



The rights of youth and families with disabilities in child welfare

MIND THE GAP

Overview of Today's Presentation

MIND THE GAP

The Disability Rights Movement



Section 504 of the Rehabilitation Act of 1973

“[N]o 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.”

Applies to:

- Public Schools
- Employment
- State Agencies including Child Welfare
- Courts



The Americans with Disabilities Act

- In the context of the ADA, “disability” is a legal term rather than a medical one
- A person who has a physical or mental “impairment” that substantially limits one or more major life activity
- This includes those with *a record* or are *regarded* as a person with a disability



Photo Credit: Disabled And Here

DOJ Civil Rights Division Guidance

- The ADA & Section 504 protects parents and children with disabilities from discrimination in the administration of child welfare, programs, & services.
- Why guidance was developed:

“In the course of their civil rights enforcement activities, OCR and DOJ have found that child welfare agencies and courts vary in the extent to which they have implemented policies, practices, and procedures to prevent discrimination against parents and prospective parents with disabilities in the child welfare system.”



POLL QUESTION:
HOW WOULD YOU DESCRIBE
THE CHILD WELFARE SYSTEM?

Child Removals and Neglect

- 75% of child removals are due to allegations of “neglect”
- Neglect is when a child is not provided with *essential needs*, like food, clothing, shelter, or medical care, putting the child’s health and safety at risk.
- Neglect can include *unsafe home environments*, leaving a young child alone, or exposing a child to drugs or dangerous activities.
- It also covers failing to seek medical help when needed for serious conditions or *not meeting a child’s emotional needs*, which can impact their growth and learning.

NATIONAL REPORTING DATA

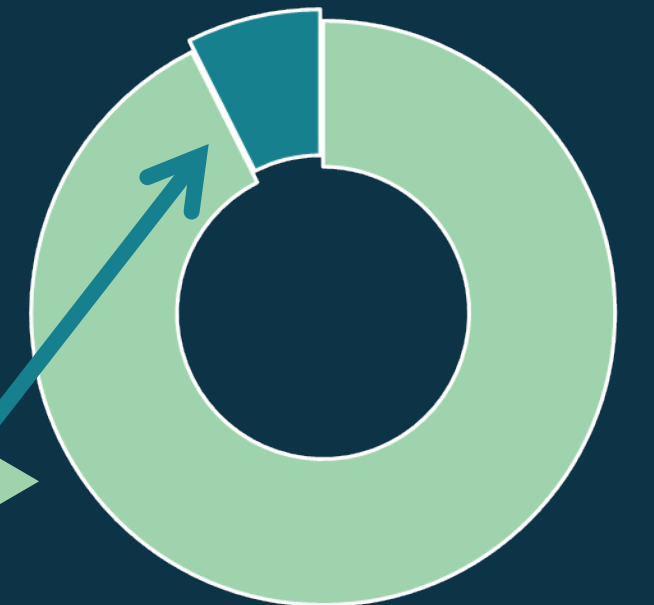
Over **4 million reports** or **7.5 million** children were the subject of a hotline call in 2022

51% or over **2 million** hotline calls are **screened-out**

82% of reports are **unsubstantiated**

75% of **substantiated** cases include an allegation of neglect, NOT abuse

Children with Substantiated Reports



■ Reported, no substantiation
■ Reported, substantiation

Trauma of Family separation

Children who are forcibly separated from their families experience emotional and psychological harm stemming from disruption of attachments, trauma from the very act of removal, and grief and loss.

In the short term, children can experience anxiety, depression, & disruptive behaviors.

In the long term, children can experience developmental harm & adult involvement with the criminal system.

Parents also experience severe trauma that can harm their identities as caregivers, resulting in grief, loss, and mental health and substance use disorders.

Trauma of Family separation

The **American Association of Pediatrics** has found that family separation “can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children.”



National Data Reveal High Percentage of Youth with Disabilities & Risk of Abuse

- 43% of children in foster care have diagnoses of depression.
- 29% of children in the foster system experience PTSD.
- Significant evidence that children in the foster system are overprescribed psychotropic medication.
- Children in the foster system are more likely to be abused or neglected while in the system, than are children in the general population.

National outcomes for the approximately 20,000 youth aging out of child welfare annually

Housing Instability

20% of young adults who age out immediately become unhoused (23% of BIPOC youth)

46% are unhoused within four years.

Education

70% have a high school diploma or GED at age 21.

5-10% earn a bachelor's degree.

Employment

One third of young people reported being employed at age 21.

Incarceration

One third of foster youth cross over into the juvenile legal system.

National Data Reveal Harm of Institutionalization

- Nationally: **50,000 children** in congregate, detention & other group settings.
- Youth with disabilities are at higher risk of institutionalization.
- Youth are at higher risk of **physical abuse** when placed in group settings (potentially **twice** that of family foster placements).
- Youth placed in group settings have worse long-term outcomes: **less likely to graduate**, more likely to become **unemployed** and in need of public benefits.

Group settings should not be used as living arrangements because of their inherently detrimental effects on the healthy development of children, regardless of age.

- The American Orthopsychiatric Association

Impact on BIPOC Youth

- **Over half – 53%** - of Black children will be subjected to a child welfare investigation by age 18. Black children make up just **14%** of the U.S. child population but **24%** of child abuse or neglect reports and **21%** of children entering the foster system.
- Indigenous children enter the foster system at nearly **double** the nationwide rate. Indigenous parents are up to **four times** more likely to have their children taken into custody than their non-Indigenous counterparts.
- **1 out of 41** Black children and **1 out of 37** Indigenous children will have their parents' parental rights terminated before the age of 18, making them nearly **3 times** more likely to be permanently separated from their families than white children.

Impact on LGBTQI+ Youth

- LGBTQ+ young people are over-represented in the foster system. [A 2019 study](#) found that **30.4%** of youth in the system identify as LGBTQ+ and **5%** as transgender, compared to **11.2%** and **1.17%** of youth not in the foster system.
- Once in the system, LGBTQI+ youth are at higher risk of additional harms, including discrimination, institutionalization, and abuse, and are more likely to age out without a permanent family home.
- Transgender, gender-expansive and gender nonconforming youth, who may identify across the sexual orientation spectrum, are overrepresented in child welfare systems at even higher rates than youth who identify as LGBTQI+.

Impact on Children & Parents with Disabilities

Legal Discrimination against Parents with Disabilities

37 of 50 states

and the District of Columbia
allow disability as a grounds for
termination of parental rights.



Removal Rates for parents with disabilities

Psychiatric Disability

70 - 80 %

Intellectual Disability

40 - 80 %

Physical Disability

13 %

Blind or Deaf

Higher than non-disabled
removal rates

The Constitutional Right to Parent

“The fundamental liberty interest of natural parents in the care custody, and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”

“Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”

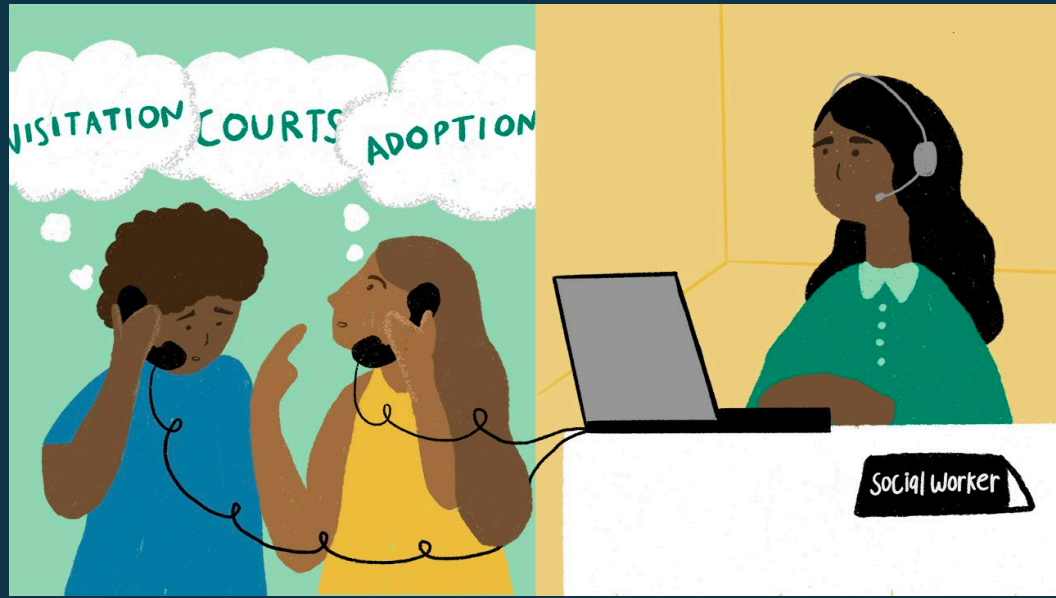
Santosky v. Kramer, 455 U.S. 745 (1982)



POLL QUESTION:
WHAT STRATEGIES HAVE YOU
USED TO ADVOCATE FOR
CLIENTS INVOLVED WITH
CHILD WELFARE?

Advocacy strategies: Policy Advocacy

- Changing laws on mandatory reporting and poverty-based removals
- De-link supports for families from child welfare system
- Address biases hidden in CPS and related investigation forms
- Importance of data



De-link support for families from the child welfare system

- Prioritize Direct Economic and Social Supports
 - Shift from punitive removals to community-based assistance that provides families with the resources they need.
- De-Link Social Services from CPS Interventions
 - Remove the threat of child removal from accessing social and economic support.
 - Apply for ODDS or APD services

Biases hidden in CPS and related investigation forms

- Through the Looking Glass

“To provide and encourage respectful and empowering services—**guided by personal disability experience and disability culture**— for families that have children, parents, or grandparents with disability or medical issues.”

- CPS forms themselves
- Telling stories
- Writing reports:
 - “Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children”
 - “A Cover Up: the Life & Death of an Oregon Son”



Child Welfare Litigation in Oregon

- State's own audits paved path towards litigation
- Lawsuit filed in April 2019
- Certified a class (general with 3 subclasses)
- Settlement Reached in May 2024



Wyatt Settlement Agreement Requirements

- Reducing maltreatment
- Reducing re-entry rates
- Improve timely completion of case plans (60 days)
- Improve timely assessments for medical, dental & mental health treatment
- Increase the quality of placements & services
- Improve communication with state courts, attorneys, children & families about harm while in care

Advocacy strategies: Individual Advocacy

- Seek behavioral health services &/or auxiliary aids & services outside of child welfare
- Support parents to get financial and other supportive services outside of child welfare.
- Ask for accommodations or modifications to ensure full & equal access to child welfare or court programs, services or activities
- Seek individualized treatment in the most integrated setting





POLL QUESTION:
ANY QUESTIONS?

A photograph of a yellow portable ramp, likely for a wheelchair, positioned on a paved surface. The ramp has a grey top surface and yellow metal edges. The text "Be the Ramp!" is written in large, bold, red letters across the center of the ramp. On the right side of the ramp, "S.W.L. 300 KG" is printed. On the left side, there are labels including "CLASS 375", "Portoramp", and "GROUND" with a downward arrow. In the background, a white vehicle is partially visible, and the word "Min" is painted on the ground.

Be the Ramp!

S.W.L. 300 KG

Resources

- DOJ Guidance, *Protecting the Rights of Parents and Prospective Parents with Disabilities: TA for Child Welfare Agencies and Courts*
- Shanta Trivedi, *The Harm of Child Removal* (2019)
- Children's Rights, *Family Separation Is an Urgent Human & Civil Rights Issue* (Sept. 2023)
- Children's Rights, *Are You Listening? Youth Accounts of Congregate Placements in New York State* (Jan. 2023)
- *Wyatt v. Brown* – filings and information from Oregon Litigation (<https://www.droregon.org/litigation-resources/wyatt-b-v-kotek>)