

# Understanding the impact of the ADA and disability rights on Child Welfare



## Definitions

**ADA:** The Americans with Disabilities Act

**Companion:** As it relates to Title II and Section 504. May include any family member, friend, or associate of a person seeking or receiving child welfare services.

**DCYF:** Department of Children, Youth, and Families

**Disability:** Both the ADA and Section 504 define a disability as: “a physical or mental impairment that substantially limits one or more major life activities.” Major life activities include things such as caring for oneself, performing manual tasks, breathing, speaking, walking, reading, learning, concentrating, seeing, hearing, eating, sleeping, or working. Major life activities also include the operation of bodily functions, including things like functions of the immune system, digestive, bowel or bladder, neurological, brain, or reproductive functions.

**Section 504:** Section 504 of the Rehabilitation Act of 1973 is a federal law that protects individuals from discrimination based on disability. Section 504 states no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of any entity that receives federal financial assistance.

**Title II:** Title II of the ADA prohibits an individual with a qualified 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 such entity. Title II includes child welfare agencies and court systems.

## Responsibility

- ✓ The agency and its employees are required to ensure that services are accessible for parents and children with disabilities engaged with DCYF.
- ✓ Services and programs are to be modified to ensure participants can benefit from them.
- ✓ Programs must provide people with disabilities an equal opportunity to participate in, and benefit from, the programs, services, and activities of the entity.
- ✓ Programs must provide reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination.
- ✓ DCYF and its employees will take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are effective through the provision of auxiliary aids and services.

DCYF and its employees, have a responsibility to provide individualized case service planning that is free of assumptions based on an individual's disability. The agency is responsible for ensuring Washington's children, youth, and families have full and equal opportunity to access DCYF's programs and services.

For additional information regarding ADA accommodations, please contact the ADA Coordinator at 360-480-7230 or email [dcyf.adaaccessibility@dcyf.wa.gov](mailto:dcyf.adaaccessibility@dcyf.wa.gov).

## Fundamental Principles under Title II of the ADA and Section 504

### Individualized Treatment.

Individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence. For example, removing children from a parent with a disability based on the stereotypical belief, unsupported by an individual assessment, that people with disabilities are unable to parent safely is prohibited. Individualized treatment was emphasized by the 2021 Washington Supreme Court Decision M.A.S.C.

**Example:** When discussing safety threats, the conversation should be focused on a parent's behaviors and/or actions. The mere existence of a disability should not be listed or viewed as a safety threat.



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## Full and Equal Opportunity.

Individuals with disabilities must be provided the same opportunities to benefit from or participate in child welfare programs, services, and activities that are equal to those extended to individuals without disabilities. In providing full and equal opportunity, a child welfare agency must make reasonable modifications and ensure effective communication.

### a. Reasonable Modification

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Providing reasonable modification may require DCYF to provide enhanced, additional, or supplemental aids, benefits, and services different than those provided to other parents when necessary to ensure an equal opportunity to obtain the same result or gain the same benefit. The 2021 Washington M.A.S.C decision highlighted the importance of making reasonable modifications for parents with intellectual/developmental disabilities or other similar neurological conditions.

**Example 1:** If parenting classes are provided and a parent with an intellectual disability requires a different method of instruction or more instruction time for repetition and practice, the agency should provide the parent with the extended time and/or method of teaching that the parent needs as a reasonable modification under the ADA.

**Example 2:** A parent with a cognitive impairment, such as a Traumatic Brain Injury or other neurological conditions, including intellectual/developmental disabilities, may have deficits impacting cognitive processes or mental skills that assist an individual plan, monitor, and execute their goals. These skills or processes are often referred to as executive functions and include things like attentional control, working memory, inhibition, and problem-solving. Some individuals experiencing executive functioning deficits may require a note-taker or real-time captioning to be provided during meetings and hearings to assist in comprehension. The provision of such service would be viewed as a reasonable modification and as providing effective communication under the ADA.

### b. Effective Communication

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DCYF must provide effective communication under the ADA to ensure parents with a cognitive disability understands the services being offered.

Appropriate steps — including the provision of aids and services, such as sign language interpreters, note takers, using plain language, and others — must be taken to ensure that individuals with communication and processing disabilities understand what is said or written and can communicate as effectively as individuals without disabilities. Child welfare agencies must give primary consideration to the aid or service requested by the individual. Some individuals may not know what types of aids or services could be provided to assist them in understanding what is being communicated. If questions arise as to which aid or service to provide to ensure effective communication, contact DCYF's ADA Coordinator.

Examples of aids and services include, among others, qualified interpreters, note-takers, real-time captioning, accessible electronic and information technology, written materials, and assisted listening devices or systems, audio recordings, braille materials, large print materials, etc.

The provision of effective communication may change depending on the setting, the number of people involved, and the topic of discussion. The type of aid or service will vary in accordance with the method of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.

**Example 1:** For case meetings involving a parent who is D/deaf, providing in-person sign language interpreters may be needed. For a simple message such as an appointment date or address, a handwritten note or text may be sufficient.

*Note: communicating via writing notes could be used for very simple conversations. Sign Language is a distinct language in and of itself, it is not English, thus individuals who speak Sign Language will have varying abilities to understand written English.*

**Example 2:** The provision of a note taker may be sufficient for meetings between a caseworker and parent, but more complex meetings such as Family Team Decision Meetings, Shared Planning Meetings, etc. may require real-time captioning.

If you believe you have a case involving an individual with a disability that may require a reasonable modification(s) or auxiliary aids or services to ensure effective communication, please contact DCYF's ADA Coordinator at 360-480-7230 or by email at [dcyf.adaaccessibility@dcyf.wa.gov](mailto:dcyf.adaaccessibility@dcyf.wa.gov).