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INFORMATION MEMORANDUM

TO: Recipients of Federal Financial Assistance from the U.S. Department of Health and Human Services Administering or Supervising the Administration of Title IV-E/IV-B of the Social Security Act

SUBJECT: Protecting the Rights of Qualified Individuals with Disabilities: Technical Assistance under Section 504 of the Rehabilitation Act of 1973 for State, Tribal, and Territorial Child Welfare Agencies and Courts that Receive Federal Financial Assistance from the U.S. Department of Health and Human Services

RELATED REFERENCES: Section 504 of the Rehabilitation Act of 1973, 45 C.F.R. § 84.60, and 84.68

PURPOSE: The purpose of this Information Memorandum (IM) is to inform state and tribal title IV-B and title IV-E agencies of a final rule issued by the United States Department of Health and Human Services (HHS) Office for Civil Rights (OCR) that implements Section 504 of the Rehabilitation Act of 1973¹ (Section 504). HHS's final rule includes regulatory provisions relevant to child welfare agencies that receive Federal financial assistance from the U.S. Department of Health and Human Services. These regulatory provisions clarify how Section 504 applies in the child welfare context. This guidance focuses on the Section 504 final rule and does not cover all disability rights laws applicable to child welfare entities.²

INFORMATION

We are issuing this Information Memorandum to title IV-B/IV-E agencies that are recipients of Federal financial assistance (recipients) to assist in implementing the final Section 504 rule. This is to ensure that the welfare of children and families participating in title IV-E/IV-B programs is protected in a manner that also protects the civil rights of children, parents, caregivers, foster parents,

¹ 29 U.S.C. § 794.

² For additional information on protecting the civil rights of people with disabilities in the child welfare system, see prior guidance issued by the U.S. Department of Health and Human Services and the U.S. Department of Justice titled *Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act* (Aug. 2015), <https://www.hhs.gov/sites/default/files/disability.pdf>.

and prospective parents³ with disabilities. Section 504 of the Rehabilitation Act of 1973⁴ (Section 504) has long protected individuals with disabilities from unlawful discrimination in child welfare programs and activities receiving Federal financial assistance as well as programs and activities conducted by the Federal government. Recently, OCR updated its Section 504 rule. The [updated rule](#) went into effect on July 8, 2024.⁵ The new rule includes specific child welfare provisions applicable to child welfare agency recipients of Federal financial assistance from HHS directly or through another recipient. This includes state, tribal, and local entities administering and supervising child welfare programs; child placement agencies; and other entities providing services to children in the child welfare system under contractual or other arrangements. This information memorandum explains how the updated Section 504 regulations apply to these child welfare programs and activities.

The provisions specific to child welfare agencies are located at [45 C.F.R. § 84.60](#). These provisions clarify that child welfare agencies must ensure individuals with disabilities are not discriminated against in *any* programs and activities, including, but not limited to parent-child visitation, reunification services, parenting evaluations, child placement, parenting skills programs, in- and out-of-home services, witness interviews, assessments, removal of children from their homes, case planning and service planning, visitation, guardianship, adoption, foster care, reunification services, and family court proceedings. Also, child welfare agencies must provide services to children and young adults with disabilities in the most integrated setting appropriate to their needs.⁶ And, while child welfare has its own section, the general provisions of the rule also apply to recipient child welfare agencies. Additional information about the Section 504 rule can be found on the [OCR website](#) including a detailed fact sheet.

Role of the Office for Civil Rights and the Children’s Bureau

The Children’s Bureau (CB) in the Administration for Children and Families administers funding for state and tribal child welfare agencies to help them operate their child welfare systems and provides guidance and technical assistance to child welfare agencies regarding child welfare law. OCR is responsible for enforcing Federal civil rights laws, including Section 504. OCR also provides technical assistance to child welfare agencies and state family courts to assist them with complying with their legal obligations under Section 504.

Overview of Legal Requirements

Section 504 provides that no qualified individual with a disability shall, solely on the basis of 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.⁷ A “qualified individual” is an individual who, with or without reasonable modifications to rules, policies, or

³ For purposes of this rule, the term “parents” means biological or adoptive parents or legal guardians, as determined by applicable State law. Prospective parents means individuals who are seeking to become foster or adoptive parents. See 45 C.F.R. § 84.10.

⁴ 29 U.S.C. § 794.

⁵ OCR’s new Section 504 rule went into effect on July 8, 2024, with two exceptions. §§ 84.84-84.89 (see [45 C.F.R. Part 84 Subpart I](#)), governing requirements for web and mobile accessibility, and §§ [84.90- 84.94](#), related to accessible medical equipment, have unique timelines for implementation.

⁶ The rule codifies the long-standing legal precedent that the unjustified segregation of people with disabilities is discrimination. *Olmstead v. L. C.*, 527 U.S. 581 (1999). The integration requirement is discussed on pages 6-7.

⁷ See 29 U.S.C. § 794; 45 C.F.R. § 84.68.

practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility criteria for the receipt of services or the participation in programs or activities provided by a recipient of Federal financial assistance.⁸

All recipients of Federal financial assistance (including grantees and subgrantees of funds from HHS pursuant to Title IV of the Social Security Act) are responsible for compliance with Section 504,⁹ as a condition of receiving Federal financial assistance.

OCR's new Section 504 rule thus applies to all child welfare agencies that receive Federal financial assistance, their contractors, and sub-agencies, all of which are responsible for ensuring that individuals with disabilities are not subject to discrimination in or denied equal access to their programs and activities.¹⁰ As such, the children, parents, caregivers, foster parents, and prospective parents with disabilities served by a child welfare agency are protected under Section 504.

Consistent with the Americans with Disabilities Act Amendments Act of 2008,¹¹ the definition of "disability" in the rule is broad and includes anyone with a physical or mental impairment that substantially limits one or more major life activities, including the operation of major bodily functions.¹² It also protects individuals with a record of disability,¹³ and individuals regarded as having a disability, whether or not they actually have a disability.¹⁴

While the rule has been updated to include provisions specific to child welfare agencies, OCR and its predecessor have been enforcing the rule prohibiting discrimination on the basis of disability in federally funded programs and activities, including child welfare programs and activities, since 1977.

Preventing Disability Discrimination in Child Welfare

Child welfare agencies are essential to promoting the well-being of children by ensuring safety, achieving permanency, and strengthening families. A key part of this work is ensuring all qualified individuals can participate in and benefit from child welfare services, including people with disabilities. There are over 4 million parents with disabilities in the United States and 27.6%¹⁵ of children involved in the child welfare system are children with disabilities.

Despite the longstanding prohibitions against disability-based discrimination, parents with

⁸ See 42 U.S.C. § 12131(1); 45 C.F.R. § 84.10.

⁹ See 29 U.S.C. § 794; 45 C.F.R. § 84.2, 84.10.

¹⁰ An entity can be a recipient of Federal financial assistance either directly or as a sub-recipient. The responsibility to comply with Section 504 applies to "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 29 U.S.C. § 794(b).

¹¹ Pub. L. 110-325 (2008).

¹² See 45 C.F.R. 84.4.

¹³ 29 U.S.C. 705(9)(B); 45 C.F.R. 84.4(a)(1)(ii); 84.4(e).

¹⁴ 29 U.S.C. 705(9)(B); 84 C.F.R. 84.4(a)(1)(iii); 84.4(f).

¹⁵ DeZelar, Sharyn, and Elizabeth Lightfoot. 2018. "Use of Parental Disability as a Removal Reason for Children in Foster Care in the U.S." *Children and Youth Services Review* 86:128–134. doi:10.1016/j.childyouth.2018.01.027.

disabilities are more likely than parents without disabilities to have their parental rights terminated.¹⁶ Recent analysis of the U.S. child welfare system revealed that 19% of children in foster care were removed, at least in part, because of parental disability, and 5% of children in foster care had parental disability as the sole reason for removal.¹⁷ Additionally, parents with disabilities have historically been more likely to lose custody of their children after divorce and prospective parents with disabilities have had more difficulty when it comes to accessing reproductive health care such as assisted reproductive technologies, and they have faced significant barriers to adopting children.¹⁸

As a result of OCR’s enforcement work, we know that there is still work to be done to ensure people with disabilities are not discriminated against by child welfare agencies. Our new rule and this memorandum clarify recipients’ obligations to not discriminate and to thereby increase access to services and supports for families with disabilities.

Removing Barriers for People with Disabilities in the Child Welfare System

As OCR’s new Section 504 rule clarifies, Section 504’s discrimination prohibitions encompass a wide range of discriminatory barriers that individuals with disabilities face when accessing child welfare services. Prohibited discrimination includes, but is not limited to:

- decisions made based on speculation, stereotypes, or generalizations about people with disabilities;¹⁹
- denying a qualified parent with a disability custody or control of, or visitation to, a child;²⁰
- denying a qualified parent with a disability an opportunity to participate in or benefit from any and all services provided by a child welfare agency, including but not limited to, family preservation and reunification services;²¹
- terminating the parental rights or legal guardianship of a qualified individual with a disability;²²
- denying a qualified caregiver, foster parent, companion, or prospective parent with a disability the opportunity to participate in or benefit from child welfare programs and activities;²³
- requiring parents to relinquish custody of their children with disabilities so that the child can receive necessary services;²⁴
- parenting evaluations that focus solely on a person’s disability;²⁵

¹⁶ Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier (2022): Child welfare system inequities experienced by disabled parents: towards a conceptual framework, Disability & Society, DOI: 10.1080/09687599.2022.2071675.

¹⁷ *Id.*

¹⁸ National Council on Disability, *Rocking the Cradle*, 15-16 (May 5, 2012), <https://www.ncd.gov/report/rocking-the-cradle-ensuring-the-rights-of-parents-with-disabilities-and-their-children/>.

¹⁹ See 45 C.F.R. § 84.60(a)(2)(i), (ii).

²⁰ See 45 C.F.R. § 84.60(b)(1).

²¹ See 45 C.F.R. § 84.60(b)(2).

²² See 45 C.F.R. § 84.60(b)(3).

²³ See 45 C.F.R. § 84.60(b)(4).

²⁴ See 45 C.F.R. § 84.60(b)(5).

²⁵ See 45 C.F.R. § 84.60(c).

- the failure to place children in the most integrated setting appropriate to the needs of the child;²⁶
- the failure to ensure that communications with individuals with disabilities are as effective as communications with others.²⁷

The duty to not discriminate in each of these areas is explained in more detail below. The rule also has broader requirements that apply to a range of recipients, including child welfare agencies, such as ensuring equal opportunities for individuals with disabilities to benefit from programs and activities,²⁸ making reasonable modifications to policies, practices, and procedures,²⁹ and providing effective communication to individuals with disabilities.³⁰

Prohibition Against Decisions Based on Speculation, Stereotypes, or Generalizations about Disability³¹

OCR’s Section 504 regulation makes clear that Section 504 prohibits child welfare agencies from making decisions based on speculation, stereotypes, or generalizations that a parent, caregiver, foster parent, or prospective parent, because of a disability, cannot safely care for a child; and from making decisions based on speculation, stereotypes, or generalizations about a child with a disability.³²

To comply with this prohibition against discrimination, recipients must ensure that any determination of whether a caregiver can provide for a child’s safety and wellbeing is not based on stereotypes about people with disabilities. For example, denying a wheelchair-user the opportunity to participate as a foster parent, solely on the basis that the person uses a wheelchair, is discrimination under the statute. Likewise, a generalization that physical or behavioral support needs of children or parents with disabilities prevent family placement is also discriminatory.

If, after an individualized assessment, it is determined that an individual with a disability poses a direct threat to the health and safety of a child that cannot be eliminated with reasonable modifications or auxiliary aids and services, the risk of harm to the child may warrant removal, denial of reunification, denial of visitation, or termination of parental rights.³³ In determining whether an individual with a disability poses a direct threat, a recipient must make an individualized assessment based on reasonable judgment from current medical knowledge or the best available objective evidence to ascertain the nature, duration, and severity of the risk to the child; the probability that the potential injury to the child will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.³⁴ Without this assessment, it is discriminatory to assume or generalize that a caregiver is a direct threat to the health and safety of others and an unfit parent solely because they have a disability.³⁵

²⁶ See 45 C.F.R. § 84.68(d), 84.76.

²⁷ See 45 C.F.R. § 84.77-81.

²⁸ See 45 C.F.R. § 84.68(b)(1)(ii).

²⁹ See 45 C.F.R. § 84.68(b)(7).

³⁰ See 45 C.F.R. § 84.77.

³¹ 45 C.F.R. § 84.60(a)(2).

³² See 45 C.F.R. § 84.60(a)(2)(i), (ii).

³³ See 45 C. F. R. § 84.10, 84.75.

³⁴ *Id.*

³⁵ See 45 C.F.R. § 84.75.

Application to Specific Services in the Child Welfare System

In addition to the provisions highlighted above, the new rule makes clear that Section 504 prohibits other discriminatory practices. This includes certain discriminatory practices allegedly perpetrated against qualified individuals with disabilities³⁶ in complaints received by OCR. These actions include: denying a qualified parent with a disability custody or visitation to, a child;³⁷ denying a qualified parent with a disability services provided by a child welfare agency, such as family preservation and reunification services, or an opportunity to participate in or benefit from those services that is equal to that afforded to persons without disabilities;³⁸ terminating the parental rights or legal guardianship of a qualified individual with a disability;³⁹ or denying a qualified caregiver, foster parent, companion, or prospective parent with a disability the opportunity to participate in or benefit from child welfare programs and activities.⁴⁰

Prohibition Against Forfeiture of Parental Rights as Requirement for Services⁴¹

OCR's new rule makes clear that Section 504 prohibits child welfare agencies from requiring children, on the basis of disability, to be placed outside the family home through custody relinquishment, voluntary placement, or forfeiture of parental rights in order to receive necessary services.

Unfortunately, the practice of requiring parents to relinquish custody of a child with a disability, so that the child may receive disability-related services, is common in some jurisdictions. For example, some child welfare agencies have required parents to relinquish custody of a child with a mental health-related disability so the child may receive intensive behavioral health supports in a group home, without any showing of abuse or neglect that would warrant a forfeiture of custody. Requiring a child to be removed from the family home, on the basis of the child's disability, in order to receive services is discrimination under Section 504.

Requirements for Parenting Evaluation Procedures⁴²

Decisions regarding the best interests of a child and the provision of services and supports often rely on assessments conducted by mental health professionals who evaluate parents' capacity to care for their children. Assessments of parents with disabilities have been criticized as being poor quality, inaccessible, and conducted by professionals who are not trained in evaluating parents with disabilities.⁴³ When parenting assessments have these flaws, the true parenting abilities of parents

³⁶ As noted above, a qualified individual with a disability is someone who meets the essential eligibility criteria for benefits or services in the recipient's program or activity 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. For example, a parent with low vision who meets the essential eligibility requirements for receiving family preservation services is a qualified individual with a disability for the purpose of receiving such services.

³⁷ See 45 C.F.R. § 84.60(b)(1).

³⁸ 45 C.F.R. § 84.60(b)(2).

³⁹ 45 C.F.R. § 84.60(b)(3).

⁴⁰ 45 C.F.R. § 84.60(b)(4).

⁴¹ See 45 C.F.R. § 84.60(b)(5).

⁴² See 45 C.F.R. 84.60(c).

⁴³ Robyn M. Powell, Susan L. Parish, Monika Mitra, Michael Waterstone & Stephen Fournier (2022): Child welfare system inequities experienced by disabled parents: towards a conceptual framework, *Disability & Society*, DOI: 10.1080/09687599.2022.2071675.

with disabilities may not be accurately identified, and parents may be inappropriately deemed unfit.⁴⁴ For example, in the course of OCR’s Section 504 rulemaking, OCR received numerous comments about the discriminatory use of IQ tests for parents with intellectual disabilities where the parent’s IQ test results alone were used as justification to deny them parenting opportunities.⁴⁵

To address this discrimination, the new rule requires child welfare agencies to ensure that all parenting evaluations are fully accessible to people with disabilities and not based on a single general IQ score or measure of the person's disability, rather than their parenting ability. Recipients must ensure that tests, assessments, and other evaluation tools and materials used for the purpose of assessing or evaluating parenting ability are based in evidence or research, are conducted by a qualified professional, and are tailored to assess actual parenting ability and specific areas of disability-related needs. Finally, recipients are required to establish procedures for referring to qualified professionals to evaluate those individuals, who, because of disability, need or are believed to need adapted services or reasonable modifications. These requirements are meant to complement the existing goals of the child welfare system by keeping children safe and keeping families together.⁴⁶

Integration Requirement⁴⁷

Recipients have a longstanding, affirmative obligation under the integration requirement of Section 504 to administer a program or activity “in the most integrated setting appropriate to the needs of a qualified person with a disability.”⁴⁸ As the United States Supreme Court held in *Olmstead v. L.C.*, the unjustified segregation of persons with disabilities constitutes discrimination.⁴⁹ This requirement applies to all recipients of Federal financial assistance. In recipient child welfare agency programs, how and where children with disabilities receive services, including foster care, must be consistent with the integration requirement.⁵⁰

The new rule affirms this obligation. To comply with Section 504, child welfare agencies must serve children in the most-integrated setting appropriate to their needs. The rule defines “most integrated setting” as one “that provides individuals with disabilities the opportunity to interact with nondisabled persons to the fullest extent possible. These settings provide opportunities to live, work, and receive services in the greater community, like individuals without disabilities; are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; and afford individuals choice in their daily life activities.”⁵¹ In contrast, segregated settings include, but are not limited to, congregate settings that are populated exclusively or primarily with individuals with disabilities and may be characterized by regimentation in daily activities; lack of privacy or autonomy; or policies or practices limiting visitors or limiting

⁴⁴ *Id.*

⁴⁵ See 89 F.R. 40066, 40107 (May 9, 2024).

⁴⁶ See 45 C.F.R. 84.60(c).

⁴⁷ See 45 C.F.R. § 84.76.

⁴⁸ *Id.*

⁴⁹ *Olmstead v. L. C.*, 527 U.S. 581 (1999).

⁵⁰ See, e.g., *G.K. by Cooper v. Sununu*, No. 21-cv-4-PB, 2021 WL 4122517 at *11 (D.N.H. Sept. 9, 2021), allowing a class action to proceed on claims filed by or on behalf of children in foster care alleging violations of the ADA and section 504 based, inter alia, on a State's failure to provide alternatives to congregate care for children with disabilities. *Id.* at *10 (“Unless [the State] could prevail on a fundamental-alteration defense, the State must administer its foster care services in a manner that enables plaintiffs to live in . . . integrated settings.”).

⁵¹ 45 C.F.R. § 84.10.

individuals' ability to engage freely in community activities and to manage their own activities of daily living.⁵² For example, a Psychiatric Residential Treatment Facility (PRTF) meets the criteria for a segregated setting under the rule.

In comparing characteristics of integrated and segregated settings, this means the most integrated setting appropriate for children is almost always the child's family home or a family foster home. Accordingly, a recipient may not engage in the unnecessary or unjustified segregation of children with disabilities, such as a default placement in institutional or other congregate care facilities, and it must work to facilitate family foster home placements consistent with this requirement. Recipients should consider and facilitate the full range of services and supports a family may be eligible for to keep parents and children together.

Generally Applicable Provisions Against Discrimination⁵³

Additionally, the broader nondiscrimination provisions of Section 504 continue to apply in the child welfare context, including provisions on reasonable modifications to policies, practices, and procedures,⁵⁴ effective communication,⁵⁵ accessible web content, mobile applications, and kiosks,⁵⁶ program accessibility,⁵⁷ and the general non-discrimination provisions,⁵⁸ along with the accompanying limitations.

Interaction with Other Laws

The child welfare-specific regulatory language in § 84.60 does not narrow or limit recipients' existing and long-standing obligations under Section 504, the Americans with Disabilities Act, or other civil rights laws. Rather, the provisions discussed in this document address several discrimination issues that frequently occur in child welfare programs and activities, which are addressed in OCR's new Section 504 final rule. The regulation also balances state autonomy with the necessity to create a Federal standard. The rule does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or state or local laws (including state common law) that provide greater or equal protection for the rights of individuals with disabilities, or individuals associated with them.

Enforcement

OCR has authority to investigate allegations of discrimination against child welfare agencies or courts that receive Federal financial assistance from the U.S. Department of Health and Human Services and can initiate compliance reviews without receiving a complaint. If a complaint investigation or a compliance review reveals a violation, OCR will pursue voluntary corrective action by the child welfare agency or court. OCR may also issue letters of findings, initiate resolution efforts, refer cases to the U.S. Department of Justice for litigation, and suspend or terminate Federal financial assistance where a violation is found and is not voluntarily resolved. Section 504 allows for

⁵² 45 C.F.R. § 84.76(c).

⁵³ *See* 45 C.F.R. 84.60(b).

⁵⁴ 45 CFR 84.68(b)(7).

⁵⁵ 45 C.F.R. § 84.77-81.

⁵⁶ 45 C.F.R. § 84.82-9.

⁵⁷ 45 C.F.R. § 84.21-3.

⁵⁸ 45 C.F.R. § 84.68.

declaratory and injunctive relief, such as an order from a court finding a violation and requiring the provision of reasonable modifications. Individuals who prevail as parties in litigation may also obtain reasonable attorney's fees, costs, and litigation expenses.⁵⁹

OCR is deeply committed to helping child welfare agencies understand these civil rights laws and ensure that their procedures and practices are compliant. OCR is available to provide ongoing technical assistance regarding these obligations.

Conclusion

This IM contains some of the obligations in the Section 504 final rule. Child welfare agencies are encouraged to visit the OCR [Section 504 web page](#) for additional information on their disability nondiscrimination obligations.

OCR will continue to ensure accessibility for people with disabilities while informing covered entities of their obligations so they can voluntarily comply. To that end, there is a list of resources available below for further information or assistance. OCR will continue to update its guidance documents and provide technical assistance and outreach whenever possible to advance these goals. The email address for OCR is OCRMail@hhs.gov.

/s/

Rebecca Jones Gaston, MSW
Commissioner
Administration on Children, Youth, and Families
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U.S. Department of Health and Human Services

LINK:

[HHS's New Section 504 Rule](#)
[HHS OCR Section 504 Website](#)
[Section 504 Fact Sheet](#)
[Section 504 Detailed Fact Sheet](#)
Email: OCRmail@hhs.gov

Disclaimer: Information Memoranda provide information or recommendations to states, Indian tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

⁵⁹ See 45 C.F.R. 84.98 (The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 45 CFR 80.6 through 80.10 and 45 CFR part 81.).