is not a government institution.¹⁰ Until recently, child protection agencies lacked the formal, independent power to separate an abused child from his or her parent, and often struggled with parents who refused to follow their orders.¹¹

Abuse Awareness Prompts a Movement
CPAs also avoided challenging parental authority or rights. For example, in a 2013 case, child abuse was reported to the local CPA, but the CPA employees neither separated the child from the parent nor filed an accusation against the parent.¹² The child victim died. This incident, followed by several others, received wide media coverage and raised public awareness about child abuse.

These incidents triggered a movement among activists, lawyers, social workers, and politicians to create new legislation addressing the holes in the current child protection system for abused and neglected children. This new law was enacted in January 2014 and implemented in September 2014.

Stay tuned. Next month’s column will highlight the new law.

Endnotes
6. Ibid.
9. Interview with Kim Sang-yong, Professor of Chung-Ang University Law School, October, 6, 2014.
The first time Alise Hegle saw her daughter again after her birth was 11 months later at a court-ordered, supervised visit.

Newly out of jail and treatment for drug addiction, Hegle was riddled with anxiety. She had no idea how to parent her only child and worried about the visitation supervisor who sat silently observing, taking notes.

“I was terrified,” she recalled. “I felt worthless. When the setting and the environment is intimidating and you don’t feel supported, it’s hard to leave the visit feeling positive.”

Rethinking Court-Ordered Visitation

Court-ordered visits are necessary for parents like Hegle to regain custody of their children after they’re placed in foster care, but the arrangement is stressful on both sides. Children might be frightened or angry and act out. Parents, often grappling with issues ranging from substance abuse to mental health challenges, may feel defensive and discouraged.

It’s hardly a scenario conducive to effective parenting. But a new open-source parenting program developed by Partners for Our Children, a center within the University of Washington’s School of Social Work, aims to help those parents become better caregivers and in turn, reunite families and reduce the costs associated with children in foster care.

As problem-solving, self-care, dealing with trauma and managing setbacks. Additionally, the center is developing a model for group classes, also designed for parents with children in foster care.

The program is based on the group’s own research and existing programs. It is intended to be flexible, allowing parents to spend more or less time on each module depending on their needs, or skip modules altogether.

The STRIVE Model

Developed in collaboration with the Washington State Children’s Administration, the program, dubbed STRIVE, will be downloadable online at no cost and was created specifically for parents of children in foster care.

The program’s initial 15 sessions focus on helping parents understand what to expect during visits, which can be emotional for them and for children. They provide instruction on interacting with children through playing and reading to them, as well . . . a new open-source parenting program . . . aims to help those parents become better caregivers and in turn, reunite families and reduce the costs associated with children in foster care.

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Child Welfare Focus

“What we’re trying to do is develop something that really takes into consideration the various struggles of the parents involved in child welfare,” said Doug Klinman, a data analyst with the Children’s Administration and UW graduate who helped develop the program.

Many parenting programs, Klinman said, focus on teaching parents how to appropriately respond to children with behavioral challenges. Such programs have been found effective for parents who have abused children. But since close to 80 percent of child maltreatment cases involve neglect, the main problem is often not parents responding inappropriately, but struggling with issues such as mental health problems or substance abuse, and consequently failing to meet their children’s basic needs.

Existing parenting programs are typically geared toward those who have sought help proactively, Klinman said, while parents involved in the child welfare system are typically not asking for guidance and are often defensive.

“It’s a much more coercive thing, where a case worker is telling the parent they have to do this or risk losing custody,” he said. “Part of what we’re trying to build into the program is a lot of motivation, helping parents see where they are and understand what steps they can take to be where they want to be.”

Funding

STRIVE is funded mostly through private donations, with around $150,000 from the state. By contrast, de Haan said, most parenting programs are developed with federal funding, resulting in narrowly defined initiatives that are not easily modified. Effective programs are often spun off into private enterprises and become prohibitively expensive for providers to access.

“They’re mostly held by private companies, they’re proprietary and you have to pay a lot to use them,” de Haan said. “Changing them to meet the needs of a specific clientele doesn’t pencil out well. We wanted to solve that problem.”

STRIVE Rollout

STRIVE started to be rolled out in
January 2015 by a Tacoma nonprofit that will test it with parents it serves. The program will be refined based on feedback from that process, then Partners for Our Children plans to conduct a randomized controlled trial, with the ultimate goal of having the program rated as an evidence-based practice by an independent panel of evaluation experts.

The program is believed to be the first open-source initiative designed for parents in the child welfare system, de Haan said, and feedback so far has been positive, with a few exceptions.

“The only people negative about it are the people who own programs,” he said. “Our price is very hard to beat. But they can use it too.”

**Success Story**

Hegle regained custody of her daughter, Rebekah, now 5, and completed a bachelor’s degree in behavioral science. She is now the parent engagement coordinator for Children’s Home Society of Washington, a Seattle-based nonprofit focused on strengthening families, and was part of a parent focus group that provided feedback on STRIVE.

Hegle thinks the program would have helped her tremendously as she struggled in those early parenting days.

“There’s a huge need, because families are in a process of trying to turn around their lives, and it’s very emotional and traumatic,” she said. “The more concrete tips, tools and strategies we can use to be better parents and better people, the more likely our children are to thrive.”

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