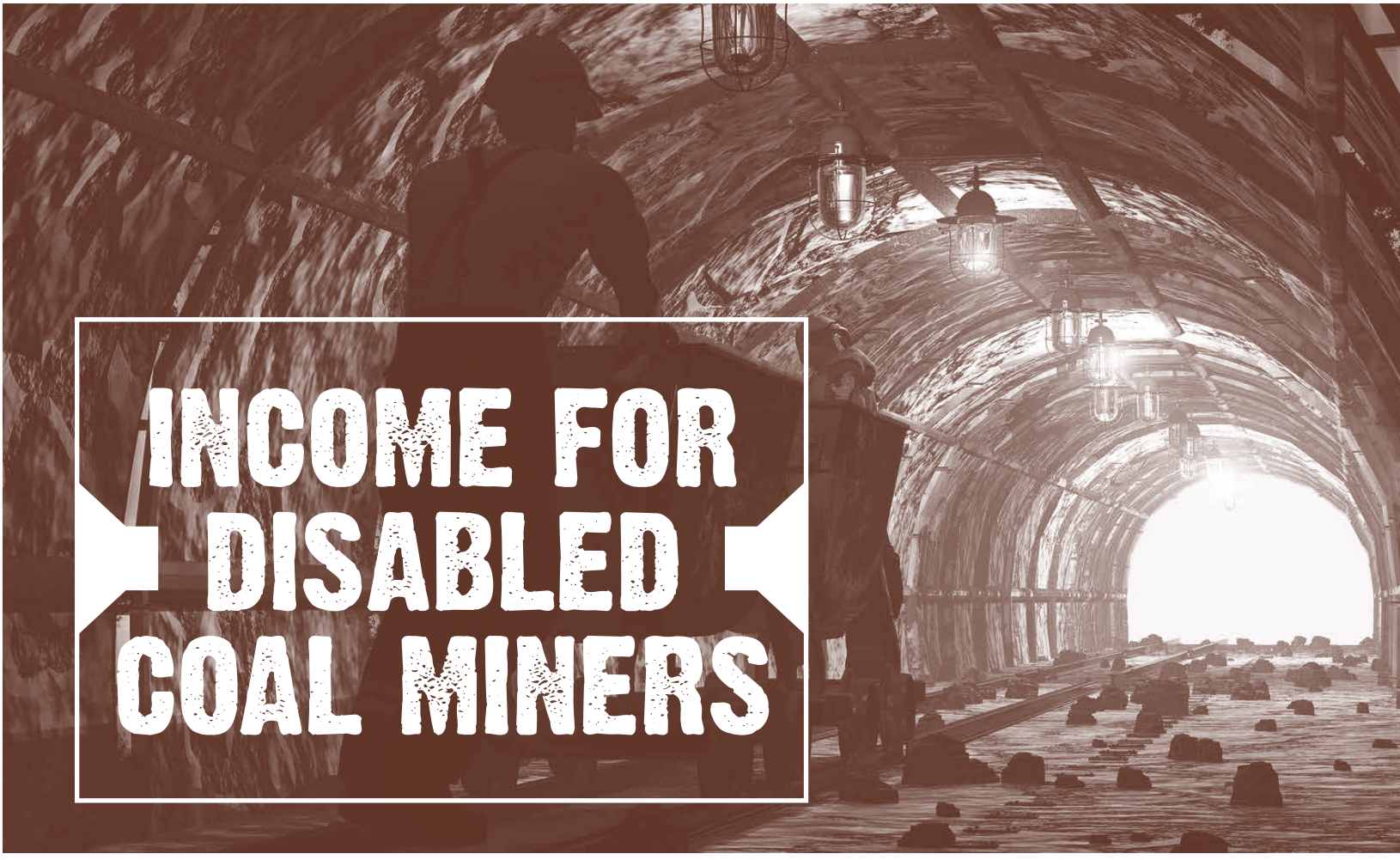
Clearinghouse REVIEW

March–April 2013
Volume 46, Numbers 11–12

Journal of Poverty Law and Policy



SHRIVER CENTER
Sargent Shriver National Center on Poverty Law

THE INDIAN CHILD WELFARE ACT

Intersections with Disability and the Americans with Disabilities Act

By Ella Callow

Ella Callow
Legal Director

National Center for Parents with Disabilities and Their Families
3075 Adeline St. Suite 120
Berkeley, CA 94704
510.848.1112
ecallow@lookingglass.org

Congress passed the Indian Child Welfare Act of 1978 because 25 percent to 35 percent of Native American children were being systematically removed from their homes and placed in non-Native homes and communities.[1] Congress noted that "no resource … is more vital to the continued existence and integrity of Indian tribes than their children and … an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies."[2] The Act created higher standards of evidence and procedural protections throughout the legal process, such as requiring "active" instead of "reasonable" efforts to avoid removal and facilitate reunification and giving tribal entities standing separate from parents and the state and the opportunity to remove the matter to tribal court.[3]

Advocates who work in Indian Child Welfare Act cases regularly work with disabled parents. Native Americans have a 27 percent rate of disability.[4] In a recent seventeen-state sample, 26.5 percent of Native American children verified by state child welfare systems as abused or neglected were in the care of an adult with a disability.[5] Despite the Americans with Disabilities Act (ADA), parents with intellectual disabilities lose custody of their children 40 percent to 80 percent of the time, and parents with psychiatric disabilities lose custody of their children 70 percent to 80 percent of the time.[6]

---

[1]Eddie F. Brown, The Indian Child Welfare Act: An Examination of State Compliance in Arizona (2002).

[2]Indian Child Welfare Act of 1978, 25 U.S.C. § 1901(3)–(4).

[3]*Id.* §§ 1901–1963.

[4]Julie Clay & Alan Fugleberg, American Indian Disability Technical Assistance Center, Introducing the American Indian, Alaska Native, and Native Hawaiian Population: Culturally Distinct People Living in BPAO [Benefits Planning, Assistance, and Outreach] Project Service Areas 3 (Nov. 2005), http://bit.ly/124AUT2.

[5]See Ella Callow et al., Summary of the 2008 National Child Abuse and Neglect Data System (NCANDS) Child File: Victims of Maltreatment and Their Caregivers' Disabilities (2011); see also National Council on Disability, Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children (2012), http://1.usa.gov/S2L9Dw.

[6]National Council on Disability, *supra* note 5, at 92.

Advocates must be aware of how disability in parents can affect cases governed by the Indian Child Welfare Act if they are to protect Native American children and the integrity of this vital law.

Disability in Indian Country: Historic and Contemporary Intersections

From 1910 through the 1960s, thirty state legislatures passed involuntary sterilization laws targeting people with disabilities.[7] These laws were designed to "deny parenthood to those who are manifestly unfit."[8] Over 60,000 Americans were sterilized, including children as young as 10.[9] Eugenics disparately harmed Native Americans due to anti-Indian racism and Native Americans' crushing poverty.[10]

Today Native American children are vastly overrepresented in the child welfare system.[11] Only 1 percent of the total U.S. child population, Native American children represent 2 percent of the national child welfare caseload.[12] South Dakota's noncompliance with the Indian Child Welfare Act has been notable.[13] While constituting only 15 percent of South Dakota's children, Native American children constitute 52 percent of that state's child welfare population.[14] Furthermore, in South Dakota, 12.6 percent of all children identified by the state child welfare system as abused or neglected had caregivers who were disabled.[15]

Disability and the ADA in Child Welfare Cases

Many practitioners do not realize that the ADA is implicated in Indian Child Welfare Act cases occurring in state courts. Title II of the ADA applies because child welfare departments and courts are state agencies.[16] Child welfare systems therefore must comply with Title II's mandate: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[17]

According to the National Council on Disability, an advisory body to Congress and the president, a child welfare agency must take these steps under the ADA for parents with disabilities: (1) allow an equal opportunity to participate in programs, services, or activities, and reasonably modify them to ensure equal participation, unless a fundamental alteration in the program would result; (2) offer programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity; (3) eliminate unnecessary eligibility standards or rules that deny people with disabilities an equal opportunity to enjoy services, programs, or activities; (4) furnish auxiliary aids and services when necessary to ensure effective communication, unless an un-

[7]Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 George Washington Law Review 862, 864 (2004).

[8]Seth K. Humphrey, *The Menace of the Half-Man*, 11 Journal of Heredity 228, 231 (1920).

[9]Philip R. Reilly, The Surgical Solution: A History of Involuntary Sterilization in the United States 2 (1991).

[10]See Nancy L. Gallagher, Breeding Better Vermonters: The Eugenics Project in the Green Mountain State (1999); Daniel Sturm, *Living with the Legacy of "Racial Hygiene" in Michigan: More than 3,700 Sterilized in State; Apology Sought*, Lansing City Pulse, Jan. 14, 2004; U.S. National Library of Medicine, "If You Knew the Conditions …" Health Care to Native Americans: The Meriam Commission and Health Care Reform (1926–1945) (May 2, 2012), http://1.usa.gov/Xy1flL.

[11]Robert B. Hill, Casey-CSSP Alliance for Racial Equity in Child Welfare, An Analysis of Racial/Ethnic Disproportionality and Disparity at the National, State, and County Levels 1–2 (2007), http://bit.ly/142uweC.

[12]Child Welfare Information Gateway, Addressing Racial Disproportionality in Child Welfare 3 (Jan. 2011), http://1.usa.gov/T16y04.

[13]See Laura Sullivan & Amy Walters, *Incentives and Cultural Bias Fuel Foster System*, National Public Radio (Oct. 25, 2011), http://n.pr/Wn8zAt; Stephanie Woodard, *Cheyenne River's ICWA Director Discusses Challenges of Protecting Tribe's Youngsters*, Indian Country Today Media Network.com (Feb. 14, 2012), http://bit.ly/V7AaFH.

[14]Woodard, *supra* note 13.

[15]Callow et al., *supra* note 5.

[16]See Americans with Disabilities Act of 1990 § 201, 42 U.S.C. § 12131.

[17]*Id.* § 12132.

due burden or fundamental alteration would result; (5) offer special benefits, beyond those required by the regulation, as needed to people with disabilities; (6) not charge individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications for program accessibility or providing qualified interpreters; (7) operate programs so that, when viewed in their entirety, they are readily accessible to, and usable by, people with disabilities; and (8) not impose requirements that tend to screen out people with disabilities.[18]

The U.S. Supreme Court has not directly addressed whether termination of parental rights proceedings are "services" or "activities."[19] However, "the Court's Title II jurisprudence indicates a broad interpretation of 'service'.... Federal courts also have interpreted Title II broadly, applying it to social services; access to public areas and public meetings; arrests; education; housing; loans; and transportation."[20]

State Interpretations. In spite of the ADA's Title II requirement of accommodation by state agencies and case law upholding its broad application, state court opinions vary widely on the ADA's application to child welfare proceedings. Many state courts have held that termination of parental rights proceedings is not a state activity or service.[21] However, other state courts have found that the ADA does apply to termination of parental rights proceedings.[22] Some courts have found that the ADA is not a defense to termination of parental rights (especially where not raised timely).[23] Others have found the failure to accommodate services necessarily renders services unreasonable under state law — sidestepping altogether the question of ADA applicability.[24]

Thus Title II may be a tool to ensure that parents with disabilities receive the proper accommodation in child welfare proceedings. Nevertheless, attorneys in Indian Child Welfare Act cases must thoroughly investigate their states' case law on whether the ADA applies to reunification services and termination of parental rights. Advocates should plead the ADA at the earliest opportunity, argue for specific accommodations in case plan services based on parental disability, and consistently challenge refusals at a review hearing. This process avoids untimeliness claims, may encourage the state to comply, precludes a finding of waiver at the appellate level, and creates a better record for any subsequent federal claims.

Crafting Accommodated Case Plan Services. Determining necessary case plan service accommodations can be confusing. Below are three examples of disability accommodation in services that we have found to work well.[25]

---

[18]National Council on Disability, *supra* note 5, at 88–89. See 28 C.F.R. § 35.130 (2012); U.S. Department of Justice, Title II Highlights (Aug. 29, 2002), http://1.usa.gov/11RRHIU.

[19]The U.S. Supreme Court has not ruled on the applicability of Title II to termination of parental rights proceedings. Most recently, it denied a petition for a writ of certiorari in the case of *In re Kayla N.*, 900 A.2d 1202 (R.I. 2006), cert. denied, 549 U.S. 1252 (2007).

[20]Dale Margolin, *No Chance to Prove Themselves: The Rights of Mentally Disabled Parents Under the Americans with Disabilities Act and State Law*, 15 Virginia Journal of Social Policy and the Law 112, 117 (2007) (citations omitted).

[21]See, e.g., *In re Ivan M.*, No. E039029, 2006 WL 1487173 (Cal. Ct. App. May 30, 2006); *In re Antony B.*, 735 A.2d 893, 899 (Conn. App. Ct. 1999); *State ex rel. B.K.F.*, 704 So. 2d 314, 317 (La. Ct. App. 1997); *In re Terrence*, 787 N.E.2d 572, 577 (Mass. App. Ct. 2003); *In re Dietrich*, Nos. 267978, 267979, 2006 WL 2355135 (Mich. Ct. App. Aug. 15, 2006); *In re Kayla N.*, 900 A.2d 1202; *In re B.S.*, 693 A.2d 716, 720–21 (Vt. 1997).

[22]See *Lucy J. v. State*, 244 P.3d 1099 (Alaska 2010); *In re K.K.*, 682 N.W.2d 83 (Iowa Ct. App. 2004); *In re Angel B.*, 659 A.2d 277, 279 (Me. 1995); *In re M.H.*, 143 P.3d 103, 107 (Mont. 2006); see also *In re Terry*, 610 N.W.2d 563, 570 (Mich. Ct. App. 2000) (state services and programs touching on termination of parental rights cases must comply with Americans with Disabilities Act (ADA), but parents may not raise ADA as defense to termination proceedings).

[23]See, e.g., *In re Murphy*, No. 250791, 2004 WL 895950, at *3 (Mich. Ct. App. April 27, 2004).

[24]See, e.g., *In re Diamond H.*, 98 Cal. Rptr. 2d 715, 722 (Cal. Ct. App. 2000).

[25]My agency has more than nine hundred contacts every year with parents with disabilities, half in child welfare cases, and has offered clinical services to disabled parents and children for thirty years (Through the Looking Glass, Mission (2013), http://bit.ly/WwzXgt). We can consult on case plan services for free.

Accommodated Parenting Evaluations. Parenting evaluations vary with parental disability but generally should be based on frequent and lengthy observation of the parent-child dyad and be conducted by a professional with expertise related to the disability or in consultation with someone who has such expertise. Evaluation should occur in the home; the parent-child dyad can be profoundly affected by unfamiliar environments, without the adaptations and home modifications that are normally used. Intelligence quotient (IQ) and other standardized tests should be avoided due to questions concerning their "ecological validity" (i.e., whether they relate to parenting capacity) and the appropriateness of the normative samples for assessment of this population.[26]

Adapted Baby Care Assessment. Designed for parents with physical disabilities, deafness, or blindness, the adapted baby care assessment requires multiday observation of the parent caring for the child at home and in the community. An occupational therapist assesses the parenting and seeks to improve parenting as needed by using adaptive baby care equipment and techniques, developed by parents with disabilities and occupational therapists to enable parents with disabilities to care for young children safely.[27]

Adapted Parent-Child Intervention. Parenting classes are a common element of child welfare case plans and should be accommodated. Adapting the form and structure of these classes enables parents to participate meaningfully in the classes. Accommodations can alter transmission of information (e.g., using American Sign Language), the substance (e.g., focusing on mastery of adapted equipment), and provider qualifications (e.g., expertise in both infant mental health and intellectual disability).

The ADA and Disability in Child Welfare Cases Under the Indian Child Welfare Act

Parental disability can alter many of the unique protections contained in the Indian Child Welfare Act. To avoid an "end-run" around the Indian Child Welfare Act based on disability, advocates must recognize these risks and be prepared to invoke the ADA.

Removal and Termination. Thirty-seven states include parental disability as a ground for removal of a child and termination of parental rights.[28] This group includes most of the ten states with significant Native American populations.[29] The Indian Child Welfare Act does not change these state laws; it does, however, heighten the evidentiary requirements and standards of proof for removal and termination of parental rights. The Act establishes two specific evidentiary requirements for both involuntary foster care placements (removals) and actions terminating parental rights:

> (1) A finding, supported by the testimony of a "qualified expert witness," that "the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child," and
>
> (2) Proof that "active efforts [were] made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts [were] unsuccessful."[30]

Qualified Expert Witnesses. Parental disability is sometimes used to argue against having a qualified expert witness with special knowledge of the Indian child's

[26]National Council on Disability, *supra* note 5, at 161–62.

[27]Christi Tuleja & Anitra DeMoss, *Babycare Assistive Technology*, 11 Technology and Disability 71 (1999); Christi Tuleja et al., Through the Looking Glass: National Resource Center for Parents with Disabilities, Continuation of Adaptive Parenting Equipment Development (1998).

[28]Elizabeth Lightfoot et al., *The Inclusion of Disability as a Condition for Termination of Parental Rights,* 34 Child Abuse and Neglect 927, 930 (2010); National Council on Disability, *supra* note 5, at 335–67.

[29]See Tina Norris et al., U.S. Census Bureau, The American Indian and Alaska Native Population: 2010, at 11 (Jan. 2012), http://1.usa.gov/W2G5zP.

[30]Indian Child Welfare Act of 1978 § 102(d)–(f), 25 U.S.C. § 1912(d)–(f).

tribe. State courts can allow an expert who is "[a] professional person having substantial education and experience in the area of his or her specialty"—even if that expert has no knowledge of, or experience with, Indian culture.[31] Such expert testimony is allowed where a "given case fails to implicate Indian culture, *such as where mental illness is involved.*"[32] Arguments are in fact "often based on the presentation of behavioral deficiencies (such as personality disorders …) as personality or functional problems that have nothing to do with cultural heritage."[33]

Where disability is the "deficiency," determining if a given trait or tendency is driven by disability or culture is difficult without expertise in both. Advocates should argue that qualified witnesses with expertise around culture *and* the parent's disability should be brought as an accommodation under Title II. Whether working directly with the parties or only reviewing files, qualified expert witnesses must be mindful that "[u]nrecognized personal biases may compromise the ethical integrity and legal reliability of evaluation conclusions and recommendations. Such biases include those related to … disability."[34] Expert witnesses should be "aware of the stigma associated with disabilities often found in child protection cases such as intellectual disabilities and psychiatric disabilities … and … ensure that they have sufficient professional competencies to provide an objective and accurate evaluation of persons presenting with these disabilities."[35]

Active Efforts. The Indian Child Welfare Act does not define "active efforts."[36] However, state courts have developed working definitions such as this one from Alaska:

> Active efforts … [are found] where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own. For instance, rather than requiring that a client find a job, acquire new housing, and terminate a relationship with what is perceived to be a boyfriend who is a bad influence, the Indian Child Welfare Act would require that the caseworker help the client develop job and parenting skills necessary to retain custody of her child.[37]

As discussed above, many states find that either the ADA or state law requires considering a parent's disability when shaping case plan services. The Indian Child Welfare Act elevates the standard for these efforts from "reasonable" to "active" and strengthens the argument for accommodation of services.

One of the few state supreme court cases to consider this issue directly and substantively is *Lucy J. v. State of Alaska*.[38] The mother in this case had static encephalopathy, which altered her cognitive and intellectual functioning. The court required that the state's reunification efforts be accommodated pursuant to the ADA and Alaska state law and that they be "active efforts" pursuant to the Indian Child Welfare Act. The state satisfied these requirements by rewriting the mother's case plan after her diagnosis to present

[31]See, e.g., *Rachelle S. v. Arizona Department of Economic Security*, 958 P.2d 459, 461 (Ariz. Ct. App. 1998); *State ex rel. Juvenile Department v. Tucker*, 710 P.2d 793 (Or. Ct. App. 1985).

[32]Native American Rights Fund, *Expert Witnesses* (n.d.), http://bit.ly/14dLvdb (emphasis added).

[33]California Indian Legal Services, California Judges Benchguide: The Indian Child Welfare Act 46 (June 2012), http://bit.ly/Xzc2LQ.

[34]American Psychological Association, *Guidelines for Psychological Evaluations in Child Protection Matters*, 68 American Psychologist 20, 24 (2013).

[35]*Id.*

[36]See 25 U.S.C. §§ 1903, 1912(d).

[37]*A.A. v. State*, 982 P.2d 256, 261 (Alaska 1999) (quoting Craig J. Dorsay, The Indian Child Welfare Act and Laws Affecting Indian Juveniles Manual 157–58 (1984)).

[38]*Lucy J.*, 244 P.3d at 1099.

the information in a straightforward way that highlighted the most important elements, helping her find stable housing, and giving her one-on-one mentoring, using phone calls, face-to-face contact, and written documents to remind her of appointments, visitation changes, and tasks that she needed to complete.[39] The court identified several accommodations that we recommend: reliance on disability-knowledgeable providers, accommodations in communication, and the use of adaptive equipment and home-based services.

Placement Preferences. Pursuant to the Indian Child Welfare Act, extended family members have clear priority "[i]n any foster care or preadoptive placement."[40] However, a child's disability is commonly cited as a "good cause" exception to the preferred placement.[41] The guidelines of the Bureau of Indian Affairs specifically include a child's disability as an appropriate ground for overriding the preferred placement.[42] Moreover, extended family members with disabilities suffer the same discrimination as disabled parents and are often denied placement of the child based on their disabilities. However, since extended family members' rights are more tentative and the issue so little understood, this discrimination goes legally unchallenged.

I recently provided technical assistance in a case involving placement of an Alaskan Native child with his grandmother, who has moderate arthritis. His mother's intellectual disability had triggered a child welfare case. The grandmother was accidentally copied on an e-mail containing the following dialogue:

> **Worker 1**: I want to express my concerns about placing [the child] with the maternal grandmother. I am worried about her capacity to care for him considering her recent broken arm and [arthritis]…. [U]nder ICWA extended family is the first placement choice but only when the child is safe. I am questioning if he will be.
>
> **Worker 2**: I am very unsatisfied with the current arrangement and also feel that the child should not be with the maternal grandmother….
>
> **Worker 1**: I went and talked to Adam. He said if we have a grandparent willing to care we have to take it. I'm not so convinced….
>
> **Worker 2**: Only if the grandparent is able to! She is obviously quite frail.[43]

A common injury (which the grandmother asserts was minor and quickly healed) and a disability such as arthritis were being used to justify noncompliance with the Indian Child Welfare Act's placement preferences. Fortuitously the court transferred jurisdiction to the Native Village, and the grandmother, with whom the mother resides, was named guardian.

Federal Review and Bypass. Lack of access to federal review of ADA violations in state dependency proceedings is a significant barrier to securing a remedy in child welfare cases in which disability discrimination is a significant factor.[44] The ADA has no exception to the *Rooker-Feldman* doctrine, which bars lower federal courts from reviewing

---

[39]*Id.* at 1116.

[40]25 U.S.C. § 1915; Native American Rights Fund, Foster Care Placement and Removal (n.d.), http://bit.ly/10CVeG4.

[41]See *Fresno County Department of Children and Family Services v. Superior Court*, 19 Cal. Rptr. 3d 155 (Cal. Ct. App. 2004); *In re M.F.*, 225 P.3d 1177 (Kan. 2010).

[42]Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67584, F.3(ii) (1979) ("[t]he extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness").

[43]Confidential e-mail (Dec. 2007) (in my files).

[44]Jennifer Mathis & Mary Giliberti, Judge David L. Bazelon Center for Mental Health Law, Termination of Parental Rights of Parents with Mental Disabilities (n.d.), http://bit.ly/W26AnX.

decisions of state courts.[45] This doctrine has hindered federal review of state court denials of accommodated services or terminations of parental rights.[46]

However, the Indian Child Welfare Act does create such an exception to *Rooker-Feldman*.[47] Thus, by framing a state's failure to accommodate services as a failure to provide "active services," attorneys for parents in Indian Child Welfare Act cases *may* seek federal review. The argument would not be grounded in the state court's failure to abide by Title II of the ADA but rather in its failure to abide by the Indian Child Welfare Act's active-efforts requirement.

Also problematic is the use by courts in six states of questionable parenting evaluations to deny reunification services to parents with mental disabilities.[48] This practice is commonly referred to as "bypass."[49] California's bypass provision is typical; it requires only that two medical professionals agree that a parent will be unable to care for the child within twelve months even with the provision of services.[50] While a related state law declares bypass improper in Indian Child Welfare Act cases, a 2009 California case holds that the Indian Child Welfare Act does not eliminate the possibility of bypass.[51] The language and reasoning are tailor-made to apply to cases involving parental disability.

Unique Practice Steps and Research When Parents Have Disabilities

Representing parents with disabilities in dependency proceedings requires additional practice steps and a familiarity with relevant research. Below are a few illustrative examples.

Practice Steps. Advocates should have a thorough discussion with their clients about the clients' disability status. Few child welfare programs systemically vet parents for disability; diagnosis is often misstated, and less obvious disabilities go undocumented. Find out what benefit entitlements your client can access and determine your client's medicinal, equipment, and communication needs. Document and transfer this knowledge to the caseworker and court.

When reviewing the case file, determine whether any of the material is based on alleged statements by the parents. If so, determine who interpreted for the parent if the parent has a speech or hearing impairment. If the parent has an intellectual disability, note if the parent was being "spoken for" by a typical adult or interviewed directly. Note that pathologizing language, such as "crippled" or "suffering from [a disease or disability]," evidences attitudinal bias in the reporter.

All courts and child welfare agencies must have an ADA coordinator and a procedure by which an individual with a disability can request accommodations.[52] Facilitate your client's request for accommodations as early as possible. State for the record at the first opportunity that your client is a person who has a disability and may require accommodations and that the ADA applies to the case.

---

[45] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 416 (1923); *Dale v. Moore*, 121 F.3d 624, 627 (11th Cir.1997).

[46] But see *Tyner v. Brunswick County Department of Social Services*, 776 F. Supp. 2d 133, 145 (E.D.N.C. 2011) (*Rooker-Feldman* doctrine did not apply to ADA claims that county social services agency refused American Sign Language interpreter for severely hearing-impaired mother and her hearing-impaired live-in boyfriend; plaintiffs were not seeking review of state court judgment itself).

[47] 25 U.S.C. § 1914 (Indian child, parent or Indian custodian, or tribe "may petition any court of competent jurisdiction to invalidate such action"); *Doe v. Mann*, 415 F.3d 1038, 1046–47 (9th Cir. 2005).

[48] Child Welfare Information Gateway, Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws (July 2009), http://1.usa.gov/ZakXEj.

[49] See *In re Lana S.*, 142 Cal. Rptr. 3d 792, 802 (Cal. Ct. App. 2012) (California law "sets forth certain narrowly specified exceptions—referred to as reunification bypass provisions—to the general mandate of services").

[50] Cal. Welf. & Inst. Code § 361.5(c) (West 2013); Cal. Rules of Court 5.695(h)(10) (2013).

[51] Cal. Welf. & Inst. Code § 361.7(a) (West 2013); *In re K.B.*, 93 Cal. Rptr. 3d 751, 760 (Cal. Ct. App. 2009).

[52] 28 C.F.R. § 35.107(a) (2012). The Justice Department's complete Title II regulation is found in *id.* §§ 35.101–.190.

Key Clinical Research. Parents with intellectual disabilities worldwide struggle to retain custody of their children. A major misconception driving this dynamic is that parental IQ can predict parenting capacity. The book *Parents with Disabilities: Past, Present and Futures* summarizes the voluminous research discrediting this position.[53] Parents with psychiatric disabilities are similarly pathologized based on stereotypes of the mentally ill as violent.[54] Research available through the National Alliance on Mental Illness and from the University of Pennsylvania challenges this bias.[55] And a common assumption is that a child will become "parentified"—that is, the child will become the disabled parent's caretaker. The work of Rhonda Olkin and Megan Kirshbaum challenges this baseless speculation.[56]

■ ■ ■

Understanding how disability and the ADA affect and inform dependency cases governed by the Indian Child Welfare Act can strengthen practice and prevent disability discrimination from undermining the vitality of the Indian Child Welfare Act and the well-being of Native families and communities.

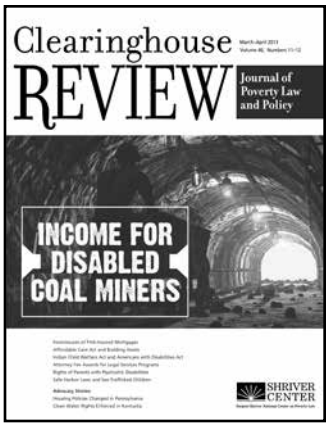
---

[53]Parents with Intellectual Disabilities: Past, Present and Futures (Gwynnyth Llewellyn et al. eds., 2010), http://bit.ly/11U4Tgw.

[54]See Loran B. Kundra & Leslie B. Alexander, *Termination of Parental Rights Proceedings: Legal Considerations and Practical Strategies for Parents with Psychiatric Disabilities and the Practitioners Who Serve Them,* 33 Psychiatric Rehabilitation Journal 142, 143 (2009).

[55]See National Alliance on Mental Illness (2013), www.nami.org; Perelman School of Medicine, University of Pennsylvania, UPenn Collaborative on Community Integration (n.d.), http://bit.ly/Ts09MN.

[56]Megan Kirshbaum & Rhoda Olkin, *Parents with Physical, Systemic, or Visual Disabilities,* 20 Sexuality and Disability 65, 74 (2002).



Subscribe to Clearinghouse Review!

Clearinghouse Review: Journal of Poverty Law and Policy is the advocate's premier resource for analysis of legal developments, innovative strategies, and best practices in representing low-income clients. Each issue of the Review features in-depth, analytical articles, written by experts in their fields, on topics of interest to lawyers who represent low-income people. The Review covers such substantive areas as civil rights, family law, disability, domestic violence, housing, elder law, health, and welfare reform.

Get Your Online Subscription Today!

- Clearinghouse Review: Journal of Poverty Law and Policy is published online six times per year.
- Your subscription includes online access to the current issue and the archive of articles published since 1967. With this online access—your "site license"—your organization's entire staff will enjoy fully searchable access to a wealth of poverty law resources, accessible from any computer or mobile device.
- Newly subscribing nonprofit programs are entitled to special discounts on our Training Programs.
- Each subscriber receives *Clearinghouse Review News*, a monthly e-newsletter that covers matters of interest to poverty and public interest law practitioners.

CUT HERE

Please fill out the following form to receive more information about subscribing to Clearinghouse Review.

Name _____

Organization _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

Subscriber	**Annual Price**
☐ Nonprofit organization	$300–$1,800 (varies with size of operating budget)
☐ Law school library	$500
☐ Individual	$400

Please e-mail this form to subscriptions@povertylaw.org.
Or fax this form to Subscriptions at 312.263.3846.

Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602