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# BARRIERS AND FACILITATORS TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT BY THE CHILD WELFARE SYSTEM: INSIGHTS FROM INTERVIEWS WITH DISABLED PARENTS, CHILD WELFARE WORKERS, AND ATTORNEYS

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*The Americans with Disabilities Act (ADA) was passed thirty years ago with the promise of “equality of opportunity” for people with disabilities. Notwithstanding, a nascent body of scholarship indicates that parents with disabilities experience substantial and pervasive inequities within the child welfare system, and that the ADA is often disregarded or misapplied by child welfare agencies and courts. Yet, despite extensive legal and social science scholarship about child welfare system involvement among parents with disabilities, no studies have empirically examined why the ADA is not effectively safeguarding the rights of parents with disabilities.*

*This Article responds to that scholarly void and offers novel and critically needed data on the barriers and facilitators to compliance with the ADA by the child welfare system. This Study draws qualitative data from forty-five in-depth*

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*interviews with parents with disabilities, child welfare workers, and parents' attorneys. Three themes emerged from the data indicating barriers and facilitators that affect compliance with the ADA by the child welfare system. First, knowledge, training, and information about the ADA by parents with disabilities, child welfare workers, and legal professionals impede or enable ADA compliance. Second, institutional support—especially well-defined agency policies and procedures about the ADA, agency culture and leadership, and resource availability—impact compliance with the ADA. Third, factors related to the legal and social context in which cases involving disabled parents occur—particularly tensions between children's rights and parents' rights and issues relating to the intersection between disability and child welfare law—are barriers or facilitators to ADA compliance. This Article concludes by identifying critical areas for further research and discussing the policy and practice implications of the findings.*

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## INTRODUCTION

For nearly five years, a mother with an intellectual disability fought the state of Michigan to regain custody of her daughter and son. The mother's battle to reunite with her children began in April 2012, when she brought her infant daughter to the Michigan Department of Health and Human Services (Department) because she was having difficulty caring for her daughter.<sup>1</sup> The mother was homeless and desperately in need of assistance.<sup>2</sup> The Department took custody of the infant and placed her in foster care.<sup>3</sup> In January 2013, a treatment plan was developed, which, among other things, required the mother to attend parenting classes, participate in counseling, visit her daughter in a supervised setting, complete high school or obtain a GED, secure housing and income, and undergo a parenting evaluation.<sup>4</sup> The Department's treatment plan for the mother included several goals, including that she would "obtain the intellectual capacity to fully be able to care for herself and her daughter."<sup>5</sup> A month later, in February 2013, the mother gave birth to her son, who was immediately placed in foster care.<sup>6</sup>

1. *In re Hicks/Brown*, 893 N.W.2d 637, 638 (Mich. 2017).

2. *In re Hicks*, 890 N.W.2d 696, 700 (Mich. Ct. App. 2016), *aff'd in part, vacated in part sub nom. In re Hicks/Brown*, 893 N.W.2d at 638 n.1.

3. *In re Hicks/Brown*, 893 N.W.2d at 638.

4. *Id.* at 638 n.1.

5. *Id.*

6. *Id.* at 638.

For most of 2013, the mother participated in services required by the plan, despite difficulties.<sup>7</sup> At a January 2014 hearing, the mother's attorney requested individualized services tailored to meet the mother's disability-related needs.<sup>8</sup> Over the next year and a half, on at least five occasions, the mother's attorney inquired about the Department's efforts to provide the mother with services through a local community-based organization that serves parents with disabilities.<sup>9</sup> Nonetheless, she never received these services.<sup>10</sup> In January 2015, the Department filed a petition to terminate the mother's parental rights to both children, which was granted in July 2015.<sup>11</sup>

The mother appealed her case, asserting that the Department failed to provide reasonable efforts because it did not accommodate her disability as required by the Americans with Disabilities Act (ADA).<sup>12</sup> She argued that receipt of reasonable modifications could have prevented the termination of her parental rights.<sup>13</sup> In turn, the Department and the children's lawyer-guardian ad litem contended that the mother had waived such a claim because she had not raised the issue previously.<sup>14</sup> The Court of Appeals disagreed, finding that the mother had preserved her claim sufficiently, as demonstrated by her attorney's many objections before the termination proceedings concerning the inadequate services the Department was providing her.<sup>15</sup> The Court concluded, therefore, that because the mother's treatment plan failed to include reasonable modifications, she was not offered an opportunity to benefit from the proffered services.<sup>16</sup> Accordingly, the Court found that the termination was premature.<sup>17</sup>

The children's lawyer-guardian ad litem appealed the Court's decision. The Michigan Supreme Court affirmed the Court of Appeals' decision, holding that the Department must make reasonable efforts in most child welfare system cases, and its duties under Title II of the ADA "dovetail" with this requirement.<sup>18</sup> Specifically, the court stated:

Absent reasonable modifications to the services or programs offered to a disabled parent, the Department has failed in its duty under the ADA to reasonably accommodate a disability. In turn, the Department has failed in its duty . . . to offer services designed to facilitate [reunification] . . . and has, therefore, failed in its duty to make reasonable efforts at reunification . . .<sup>19</sup>

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7. *Id.*

8. *Id.* at 638-39.

9. *Id.* at 639.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 639-40.

19. *Id.* at 640.

The Court found that “efforts at reunification cannot be reasonable...unless the Department modifies its services as reasonably necessary to accommodate a parent’s disability. And termination is improper without a finding of reasonable efforts.”<sup>20</sup>

While this case ultimately had a positive outcome, this mother’s experience illustrates an all-too-common issue facing parents with disabilities: Child welfare agencies and courts regularly disregard the ADA, particularly at the termination of parental rights phase.<sup>21</sup> Although the ADA<sup>22</sup> was passed thirty years ago to ensure “equality of opportunity”<sup>23</sup> for people with disabilities, disabled people are still fighting for their fundamental right to parent.<sup>24</sup> In other words, the ADA is not protecting the rights of parents with disabilities involved with the child welfare system, although it should. Notwithstanding a burgeoning body of scholarship that has documented the adverse experiences disabled parents and their families face when engaged with the child welfare system, no study has empirically elucidated why the ADA is not effectively safeguarding these parents’ rights. In particular, no research concerning the ADA and the child welfare system has collectively examined the experiences and perspectives of the individuals most intimately involved in these cases: parents with disabilities, child welfare workers, and attorneys who represent parents (“parents’ attorneys”). Not including the insights of these individuals is a substantial omission from an otherwise considerable body of research. This Article begins to fill that gap.

Through in-depth qualitative interviews with disabled parents, child welfare workers, and parents’ attorneys, this Study offers novel and critically needed data on the barriers and facilitators to compliance with the ADA by the child welfare system, as perceived and experienced by the parents and professionals who

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20. *Id.* at 642.

21. See Alexis C. Collentine, *Respecting Intellectually Disabled Parents: A Call for Change in State Termination of Parental Rights Statutes*, 34 HOFSTRA L. REV. 535, 562 (2005); Susan Kerr, *The Application of the Americans with Disabilities Act to the Termination of Parental Rights of Individuals with Mental Disabilities*, 16 J. CONTEMP. HEALTH L. & POL’Y 387, 411-25 (2000); Jude T. Pannell, *Unaccommodated: Parents with Mental Disabilities in Iowa’s Child Welfare System and the Americans with Disabilities Act*, 59 DRAKE L. REV. 1165, 1176-81 (2011); Charisa Smith, *Making Good on an Historic Federal Precedent: Americans with Disabilities Act (ADA) Claims and the Termination of Parental Rights of Parents with Mental Disabilities*, 18 QUINN. HEALTH L.J. 191, 221-28 (2015); Susan Stefan, *Accommodating Families: Using the Americans with Disabilities Act to Keep Families Together*, 2 ST. LOUIS U. J. HEALTH L. & POL’Y 135, 161-64 (2008); Chris Watkins, *Beyond Status: The Americans with Disabilities Act and the Parental Rights of People Labeled Developmentally Disabled or Mentally Retarded*, 83 CALIF. L. REV. 1415, 1440-47 (1995).

22. Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134 (1990).

23. *Id.* at § 12101(a)(7).

24. Dave Shade, *Empowerment for the Pursuit of Happiness: Parents with Disabilities and the Americans with Disabilities Act*, 16 LAW & INEQ. 153, 153-154 (1998) (“Although persons with disabilities have made significant gains in recent years in overcoming the invidious discrimination with which they have long been burdened, the legal rights of parents with disabilities remain in question.” (footnote omitted)).

support them. This Study has two overarching research questions. First, what are disabled parents', child welfare workers', and parents' attorneys' experiences related to compliance with the ADA by the child welfare system? Second, what do disabled parents, child welfare workers, and parents' attorneys perceive as the barriers and facilitators to compliance with the ADA by the child welfare system? Understanding these unique experiences and viewpoints is essential to the development and implementation of policies and practices that advance compliance with the ADA by the child welfare system as well as to ensuring that parents with disabilities and their families are afforded their rights.

This Article is organized as follows. Part I discusses the experiences of parents with disabilities who are involved with the child welfare system. Specifically, this Part begins by describing inequities experienced by disabled parents involved with the child welfare system, including potential causes of these disparities. It then explains the ADA and its applicability to the child welfare system, including a brief discussion about the difficulties enforcing the law in the courtroom and emerging legislative and judicial trends that suggest an increased understanding of how the ADA protects the rights of parents with disabilities. Part II explains the Study's methodology and data, including information about the Study's sample, data collection, and data analysis. Part III presents and discusses the findings, which are organized according to the barriers and facilitators to compliance with the ADA by the child welfare system: (1) knowledge, training, and information; (2) institutional support; and (3) legal and social context. Finally, drawing on the data, Part IV concludes by exploring the implications of this Study for future research as well as policymaking and practice.

The Study has notable limitations, namely the general nature of its findings in light of the sample's size and homogeneity. Selection bias and recall bias also limit the Study's findings. Notwithstanding, as the first investigation of the barriers and facilitators to the child welfare system's compliance with the ADA, this Study offers a novel contribution to our understanding of this issue and raises important questions for future scholarship. Secondly, we call for centering voices from marginalized communities, including people with disabilities, in both legal scholarship as well as the development and implementation of policies and programs that impact them.<sup>25</sup>

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25. Commenters have explained the importance of including marginalized communities' perspectives when developing and implementing policies and programs that affect them. See Amber Baylor & Daria Fisher Page, *Emerging Coalitions: Challenging the Structures of Inequality: Developing a Pedagogy of Beneficiary Accountability in the Representation of Social Justice Non-Profit Organizations*, 45 SW. L. REV. 825, 826 (2016) ("If we believe that lawyers can make a difference in communities—and that social justice non-profit organizations are a vehicle for doing so—we need to fully understand our obligations and relationship to the beneficiary community explicitly targeted by an organization's mission statement. When an advocacy organization works to advance the rights of marginalized individuals, how do the lawyers ensure that the 'advancements' sought are what those individuals want and that the process reflects their world view? When a legal

## I. PARENTS WITH DISABILITIES AND THE CHILD WELFARE SYSTEM

“More families are headed by a parent with a disability than ever before[,]” say researchers.<sup>26</sup> Current prevalence estimates range from 2.9 million<sup>27</sup> to 4.1 million<sup>28</sup> to roughly ten percent<sup>29</sup> of parents in the United States have a disability. And that number is expected to grow as people with disabilities enjoy greater opportunities to participate in their communities.<sup>30</sup> At the same time, longstanding research indicates that parents with disabilities and their families experience striking disparities within the child welfare system.<sup>31</sup> To that end, this Part begins with a brief discussion of the inequities experienced by disabled parents involved with the child welfare system. Thereafter, it explains the ADA’s application to the child welfare system, including an overview of difficulties enforcing the law in the courtroom.

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services organization providing representation for indigent families decides to expand their services, how do the lawyers determine what would really be helpful to their clients and their children?”). Building off this recognition in the legal scholarship as well as the disability community’s ethos: “Nothing about us, without us,” this Study intentionally included the voices of people with disabilities, thereby acknowledging the essential role people with disabilities must have in the development and implementation of policies and programs that impact them. See JAMES I. CHARLTON, *NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT* 3-4 (1998); Peter Beresford, *Service Users, Social Policy and the Future of Welfare*, 21 CRITICAL SOC. POL’Y 494, 508 (2001) (“Service users are demanding that social policy goes beyond seeing them as a data source. Service users and their organisations can and want to offer their own analyses, interpretations and plans for action. They want to develop their own practice, services and organisations instead of just being subject to other people’s. One of the ironies of social policy is that while the discipline has been slow to include service users, movements like the disabled people’s movement can now probably exert more political influence than the discipline can.” (citations omitted)).

26. 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 PSYCH. REHAB. J. 142, 142 (2009) (footnote omitted).

27. Henan Li et al., *Health of U.S. Parents with and Without Disabilities*, 10 DISABILITY & HEALTH J. 303, 305 (2017).

28. H. Stephen Kaye, *Current Demographics of Parents with Disabilities in the U.S.*, BERKELEY, CA: THROUGH THE LOOKING GLASS (2012), <https://perma.cc/24QA-6QW8> (for a document listing a summary of national figures: <https://perma.cc/QG2X-PSQU>).

29. Rajan Sonik et al., *Parents with and Without Disabilities: Demographics, Material Hardship, and Program Participation*, 14 REV. OF DISABILITY STUD.: AN INT’L J. 1, 7 (2018).

30. NAT’L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* 45 (2012) [hereinafter *ROCKING THE CRADLE*], <https://perma.cc/4FZG-F66U> (“Millions of parents throughout the United States have disabilities, and this number is likely to grow as people with disabilities become increasingly independent and integrated into their communities.”); see also Maurice A. Feldman, *Parents with Intellectual Disabilities: Implications and Interventions*, in *HANDBOOK OF CHILD ABUSE RESEARCH AND TREATMENT* 401, 401-402 (John R. Lutzker ed., 1998) (asserting that the number of parents with intellectual disabilities continues to grow because of deinstitutionalization).

31. *ROCKING THE CRADLE*, *supra* note 30, at 106 (“Parents with disabilities face multiple layers of discrimination from the moment they enter the child welfare system.”).



## A. Overview of the Issues

Decades of research indicate that parents with disabilities and their families are more likely to be involved with the child welfare system and to have their parental rights terminated, compared to nondisabled parents.<sup>32</sup> A recent study of national child welfare system data revealed that nineteen percent of children in the foster care system were placed there, at least in part, because of parental disability, and five percent were in foster care solely because of parental disability.<sup>33</sup> That same study found that children of parents with disabilities were less likely to be returned to their parents, and that the odds of termination of parental rights among disabled parents were twenty-two percent higher than among parents without disabilities.<sup>34</sup> Existing scholarship has shown that parents with intellectual disabilities are especially vulnerable to child welfare system involvement, and have their children permanently removed at rates ranging from thirty to fifty percent.<sup>35</sup> The rates of child welfare system involvement and child removal from parents with psychiatric disabilities are also shockingly high, with some researchers documenting rates as high as eighty percent.<sup>36</sup>

To be sure, “[child welfare system] involvement is not necessarily a proxy

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32. *Id.* at 72 (“Parents with disabilities and their families are frequently, and often unnecessarily, forced into the system and, once involved, lose their children at disproportionately high rates.”).

33. Elizabeth Lightfoot & Sharyn DeZelar, *The Experiences and Outcomes of Children in Foster Care Who Were Removed Because of a Parental Disability*, 62 CHILD. & YOUTH SERVS. REV. 22, 23 (2016).

34. *Id.* at 26.

35. See, e.g., Tim Booth & Wendy Booth, *Findings from a Court Study of Care Proceedings Involving Parents with Intellectual Disabilities*, 1 J. POL’Y & PRAC. INTELL. DISABILITIES 179, 180 (2004); Tim Booth et al., *Care Proceedings and Parents with Learning Difficulties: Comparative Prevalence and Outcomes in an English and Australian Court Sample*, 10 CHILD & FAM. SOC. WORK 353, 355 (2005); Feldman, *supra* note 30, at 401; Maurice Feldman et al., *Effectiveness of Home-Based Early Intervention on the Language Development of Children of Mothers with Mental Retardation*, 14 RES. DEVELOP. DISABIL. 387, 404 (1993); Gwynnyth Llewellyn et al., *Prevalence and Outcomes for Parents with Disabilities and their Children in an Australian Court Sample*, 27 CHILD ABUSE & NEGLECT 235, 239 (2003); David McConnell et al., *Parental Cognitive Impairment and Child Maltreatment in Canada*, 35 CHILD ABUSE & NEGLECT 621, 628 (2011).

36. See, e.g., Jill G. Joseph et al., *Characteristics and Perceived Needs of Mothers with Serious Mental Illness*, 50 PSYCHIATRIC SERVS. 1357, 1358 (1999); Carol Mowbray et al., *Motherhood for Women with Serious Mental Illness: Pregnancy, Childbirth, and the Postpartum Period*, 65 AMER. J. ORTHOPSYCHIATRY 21, 33 (1995); Roberta G. Sands et al., *Maternal Custody Status and Living Arrangements of Children of Women with Severe Mental Illness*, 29 HEALTH & SOC. WORK 317, 320 (2004); see also Katy Kaplan et al., *Child Protective Service Disparities and Serious Mental Illnesses: Results from a National Survey*, 70 PSYCHIATRIC SERVS. 202, 204 (2019) (finding that parents with psychiatric disabilities were eight times more likely than other parents to be involved with the child welfare system); Jung Min Park et al., *Involvement in the Child Welfare System Among Mothers with Serious Mental Illness*, 57 PSYCHIATRIC SERVS. 493, 494 (2006) (finding mothers with psychiatric disabilities were three times more likely than other mothers to have had child welfare system involvement or had their children removed).

for child maltreatment. In other words, it is not clear that the disproportionately high rate of [child welfare system] involvement necessarily reflects a more significant risk of child maltreatment among parents with [disabilities].”<sup>37</sup> According to the National Council on Disability, an independent federal agency, “high-quality studies indicate that [parental] disability alone is not a predictor of problems or difficulties in children and that predictors of problem parenting are often found to be the same for disabled and nondisabled parents.”<sup>38</sup> For example, decades of research have revealed that there is no relationship between parenting capabilities and intelligence, disputing presumptions that parents with intellectual disabilities are inherently unfit.<sup>39</sup> Likewise, studies have found that parents with psychiatric disabilities are not more likely to abuse or neglect their children than other parents.<sup>40</sup> Nevertheless, parents with disabilities and their children are at increased risk of poor health, social isolation, low socioeconomic status and deleterious developmental, cognitive, and emotional outcomes, which increase their chances of child welfare system involvement.<sup>41</sup> Accordingly, and consistent with the ADA, the child welfare system should focus on supporting these families instead of separating them.

Biases about parents with disabilities and their capabilities to safely raise children pervade the entire child welfare system, beginning with the initial investigation and persisting throughout families’ involvement with the system.<sup>42</sup>

37. Robyn M. Powell & Joanne Nicholson, *Disparities in Child Protective Services: Commentary on Kaplan et al. (2019)*, 70 PSYCHIATRIC SERVS. 209, 209 (2019).

38. ROCKING THE CRADLE, *supra* note 30, at 186; *see also* Robyn M. Powell, *Safeguarding the Rights of Parents with Intellectual Disabilities in Child Welfare Cases: The Convergence of Social Science and Law*, 20 CUNY L. REV. 127, 148 (2016) (“Thus, I contend that we must urgently move beyond deciding the fate of families vis-à-vis broad-based presumptions about categories of families and instead act to ensure that decisions are based on sound evidence.”).

39. *See, e.g.*, Tim Booth & Wendy Booth, *Parenting with Learning Difficulties: Lessons for Practitioners*, 23 BRIT. J. SOC. WORK, 459, 463 (1993) (“There is no clear relationship between parental competency and intelligence. . . . A fixed level of intellectual functioning is neither necessary nor sufficient for adequate parenting[,] . . . and the ability of a parent to provide good-enough child care is not predictable on the basis of intelligence alone . . . .” (internal citations omitted)).

40. Krista A. Gallagher, *Parents in Distress: A State’s Duty to Provide Reunification Services to Mentally Ill Parents*, 38 FAM. & CONCILIATION CTS. REV. 234, 239-244 (2000) (reviewing past studies).

41. *See* Int’l Ass’n for the Sci. Study of Intell. Disabilities Special Interest Research Grp. on Parents and Parenting with Intell. Disabilities, *Parents Labelled with Intellectual Disability: Position of the IASSID SIRG on Parents and Parenting with Intellectual Disabilities*, 21 J. APPLIED RES. INTELL. DISABILITIES 296 (2008) [hereinafter IASSID SIRG] (reviewing state of knowledge about parents with intellectual disabilities and their children); Joanne Nicholson & Kathleen Biebel, *Commentary on “Community Mental Health Care for Women with Severe Mental Illness who are Parents”—The Tragedy of Missed Opportunities: What Providers Can Do*, 38 CMTY MENTAL HEALTH J. 167, 169 (2002).

42. *See* ROCKING THE CRADLE, *supra* note 30, at 76 (“Beginning with the investigation into a report of child maltreatment, bias pervades the child welfare system, and ‘at any step in the process, societal prejudices, myths, and misconceptions may rear their heads.’” (internal

“Systematic discrimination by state courts, child welfare agencies, and legislatures against parents with disabilities and their families has taken a toll.”<sup>43</sup> For example, blind parents and parents with physical disabilities face assumptions that they cannot safely care for their children, while Deaf parents encounter presumptions that their children’s language development will be delayed.<sup>44</sup> Similarly, parents with psychiatric disabilities contend with stereotypes that they are a danger to their children,<sup>45</sup> and parents with intellectual disabilities are assumed to be entirely unable to care for children or learn parenting tasks.<sup>46</sup>

Other systemic issues also account for some of the inequities experienced by disabled parents and their families involved with the child welfare system. Indeed, research indicates that the child welfare system is wholly unprepared to work with parents with disabilities.<sup>47</sup> For example, child welfare workers have reported a need for additional training on assessing parents with disabilities and accessing appropriate services and supports for these families.<sup>48</sup> Parenting assessments are common in child welfare cases and are conducted to evaluate the capabilities of parents. Services and supports help parents with disabilities care for their children, such as specialized or adapted training and adaptive equipment. Similarly, parents’ attorneys and judges lack training about parents with disabilities.<sup>49</sup> Moreover, the child welfare system often fails to provide

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citations omitted)).

43. *Id.*

44. Michael Ashley Stein, *Mommy has a Blue Wheelchair: Recognizing the Parental Rights of Individuals with Disabilities*, 60 BROOK. L. REV. 1069, 1083 (1994).

45. Theresa Glennon, *Walking with Them: Advocating for Parents with Mental Illnesses in the Child Welfare System*, 12 TEMP. POL. & CIV. RTS. L. REV. 273, 291 (2003) (“Most damaging to parents involved in the child welfare system is the deeply embedded belief that individuals with mental illnesses are unpredictable and dangerous.”).

46. Watkins, *supra* note 21, at 1440 (“[T]he labels of developmentally disabled and mentally retarded are often misleading because they have little, if any, predictive value regarding individual capability. Nonetheless, statutes and courts often use a ‘diagnosis’ of developmental disability or mental retardation both to explain past behavior and to predict future behavior.”); *see also* Powell, *supra* note 38, at 143 (“[T]here is a belief that parents with intellectual disabilities are unable to learn the necessary skills to safely parent.”).

47. ROCKING THE CRADLE, *supra* note 30, at 18 (“The child welfare system is ill-equipped to support parents with disabilities and their families, resulting in disproportionately high rates of involvement with child welfare services and devastatingly high rates of parents with disabilities losing their parental rights.”).

48. Traci L. LaLiberte, *Are We Prepared? Child Welfare Work with Parents with Intellectual and/or Developmental Disabilities*, 7 J. PUB. CHILD WELFARE 633, 648 (2013).

49. *See* Stephanie N. Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 ST. LOUIS U. PUB. L. REV. 341, 343 (2009) (“[I]nsufficient judicial education of family court judges may contribute to unequal or ineffective treatment of parents with mental disabilities in the court system.”); ROCKING THE CRADLE, *supra* note 30, at 32 (“Many attorneys lack the skills and experience to meet the needs of parents with disabilities.”); *see also* Joshua B. Kay, *Representing Parents with Disabilities in Child Protection Proceedings*, 13 MICH. CHILD WELFARE L.J. 27, 31 (2009); ROCKING THE CRADLE,

appropriate and accessible services and supports to disabled parents, which makes it more difficult for families to reunify.<sup>50</sup>

Furthermore, the discrimination experienced by parents with disabilities involved with the child welfare system is also a result of the legal framework in which it exists. While the child welfare system is administered primarily by states, the federal government has played an increasing role in governing the child welfare system through the enactment of laws and funding of programs.<sup>51</sup> Specifically, three federal laws apply to the child welfare system: the Child Welfare Prevention and Treatment Act of 1974 (CAPTA),<sup>52</sup> the Adoption Assistance and Child Welfare Act of 1980 (AACWA),<sup>53</sup> and the Adoption and Safe Families Act (ASFA) of 1997.<sup>54</sup> Specifically, CAPTA, the first federal law relating to child maltreatment, provides funding for states “in support of prevention, assessment, investigation, prosecution, and treatment activities as well as grants to public agencies and nonprofit organizations for demonstration programs and projects.”<sup>55</sup> Additionally, CAPTA provides a minimum definition of child abuse and neglect.<sup>56</sup> AACWA requires child welfare agencies to make “reasonable efforts” to keep children with their parents, both to prevent or eliminate the need for removal of children from their families and to make it possible for children to be reunified with their families following removal.<sup>57</sup> Nonetheless, AACWA has been criticized for its vagueness in explaining the “reasonable efforts” standard.<sup>58</sup> Finally, ASFA was passed in response to the growing number of children who were “lingering” in foster care.<sup>59</sup> ASFA allows

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*supra* note 30, at 98-101 (discussing issues related to lack of knowledge by judges).

50. Collentine, *supra* note 21, at 548-549.

51. *Id.*; see also Frank E. Vandervort, *Federal Child Welfare Legislation*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 199-200 (Donald N. Duquette & Ann M. Haralambie eds., 2d. ed. 2010) (describing the ways in which federal laws govern the child welfare system primarily through funding rather than substantive law).

52. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101-5106 (1994)).

53. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in various sections of 42 U.S.C.).

54. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in various sections of 42 U.S.C.).

55. CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., HOW THE CHILD WELFARE SYSTEM WORKS 2-3 (2013), <https://perma.cc/38EL-YPEX>.

56. *Id.*

57. Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 TOL. L. REV. 321, 324-326 (2005); see also David J. Herring, *The Adoption and Safe Families Act—Hope and Its Subversion*, 34 FAM. L.Q. 329, 330, 336-338 (2000) (describing AACWA).

58. Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259 (2003).

59. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 649 (2006) (explaining that the Adoption and Safe Families Act was enacted in response to the “foster care drift,” which referred to children remaining in foster care for extended periods of time).

states to petition courts for termination of parental rights in cases where a child has been in foster care for 15 of the most recent 22 months (commonly known as the “15/22 rule”).<sup>60</sup> Although ASFA does not reference parental disability status at all, disabled parents often have difficulty complying with the strict timelines set forth by ASFA because effective treatment often takes longer than the mandated timelines, and appropriate services and supports usually take time to obtain.<sup>61</sup> Second, ASFA allows child welfare agencies to bypass the provision of reasonable efforts and instead terminate parental rights in limited circumstances.<sup>62</sup> Some states include a parent’s disability alongside egregious acts such as manslaughter or murder as reasons for bypassing reasonable efforts and “fast-tracking” termination of parental rights.<sup>63</sup> Further, ASFA authorizes concurrent planning, which authorizes child welfare agencies to provide reunification services to families while simultaneously planning for permanency (i.e., adoption) if reunification efforts fail.<sup>64</sup> Thus, a parent’s disability can serve as the reason a family is referred to the child welfare system and then as the justification for denying reunification.<sup>65</sup> ASFA and its focus on permanency continue to provide the framework for child welfare practice and judicial decision-making in termination of parental rights cases.

#### B. The Child Welfare System and the Americans with Disabilities Act

Thirty years ago, President George H. W. Bush signed the ADA into law, proclaiming: “Let the shameful wall of exclusion finally come tumbling down.”<sup>66</sup> The overarching aim of the ADA is to eradicate discrimination and stigma experienced by people with disabilities. In enacting the ADA, Congress found that people with disabilities had experienced pervasive isolation, segregation, and discrimination for far too long.<sup>67</sup> In furtherance of the goal of

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60. 42 U.S.C. § 675(5)(E).

61. See Ella Callow et al., *Parents with Disabilities in the United States: Prevalence, Perspectives, and a Proposal for Legislative Change to Protect the Right to Family in the Disability Community*, 17 TEX. J. C.L. & C.R. 9, 22 (2011); Christina Risley-Curtiss, et al., *Identifying and Reducing Barriers to Reunification for Seriously Mentally Ill Parents Involved in Child Welfare Cases*, 85 FAM. SOC’Y 107, 112 (2004); Colby Brunt & Leigh Goodmark, *Parenting in the Face of Prejudice: The Need for Representation for Parents with Mental Illness*, 36 CLEARINGHOUSE REV. 295, 299 (2002); Leslie Francis, *Maintaining the Legal Status of People with Intellectual Disabilities as Parents: The ADA and the CRPD*, 57 FAM. CT. REV. 21, 25 (2019); see also ROCKING THE CRADLE, *supra* note 30, at 87-88 (detailing the difficulties parents with disabilities experience related to complying with ASFA’s timelines).

62. 42 U.S.C. § 671(a)(15)(D)(i)-(iii).

63. ROCKING THE CRADLE, *supra* note 30, at 90-92 (explaining the bypass provision and its effect on parents with disabilities).

64. 42 U.S.C. § 671(a)(15)(F).

65. Watkins, *supra* note 21, at 1444.

66. Remarks on Signing the Americans with Disabilities Act of 1990, 2 PUB. PAPERS 1067 (July 26, 1990).

67. 42 U.S.C. § 12101(a).

eliminating disability-based discrimination, Congress declared that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals[.]”<sup>68</sup> This Subpart considers the ADA as it applies to the child welfare system. First, the Subpart provides an overview of the ADA, describing the law’s mandates and protections. Second, the Subpart describes the current state of compliance with the ADA by the child welfare system, focusing on lessons and limitations.

### 1. Overview of the Americans with Disabilities Act

The ADA and its predecessor, the Rehabilitation Act of 1973 (Rehabilitation Act),<sup>69</sup> established a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”<sup>70</sup> In passing the ADA, Congress vowed to protect people with disabilities from discrimination as it had previously done with other protected classes, such as race, color, sex, national origin, religion, and age.<sup>71</sup> The ADA prohibits “discrimination against disabled individuals in major areas of public life[.]”<sup>72</sup> Accordingly, the ADA is sweeping in scope, and its “breadth” necessitates that the law applies to nearly all facets of life, including “in situations not expressly anticipated by Congress.”<sup>73</sup> The ADA encompasses five distinct titles: employment (Title I); public services (Title II); places of public accommodation (Title III); telecommunications (Title IV); and miscellaneous provisions (Title V).<sup>74</sup>

Pursuant to the ADA, a person is defined as having a disability if she (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of such impairment, or (3) is regarded as having such impairment.<sup>75</sup> Major life activities include, *inter alia*, caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, learning, communicating, and working.<sup>76</sup> In 2008, Congress amended the ADA to clarify that (1) “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active”<sup>77</sup> and (2) a “[d]etermination whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating

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68. 42 U.S.C. § 12101(a)(7).

69. 29 U.S.C. § 701-796.

70. 42 U.S.C. § 12101(b)(1).

71. 42 U.S.C. § 12101(a)(4).

72. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001).

73. *Penn. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (quotation marks omitted).

74. 42 U.S.C. § 12101-12213.

75. 42 U.S.C. § 12102(1).

76. 42 U.S.C. § 12102(2)(A).

77. 42 U.S.C. § 12102(4)(D).

measures.”<sup>78</sup> Hence, the definition of disability should be interpreted broadly.<sup>79</sup>

With respect to the child welfare system, Title II is the most relevant because it governs access to state and local government agencies and instrumentalities, including child welfare agencies and courts.<sup>80</sup> According to Title II of the ADA:

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.<sup>81</sup>

A “qualified individual” is defined as a disabled person who “meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity” with or without “reasonable modifications,” “auxiliary aids and services,” or “the removal of architectural or communication barriers.”<sup>82</sup>

Under Title II of the ADA, the child welfare system (including child welfare agencies and courts), must, *inter alia*: (1) provide people with disabilities an equal opportunity to participate in services, programs, and activities;<sup>83</sup> (2) administer services, programs, and activities in the most integrated setting appropriate to the needs of people with disabilities;<sup>84</sup> (3) not impose or apply eligibility criteria that screen out or tend to screen out people with disabilities;<sup>85</sup> (4) provide auxiliary aids and services;<sup>86</sup> (5) not place surcharges on people with disabilities to cover the costs of measures to ensure nondiscriminatory treatment;<sup>87</sup> and (6) not deny benefits, activities, and services to people with disabilities because entities’ facilities are inaccessible.<sup>88</sup> The child welfare system must also comply with regulations related to physical accessibility,<sup>89</sup> and provide “reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination based on disability.”<sup>90</sup>

Significantly, the ADA requires individualized treatment of people with disabilities. Hence, public and private entities, including the child welfare system, must treat disabled people on a case-by-case basis, consistent with facts

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78. 42 U.S.C. § 12102(4)(E)(i).

79. 42 U.S.C. § 12102(4)(A).

80. 28 C.F.R. § 35.102 (2019); 28 C.F.R. pt. 35 app. B § 35.102 (2019) (“Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance.”).

81. 42 U.S.C. § 12132.

82. 42 U.S.C. § 12131(2).

83. 28 C.F.R. § 35.130(b)(1)(ii) (2019).

84. 28 C.F.R. § 35.130(d) (2019).

85. 28 C.F.R. § 35.130(b)(8) (2019).

86. 28 C.F.R. §§ 35.160(a)(1), 35.160(b)(1), 35.164 (2019).

87. 28 C.F.R. § 35.130(f) (2019).

88. 28 C.F.R. § 35.130(b)(1)(i) (2019).

89. 28 C.F.R. §§ 35.150-35.151 (2019).

90. 28 C.F.R. § 35.130(b)(7)(i) (2019).

and objectives, and may not act based on stereotypes and generalizations about people with disabilities.<sup>91</sup> Individualized treatment is especially pertinent when considering issues of accessibility and reasonable modifications. Access is only meaningful when it considers a person's specific disabilities and needs.<sup>92</sup> As such,

the determination of whether a particular modification is "reasonable" involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it.<sup>93</sup>

Child welfare agencies, however, are not required to provide reasonable modifications if they would result in (1) a fundamental alteration of the nature of the activities, programs, or services offered;<sup>94</sup> (2) an undue financial and administrative burden;<sup>95</sup> or (3) a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.<sup>96</sup> In other words, child welfare agencies can legally refuse to provide a reasonable modification if they can prove that doing so would significantly change the nature of the service, be too expensive, or result in danger to others.

In sum, the ADA is a far-reaching federal law that proffers people with disabilities strong protections against discrimination in nearly all aspects of life. However, as described below, the ADA has not met its full potential in terms of ensuring the rights of disabled parents involved with the child welfare system.

## 2. Application of the Americans with Disabilities in the Child Welfare System: Lessons and Limitations

Undeniably, the ADA *should* protect the rights of parents with disabilities. The ADA's legislative history shows that Congress considered discrimination against parents with disabilities when it enacted the law in 1990. During Congressional hearings, for example, a witness explained that "historically,

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91. See, e.g., 28 C.F.R. § 35.130(b) (2019); see also 28 C.F.R. pt. 35, app. B § 35.130 (2019) (explaining in the 1991 Section-by-Section guidance to the Title II regulation that, "[t]aken together, the[] provisions [in 28 C.F.R. § 35.130(b)] are intended to prohibit exclusion . . . of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not presumptions as to what a class of individuals with disabilities can or cannot do.").

92. See *PGA Tour, Inc.*, 532 U.S. 661, 691 (2001) (deeming an individualized inquiry among the ADA's most "basic requirement[s]").

93. *Mary Jo C. v. N.Y.S. & Local Ret. Sys.*, 707 F.3d 144, 153 (2d Cir. 2013) (quoting *Staron v. McDonald's Corp.*, 51 F.3d 353, 356 (2d Cir. 1995)).

94. 28 C.F.R. §§ 35.150, 30.164 (2019).

95. *Id.*

96. *Id.* §§ 36.302-.303 (2019).



child-custody suits almost always have ended with custody being awarded to the non-disabled parent.”<sup>97</sup> Another witness testified about discriminatory policies and practices that affected disabled people in all aspects of life, including in “securing custody of their children.”<sup>98</sup> Another witness stated that “being paralyzed has meant far more than being unable to walk—it has meant...being deemed an ‘unfit parent[.]’”<sup>99</sup> Likewise, the U.S. Commission on Civil Rights found that several parents with disabilities “have had custody of their children challenged in proceedings to terminate parental rights and in proceedings growing out of divorce.”<sup>100</sup> However, to date, scholars and advocates contend the ADA has not prevented discrimination against disabled parents involved with the child welfare system, particularly in termination of parental rights proceedings, where courts often misapply the statute.<sup>101</sup>

Despite the ADA’s apparent applicability to the child welfare system, most courts have held that the law is not a defense in termination of parental rights proceedings.<sup>102</sup> In fact, courts have overwhelmingly favored child welfare agencies in termination of parental rights cases involving disabled parents.<sup>103</sup> Some courts have refused to apply the ADA, reasoning that termination of parental rights proceedings are not a “service, program, or activity” within the meaning of the ADA.<sup>104</sup> Other courts have held that applying the ADA in

97. *Americans with Disabilities Act of 1988: Joint Hearing on S. 2345 Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Human Res. and the Subcomm. on Select Educ. of the House Comm. on Educ. and Labor*, 100th Cong. 2d Sess. (1988) (testimony of Arlene Mayerson), reprinted in 2 LEGIS. HIST. OF PUB. L. NO. 101-336: THE AMERICANS WITH DISABILITIES ACT, 100TH CONG., 2D SESS., at 1611 n.10 (1990) (quoting Carolyn L. Vash & Nancy M. Crewe, *THE PSYCHOLOGY OF DISABILITY* 155 (1931)).

98. H.R. REP. NO. 101-485, at 25 (1990).

99. H.R. REP. NO. 485, pt. 2, at 41 (1990).

100. U.S. COMM’N ON CIVIL RIGHTS, *ACCOMMODATING THE SPECTRUM OF INDIVIDUAL ABILITIES* 51 (1983).

101. See Robyn M. Powell et al., *The Americans with Disabilities Act and Termination of Parental Rights Cases: An Examination of Appellate Decisions Involving Disabled Mothers*, 39 YALE L. & POL’Y REV. (forthcoming 2021) (manuscript at 14) (on file with authors) (empirical study finding that the ADA was only raised in six percent of appellate termination of parental rights cases involving disabled parents and raised in less than two percent of decisions); see also Collentine, *supra* note 21, at 562 (“It follows that the ADA should apply and that delayed parents who have had their rights terminated on basis of their delays should have a strong cause of action. However, actions appealing a termination of parental rights under the ADA have not been successful.”); Smith, *supra* note 21, at 192 (“Previously, courts were extremely split on whether the ADA could be utilized by parents with mental disabilities in the child welfare context.”).

102. ROCKING THE CRADLE, *supra* note 30, at 93.

103. *Id.*

104. See, e.g., *In re B.S.*, 693 A.2d 716, 720 (Vt. 1997); *In re B.K.F.*, 704 So. 2d 314, 317 (La. Ct. App. 1997); *In re Antony B.*, 735 A.2d 893, 899 (Conn. App. Ct. 1999); *In re Anthony P.*, 84 Cal. App. 4th 1112, 1116 (2000); *Adoption of Gregory*, 747 N.E.2d 120, 120-121 (Mass. 2001); *In re Chance Jahmel B.*, 723 N.Y.S.2d 634, 639 (N.Y. Fam. Ct. 2001); *In re La’Asia S.*, 739 N.Y.S.2d 898, 907-08 (N.Y. Fam. Ct. 2002); *In re Kayla N.*, 900 A.2d 1202, 1208 (R.I. 2006), *cert. denied*; *Irving N. v. R.I. Dep’t of Children, Youth, & Families*,

termination of parental rights proceedings would circumvent children's rights in the interest of parents' rights.<sup>105</sup> Meanwhile, other courts have asserted the ADA does not supersede the obligations of state dependency laws.<sup>106</sup> Relatedly, courts have held that although the ADA is not a defense to termination of parental rights, a parent may bring a separate ADA action related to the provision of services.<sup>107</sup> In short, several state courts have rejected ADA claims in termination of parental rights proceedings.<sup>108</sup>

While courts have historically refused to apply the ADA in termination of parental rights proceedings, emerging reforms to state laws and recent decisions indicate progress is being made in ensuring the rights of parents with disabilities.<sup>109</sup> For example, nearly 30 states have introduced or passed legislation aimed at protecting the rights of disabled parents. Similarly, recent termination of parental rights opinions also suggest courts may be shifting with respect to applying the ADA in these cases. As previously described, in a 2017 unanimous opinion, the Michigan Supreme Court reversed a termination of parental rights decision, finding ADA violations in a case involving a mother with an intellectual disability.<sup>110</sup> More recently, in 2019, the Colorado Court of Appeals held that a child welfare agency fails to comply with its duties under the ADA, as well as its reasonable efforts mandates, if it does not make reasonable modifications to case plans and services provided to parents with disabilities.<sup>111</sup> In this case, the parents had intellectual and psychiatric disabilities and were referred to the child welfare agency because their infant experienced several medical conditions, including "failure to thrive."<sup>112</sup> The lower court determined that the parents' disabilities severely limited their ability to care for the child.<sup>113</sup> Although the appeal was ultimately unsuccessful, the ruling about the

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549 U.S. 1252 (2007).

105. See, e.g., *J.T. v. Ark. Dep't Human Servs.*, 947 S.W.2d 761, 768 (Ark. 1997); *People v. T.B.*, 12 P.3d 1221, 1223-1224 (Colo. Ct. App. 2000); *In re Anthony P.*, 84 Cal. App. 4th at 1116; *In re Guardianship of R.G.L.*, 782 A.2d 458, 472-73 (N.J. Super. Ct. App. Div. 2001); *Gregory*, 747 N.E.2d at 121.

106. See, e.g., *In re Torrance P.*, 522 N.W.2d 243, 246 (Wisc. Ct. App. 1994); *In re Antony B.*, 735 A.2d at 899; *T.B.*, 12 P.3d at 1224; *In re Doe*, 60 P.3d 285, 291 (Haw. 2002).

107. See, e.g., *In re Torrance P.*, 522 N.W.2d at 246; *In re B.S.*, 693 A.2d at 721; *In re B.K.F.*, 704 So. 2d at 318; *In re Antony B.*, 735 A.2d at 899 n.9; *In re Anthony P.*, 84 Cal. App. 4th at 1116; *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000); *In re Harmon*, No. 00 CA 2693, 2000 WL 1424822, \*12 (Ohio Ct. App. Sept. 25, 2000); *In re Chance Jahmel B.*, 723 N.Y.S.2d at 640; *In re Doe*, 60 P.3d at 291, 293.

108. Joshua B. Kay, *The Americans with Disabilities Act: Legal and Practical Applications in Child Protection Proceedings*, 46 CAP. U. L. REV. 783, 809 (2018).

109. *Id.* at 812. ("While the ADA has had a rocky history in child protection courts, particularly as a defense to termination of parental rights, there are signs of progress in state statutes and court decisions.")

110. *In re Hicks/Brown*, 893 N.W.2d 637 (Mich. 2017).

111. *People ex. rel. S.K.*, 440 P.3d 1240, 1251-52 (Colo. App. 2019).

112. *Id.* at 1245-48.

113. *Id.* at 1248.

intersection of the ADA and reasonable efforts was important.

The United States Department of Justice (DOJ) and the United States Department of Health and Human Services (HHS) have also stated that the child welfare system must comply with the ADA. In January 2015, the Departments issued a joint letter of findings, holding that the Massachusetts Department of Children and Families violated the ADA and Rehabilitation Act by acting based on assumptions about the capabilities of a mother with an intellectual disability and failing to provide that mother and her daughter with appropriate services and supports.<sup>114</sup> Later that year, in August, the DOJ and HHS released technical guidance concerning the child welfare system's legal mandates vis-à-vis the ADA and Rehabilitation Act.<sup>115</sup> More recently, in November 2019, the Office for Civil Rights at HHS entered into a voluntary resolution agreement with the Oregon Department of Human Services relating to the rights of parents with disabilities after the state's child welfare agency removed two infant children from a mother and father with disabilities and denied the parents effective and meaningful opportunities to reunite with their children because of their disabilities.<sup>116</sup> Although the agreement did not explicitly declare that Oregon violated the ADA and Rehabilitation Act, it confirmed that the child welfare system must comply with these laws.

## II. METHODOLOGY AND DATA

This research is part of a more extensive study examining the experiences of parents with disabilities who are involved with the child welfare system.<sup>117</sup> The Institutional Review Board (IRB) at Brandeis University approved the methodology and data collection for this study. This Article builds on the existing

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114. Letter from U.S. Dep't. of Just., Civil Rights Div. & U.S. Dep't of Health & Human Serv., Office for Civil Rights, to Interim Comm'r Erin Deveney, Mass. Dep't of Children & Families (Jan. 29, 2015), <https://perma.cc/DJ55-TUEM> [hereinafter Letter of Findings].

115. U.S. DEP'T OF HEALTH & HUMAN SERV., OFF. FOR CIVIL RIGHTS ADMIN. FOR CHILD. & FAM. & U.S. DEP'T OF JUST., CIVIL RIGHTS DIV. DISABILITY RIGHTS SECTION, 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://perma.cc/F7RQ-UTCP> [hereinafter TECHNICAL ASSISTANCE].

116. U.S. DEP'T OF HEALTH & HUMAN SERV., OFF. FOR CIVIL RIGHTS, VOLUNTARY RESOLUTION AGREEMENT BETWEEN U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE FOR CIVIL RIGHTS AND OREGON DEPARTMENT OF HUMAN SERVICES (Nov. 18, 2019) [hereinafter VOLUNTARY RESOLUTION AGREEMENT], <https://perma.cc/UX4D-SVZ2>.

117. See, e.g., Sasha M. Albert & Robyn M. Powell, *Supporting Disabled Parents and Their Families: Perspectives and Recommendations from Parents, Attorneys, and Child Welfare Professionals*, J. PUB. CHILD WELFARE (forthcoming 2021) (describing parents', child welfare professionals', and parents' attorneys' perspectives on the child welfare system's capacity to support disabled parents and their recommendations for improvement). Forthcoming studies will explore other topics that emerged from the interviews, such as adaptive parenting assessments, strategies for working with disabled parents, and the training needs of child welfare workers and parents' attorneys.

literature by analyzing empirical data to investigate barriers and facilitators to compliance with the ADA by the child welfare system as perceived by parents, child welfare workers, and parents' attorneys. This Part describes the Study's methodology and data. First, it discusses qualitative research methodology and ways in which it has been utilized to answer important legal and policy questions. Next, it explains the Study's sample. Thereafter, this Part provides information on how data were collected for the Study. Lastly, it details how the data for this Study were analyzed.

#### A. Qualitative Methodology

This Study employs qualitative in-depth interviews, an approach legal scholars are increasingly using to understand the experiences of people involved with the legal system.<sup>118</sup> Qualitative interviews have previously been used to study the perceived legal needs of parents with psychiatric disabilities.<sup>119</sup> Furthermore, qualitative research is an essential methodology for social policy research because it provides policymakers the perspectives of those directly impacted by their decisions.<sup>120</sup> Specifically, qualitative data, which are usually detailed and vibrant, enable investigators to address "how" and "why" questions.<sup>121</sup>

Qualitative in-depth interviews are an important tool for collecting data. In-depth interviews allow broad questions and topics to be explored while also enabling the interviewer and interviewee to examine additional issues related to

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118. MICHÈLE LAMONT & PATRICIA WHITE, WORKSHOP ON INTERDISCIPLINARY STANDARDS FOR SYSTEMATIC QUALITATIVE RESEARCH 10 (n.d.), <https://perma.cc/8ULA-9BFB>. There are numerous examples of qualitative research within the legal scholarship. See, e.g., Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451 (2008) (interviewing 50 low-income women regarding their experiences and preferences for usury regulations and based on the findings and suggestions of the study's participants advocating for modifications to credit cards that could serve the needs of low-income individuals as well as creditors); Sara Sternberg Greene, *Race, Class, and Access to Justice*, 101 IOWA L. REV. 1263 (2016) (interviewing 97 residents of public housing communities to understand why low-income individuals and members of minority groups often do not seek legal assistance when experiencing civil legal problems and then using the findings to identify further research and policy considerations).

119. See Robyn M. Powell et al., *Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Interviews with Parents*, 38 LAW & INEQ. 69 (2020).

120. Marisol Smith et al., *Bridging the Empirical Gap: New Insights into the Experience of Multiple Legal Problems and Advice Seeking*, 10 J. EMPIRICAL LEGAL STUD. 146, 148-49 (2013); see also Jane Ritchie & Liz Spencer, *Qualitative Data Analysis for Applied Policy Research*, in THE QUALITATIVE RESEARCHER'S COMPANION 305, 306 (A. Michael Huberman & Matthew B. Miles eds., 2002); Aashish Srivastava & S. Bruce Thomson, *Framework Analysis: A Qualitative Methodology for Applied Research*, 4 J. ADMIN. & GOVERNANCE 72, 78 (2009); Harry Torrance, *Evidence, Criteria, and Politics: The Debate About Quality and Utility*, in *Educational and Social Research*, in THE SAGE HANDBOOK OF QUALITATIVE RESEARCH 766 (Norman K. Denzin & Yvonna S. Lincoln eds., 2017).

121. Smith et al., *supra* note 120 at 149.

the study's interests that emerge in the course of the interview.<sup>122</sup> Further, in-depth interviews allow the interviewer to build trust and understanding with the interviewee, which increases the possibility of collecting personal information.<sup>123</sup> Undoubtedly, "[s]uch information can be key in helping to explain behavior, which in turn can aid in improved policy design."<sup>124</sup>

The present Study sought to understand the barriers and facilitators to compliance with the ADA by the child welfare system. Some of the study's participants, especially the parents, have faced significant adversity, and disclosing these sensitive details can be difficult. Moreover, issues related to child welfare system involvement are inherently complex, can be challenging to discuss, and require in-depth exploration. Therefore, in-depth interviews are the ideal methodology for gathering the data needed to answer the Study's research questions. The information this Study sought would be challenging for participants to provide through a written survey. Instead, in-depth interviews allow for open-ended questions and enable the interviewer to ask probing follow-up questions to understand the depth of participants' responses better.

## B. Sample

The data in this Article consist of transcripts from in-depth qualitative telephone interviews with parents with disabilities, child welfare workers, and parents' attorneys. This Subpart will describe the sample, beginning with an overview of the recruitment strategies that were used to find participants for this study. Next, the inclusion criteria for this Study will be reported. Finally, descriptive information about the sample will be presented.

### 1. Recruitment

This Study used convenience sampling and snowball sampling to recruit participants. Convenience sampling is a non-probability sampling technique where participants are selected because of their accessibility to the researcher.<sup>125</sup> Researchers often use convenience sampling as it is reasonably inexpensive and effective, particularly compared to other, more systematic or networked

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122. Daniel W. Turner, *Qualitative Interview Design: A Practical Guide for Novice Investigators*, 15 QUALITATIVE REP. 754, 754 (2010) ("One of the more popular areas of interest in qualitative research design is that of the interview protocol. Interviews provide in-depth information pertaining to participants' experiences and viewpoints of a particular topic.").

123. See Littwin, *supra* note 118 at 503-505 (describing the author's approach to building rapport with interviewees in order to collect sensitive information regarding finances).

124. Greene, *supra* note 118 at 1282.

125. Laura S. Abrams, *Sampling 'Hard to Reach' Populations in Qualitative Research: The Case of Incarcerated Youth*, 9 QUALITATIVE SOC. WORK 536, 542 (2010).

sampling approaches.<sup>126</sup> Convenience sampling is often employed in studies with traditionally “hidden” populations or populations that are otherwise difficult to locate, including people with disabilities.<sup>127</sup> Snowball sampling, which was also used, is another standard data collection tool and involves study participants assisting in the recruitment process by referring their peers to the study. Hence, with snowball sampling, “[t]he researcher begins with those members of the population to whom the researcher has access and then asks each participant to help the researcher...contact...other members of the population...The sample builds, or ‘snowballs,’ as more and more participants are discovered.”<sup>128</sup> Snowball sampling, like convenience sampling, assists researchers in recruiting participants that are traditionally difficult to locate or unlikely to participate due to the sensitive nature of the study.<sup>129</sup>

Recruitment occurred between January and June 2019. To recruit participants, we developed a one-page flyer, which included information about the Study as well as contact information for the research team. To recruit parents, the one-page flyer was disseminated to national and state disability services organizations, such as centers for independent living<sup>130</sup> and state and local chapters of The Arc,<sup>131</sup> who then shared the information with their networks. To recruit child welfare workers, we sent information about the study to national social work and child welfare organizations, such as the National Association of Social Workers and the Child Welfare League of America, as well as state child welfare agencies. To recruit parents’ attorneys, the one-page flyer was sent to the American Bar Association’s Parent Attorneys listserv and other relevant organizations. Further, information about the study was shared extensively on social media.

One-hundred and seven parents and professionals contacted the research team to learn about the study. Subsequently, seventeen parents and ten child welfare workers or parents’ attorneys were screened out because they did not meet the Study’s eligibility criteria,<sup>132</sup> thirty-three individuals could not be

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126. Kristie Saumure & Lisa M. Given, *Convenience Sample*, in THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS 124 (Lisa M. Given ed., 2008).

127. Abrams, *supra* note 125 at 541-542.

128. ROBERT M. LAWLESS ET AL., EMPIRICAL METHODS IN LAW 148-49 (2010).

129. See Kath Browne, *Snowball Sampling: Using Social Networks to Research Non-Heterosexual Women*, 8 INT’L J. SOC. RSCH. METHODOLOGY 47, 47-48 (2005).

130. “Centers for Independent Living are community-based, cross-disability, non-profit organizations that are designed and operated by people with disabilities. CILs are unique in that they operate according to a strict philosophy of consumer control, wherein people with all types of disabilities directly govern and staff the organization.” *About Independent Living*, NAT’L COUNCIL ON INDEPENDENT LIVING, <https://perma.cc/8T9K-LXJZ>. There are over 400 CILs across the United States. *Id.*

131. “The Arc is the largest national community-based organization advocating for and with people with intellectual and developmental disabilities (I/DD) and serving them and their families.” *About the Arc of the United States*, THE ARC, <https://perma.cc/L34B-X2YS>. The Arc has over 600 state and local chapters across the United States. *Id.*

132. See *infra* Subsection II.B.2 for explanation of the Study’s inclusion criteria.

reached for screening, and two child welfare workers were interviewed but later excluded because one interview revealed that the individual did not meet eligibility criteria and there was a technical issue with the recording equipment during the other. Ultimately, the final analytic sample included forty-five participants: fifteen disabled parents, fifteen child welfare workers, and fifteen parents' attorneys.<sup>133</sup>

## 2. Inclusion Criteria

This Study included a national sample of parents with disabilities, child welfare workers, and parents' attorneys. To participate in the Study, individuals had to satisfy the eligibility criteria. For parents, eligibility criteria included: (1) identifying as a parent with a disability; (2) involvement with the child welfare system within the past five years; and (3) being eighteen years of age or older. For child welfare workers and parents' attorneys, eligibility criteria included: (1) a minimum of two years of experience working in the child welfare system; (2) experience working with at least three families that included parents with disabilities within the past five years; (3) currently working within the child welfare system; and (4) being eighteen years of age or older. Individuals who did not satisfy the inclusion criteria in its entirety were excluded from participating in the study.

## 3. Sample Description

*Table 1* presents descriptive information about the sample of parents ( $N = 15$ ). Most parents identified as mothers (80%), white (67%), and heterosexual (79%). Over half of the parents were between 36 and 45 years old (57%) and married or partnered (64%). A majority of the parents were unemployed (53%) and had attended some college or earned a college degree (57%). Most parents reported annual household incomes below \$25,000 (62%), and over three-quarters (85%) received Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Geographically, parents were evenly distributed among three regions: Northeast (36%), Southeast (36%), and West (29%). Parents reported a range of disabilities, including muscular dystrophy, traumatic brain injury, cerebral palsy, post-traumatic stress disorder, depression, anxiety, and chronic illness. Most parents reported having more than one disability.

Parents had between one and five children; the majority had two or more children (73%). Over three-quarters of the children were nine years of age or younger (79%). More than half of the parents only had one child living at home at the time of the interview (60%).

**Table 1.** Parents' Demographic Characteristics ( $N = 15$ )

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133. We intentionally aimed to recruit fifteen of each population as we believed doing so would provide many perspectives while also being a manageable sample size.

Characteristic	N (%)
Parenting role	
Mother	12 (80)
Father	3 (20)
Race/ethnicity	
White/Caucasian	10 (67)
Other	1 (7)
Multiracial	4 (27)
Age (years) <sup>a</sup>	
26-35	2 (14)
36-45	8 (57)
46-50	4 (29)
Sexual orientation <sup>a</sup>	
Heterosexual	11 (79)
LGBTQ	3 (21)
Relationship status <sup>a</sup>	
Single	5 (36)
Married or partnered	9 (64)
Census region <sup>a</sup>	
Northeast	5 (36)
Southeast	5 (36)
West	4 (29)
Employment status <sup>a, b</sup>	
Employed	7 (47)
Unemployed	8 (53)
Highest level of education <sup>a</sup>	
Did not complete high school	1 (8)
High school or GED	2 (15)
Some college or college degree	8 (57)
Master's degree or beyond	2 (15)
Household income <sup>a</sup>	
Less than \$25,000	8 (62)
\$25,000 to \$74,999	4 (31)
\$200,000 or more	1 (8)
Government benefits received <sup>a, b</sup>	
SSI/SSDI	11 (85)
SNAP/Food Stamps	4 (31)
Number of children	
1	4 (27)
2-3	6 (40)
4-5	5 (33)
Youngest child's ages (years) <sup>a</sup>	
1-4	5 (36)
5-9	6 (43)



10-12	2 (14)
16-18	1 (7)
Number of children who live with a parent <sup>a</sup>	
0	2 (13)
1	9 (60)
2	2 (13)
3	1 (7)

*Notes:* SSI = Supplemental Security Income; SSDI = Social Security Disability Insurance; SNAP = Supplemental Nutrition Assistance Program

<sup>a</sup> Missing data due to nonresponse

<sup>b</sup> Categories are not mutually exclusive

*Table 2* presents descriptive information about the sample of child welfare workers ( $N = 15$ ) and parents' attorneys ( $N = 15$ ). The majority of child welfare workers (87%) and parents' attorneys (93%) identified as female. Most child welfare workers (80%) and parents' attorneys (87%) were white. More than two-thirds of child welfare workers (77%) and over half of the parents' attorneys (54%) were 45 years of age or younger. All parents' attorneys had law degrees, and the majority of child welfare workers (60%) had a Master's degree. Geographically, child welfare workers and parents' attorneys were distributed among four regions (Midwest, Northeast, Southeast, and West), with the highest number of child welfare workers located in the Southeast (40%) and the highest number of parents' attorneys located in the West (47%). Child welfare workers and parents' attorneys worked in a range of settings, with most child welfare workers (67%) and parents' attorneys (53%) working in urban settings. The majority of child welfare workers (60%) and parents' attorneys (57%) had ten years or less of professional experience. Most child welfare workers were employed by state or county agencies (73%), and most parents' attorneys worked in private practice (57%).

**Table 2.** Professionals' Demographic Characteristics ( $N = 30$ )

Characteristics	Child Welfare Workers ( $N = 15$ ) $N$ (%)	Parents' Attorneys ( $N = 15$ ) $N$ (%)	Total ( $N = 30$ ) $N$ (%)
Gender			
Female	13 (87)	14 (93)	27 (90)
Male	2 (13)	1 (7)	3 (10)
Age (years)			
26-35	5 (33)	4 (27)	9 (30)
36-45	6 (40)	4 (27)	10 (33)
46-50	2 (13)	2 (13)	4 (13)
51 or older	2 (13)	5 (33)	7 (23)
Race/ethnicity			

Black/African American	1 (7)	0	1 (3)
White/Caucasian	12 (80)	13 (87)	25 (83)
Hispanic/Latinx	2 (13)	1 (7)	3 (10)
Multiracial	0	1 (7)	1 (3)
Highest level of education <sup>a</sup>			
Bachelor's degree	6 (40)	0	6 (21)
Master's degree	9 (60)	0	9 (31)
Professional degree	0	14 (93)	14 (48)
Census region			
Midwest	3 (20)	0	3 (10)
Northeast	4 (27)	4 (27)	8 (27)
Southeast	6 (40)	4 (27)	10 (33)
West	2 (13)	7 (47)	9 (30)
Work setting <sup>b</sup>			
Urban	10 (67)	8 (53)	18 (60)
Rural	8 (53)	5 (33)	13 (43)
Suburbs	2 (13)	3 (20)	5 (17)
Other	0	1 (7)	1 (3)
Professional experience (years) <sup>a</sup>			
1-5	5 (33)	5 (36)	10 (34)
6-10	4 (27)	3 (21)	7 (24)
11-15	3 (20)	2 (14)	5 (17)
16-20	3 (20)	2 (14)	5 (17)
21+	0	2 (14)	2 (7)
Practice type <sup>a</sup>			
State/county	11 (73)	2 (14)	13 (45)
Private Practice	3 (20)	8 (57)	11 (38)
Other	1 (7)	4 (29)	5 (17)

*Notes.* <sup>a</sup> Missing data due to nonresponse.

<sup>b</sup> Categories are not mutually exclusive

### C. Data Collection

Individuals who were interested in participating in or learning more about the Study contacted the authors by email. During the initial communication, the Study was explained, and the individual was screened for eligibility. The authors then answered questions about the Study. If the individual satisfied the eligibility criteria and was interested in participating in the Study, an interview was scheduled. At this time, participants were also emailed a written consent form, which needed to be signed and returned before interviews occurred.

The authors conducted interviews by telephone in English, and each lasted approximately 45 minutes. The authors, who are both trained in qualitative

interviewing, conducted the interviews. At the beginning of the interviews, the interviewer summarized the Study, described the confidentiality measures taken to protect the participant's privacy and identity, and requested permission to audio-record the interview. The interviewer also answered the participants' questions. To ensure valid informed consent, parents were required to demonstrate their understanding of the risks, benefits, and voluntary nature of research participation through the successful completion of a "consent quiz." This quiz was administered verbally by the interviewer before the interview. The use of this quiz ensured that parents adequately understood the risks, benefits, and voluntary nature of the Study and were making an informed decision to participate. Each participant received a \$15 Amazon gift card to thank them for their time and contribution to the Study.

The interviews were semi-structured. To ensure consistency across interviews, the authors developed an interview protocol for each population (i.e., parents, child welfare workers, and parents' attorneys) that included broad questions and topics to be explored. This approach allowed the interviewer and participant to examine additional issues related to the Study that emerged during the interview. Interview questions covered a range of topics relating to child welfare system involvement among parents with disabilities. Of relevance to this Article, authors asked participants about their knowledge of the ADA, training they had received about the ADA and working with disabled parents, their perceptions of judges' knowledge about the ADA, ways in which agencies support or hinder ADA compliance, and how principles of disability law and child welfare law converge.

This Study took measures to comply with IRB requirements and to protect the identities of participants. Interview participants were assigned identification numbers on all documents except their verbal consent forms. Study documents, including consent forms, mailing addresses, a master list of identification numbers, and notes taken during the interviews, were stored in separate locked filing cabinets, in a locked office that was only accessible to the authors. Once the gift cards were mailed to the participants, their mailing addresses were shredded. All transcripts, audio-recordings, and other digital documents were saved in a password-protected folder. Further, after reviewing each transcript for accuracy and redacting any personally identifiable information, the Authors permanently deleted the audio-recordings from the computer.

#### D. Data Analysis

The interviews were professionally transcribed verbatim. Based on traditional content analysis methodology, the analysis of the transcripts was both iterative and inductive.<sup>134</sup> First, each author conducted a line-by-line, in-depth

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134. See generally Hsiu-Fang Hsieh & Sarah E. Shannon, *Three Approaches to Qualitative Analysis*, 15 QUALITATIVE HEALTH RSCH. 1277 (2015) (describing content

analysis of three randomly selected transcripts, and developed a preliminary set of codes. Specifically, we created a working list of topics as we read the transcripts. The authors then met and developed a preliminary codebook based on their initial analysis, reconciling discrepancies in initial codes.

The interview transcripts were uploaded into Dedoose, an online qualitative data analysis program. Using the codebook, the second author continued line-by-line, in-depth analysis of the interview transcripts. During this time, the authors were in regular contact to discuss and refine codes. Once coding was complete, the first author reviewed the coding. Any disagreement in coding was discussed until consensus was reached. The final codebook consisted of themes, codes, and definitions and was approved by both authors.

### III. DISCUSSION AND FINDINGS

Three overarching themes related to the barriers and facilitators to compliance with the ADA by the child welfare system emerged from the data: (1) knowledge, training, and information; (2) institutional support; and (3) legal and social context. Here, we briefly summarize the Study's findings and then discuss them in greater detail, using case examples and verbatim quotes from participants.

First, knowledge, training, and information about the ADA were critical barriers or facilitators to compliance with the ADA by the child welfare system. Specifically, participants described their knowledge about the ADA, including training they had received, and how that understanding and education affected the extent to which the child welfare system complied with the ADA. Overall, most participants reported minimal knowledge and training about how the ADA applied to the child welfare system. However, increased familiarity and education about the ADA and the challenges facing parents with disabilities appeared to increase the likelihood of compliance with the ADA. The availability of information about the ADA's application to the child welfare system was also described. In addition to discussing their knowledge and training, participants explained their perceptions of other stakeholders' understanding of the ADA. Notably, many parents with disabilities and parents' attorneys felt that child welfare workers and judges often lack knowledge or training about the ADA, which, in turn, affects compliance with and enforcement of the ADA. If judges, for example, do not understand the ADA, they may be less likely to enforce the law.

Second, participants described how institutional support—or lack thereof—translated into barriers or facilitators to compliance with the ADA. For example, some child welfare workers and parents' attorneys reported that their agencies lacked well-defined agency policies about the ADA or procedures for working with parents with disabilities. Conversely, child welfare workers and parents'

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analysis).

attorneys reported greater compliance with the ADA by the child welfare system when there were established policies and procedures. Child welfare workers and parents' attorneys also described limited "buy-in" or support from their agency's leadership about how to comply with the ADA. In particular, child welfare workers and parents' attorneys described ways in which the culture of their agency supported or hindered compliance. For example, some participants believed their supervisors or colleagues promoted ADA compliance, while others felt unsupported. Participants also described resource availability as a barrier or facilitator to ADA compliance. Specifically, participants explained that agencies and communities with adequate services and supports for parents with disabilities were able to comply with the ADA more efficiently, especially its mandate for individually tailored services and supports for disabled parents. Nonetheless, most participants found that services and supports for disabled parents were lacking in their agencies and communities. Parents with disabilities also described their perceptions relating to institutional support and compliance with the ADA.

Third, factors related to the legal and social context in which cases involving disabled parents occur are barriers or facilitators to compliance with the ADA by the child welfare system. The legal and social context centered on how principles of disability law and child welfare law converged. Several participants explained that conflicting policies and practices affected ADA compliance. For example, the perceived tension between children's rights and parents' rights often shifted the focus away from ensuring the disabled parent received necessary reasonable modifications. Participants also raised issues relating to the intersection between disability and child welfare law. For instance, some participants described matters related to ASFA's reasonable efforts requirement and how it inherently implicated the ADA's reasonable modifications provisions.

#### A. Knowledge, Training, and Information

An important goal of this research was to elucidate the extent to which knowledge, training, and information serve as a barrier or facilitator to compliance with the ADA by the child welfare system. Consistent with existing scholarship, findings from this Study underscore the critical need for child welfare workers and legal professionals to fully understand how the ADA applies to the child welfare system, as well as have a broad awareness of parents with disabilities. Likewise, parents with disabilities involved with the child welfare system must have access to information about their legal rights, especially vis-à-vis the ADA. This Subpart explores the participants' knowledge about the ADA as well as how that understanding—or lack thereof—affects ADA compliance. This Subpart also discusses the participants' perspectives of others' knowledge of the ADA. First, this Subpart describes disabled parents' reported awareness of the ADA. Second, this Subpart explores the knowledge of child welfare workers, both self-reported and the perceptions of parents with disabilities and

parents' attorneys. Finally, this Subpart presents legal professionals' understanding of the ADA, as perceived by all three groups of participants.

### 1. Knowledge, Information, and Training for Parents with Disabilities

Familiarity with the ADA varied among parents with disabilities, with some reporting extensive understanding of how the ADA applies to the child welfare system and others describing limited awareness. For example, when a parent, who described herself as an advocate, was asked if she felt she understood her rights under the ADA, she responded, "Probably not, and that's really scary because if I don't understand, who does?" Another parent, who attended college for special education, had similar uncertainty about how the ADA pertains to the child welfare system: "I am still confused, even after professional education learning about the ADA. It's, in fact, pretty new—relatively—it's twenty, thirty years old, I guess. And no, we were not given any information about how it applies to the child welfare system. We weren't educated on that. I just didn't think it was legal what they were doing to us." Likewise, when another parent was asked if she understood how the ADA applies to the child welfare system, she remarked, "Does it? Most people consider the ADA to be like accessibility for buildings and so forth."

Other parents explained the efforts they took to learn about the ADA. One parent, for example, described the difficulty he experienced learning the ADA: "And, it was very stressful, and I spend about sixty hours a week on just trying to learn [the] law, learn my rights, and figure out how to resolve the situation." He explained that the professionals he interacted with, including child welfare workers, attorneys, and judges, showed little regard for the ADA, so it was incumbent on him to have this knowledge to advocate for himself and his family. Another parent said, "I've had to study the ADA, and I've read stuff and woke up in the middle of the night, taking more notes and more notes." However, not all parents felt the burden should be on them to learn about the ADA. For example, one parent explained, "[Parents] shouldn't be expected to know the law; it should be kind of explained to them."

Finally, some parents sought to use their knowledge of their legal rights in their cases. One parent, for example, remarked, "I had an education, so I knew about the Americans with Disabilities Act. I said, 'I think you guys should provide—or you're required by law to provide me services.' And they said, 'Well, we're not doing that, and we're moving forward with the [termination of parental rights].'"

Another parent, who is a disability rights advocate, believes her experience with the child welfare system benefited from her knowledge of her rights under the ADA and experience advocating on behalf of herself and others: "I made it clear that I knew my rights because I wanted them to know they could not push me around." She also explained, "I made sure they knew who my connections were because a lot of parents are so taken advantage of by the system."

## 2. Knowledge, Information, and Training for Child Welfare Workers

Knowledge, information, and training for child welfare workers about the ADA emerged as a striking barrier or facilitator to compliance with the law. Child welfare workers described varying levels of understanding about the ADA and its application to the child welfare system, with the majority reporting minimal knowledge and not having access to information or training about the topic. One child welfare worker, for example, described her understanding of the ADA as “limited.” She explained, “I understand it on a surface level...but it’s not something that I utilize daily or even probably on a regular basis.” Another child welfare worker, describing her knowledge of the ADA, said, “I’m not well-versed in it. And, I’m not super familiar with the Act.” Similarly, one child welfare worker portrayed her understanding of the ADA as “embarrassing,” and another remarked, “[T]hat’s something I definitely don’t know about.”

Other child welfare workers, conversely, reported some knowledge of the ADA and its application to the child welfare system, although their knowledge was limited. For example, one child welfare worker stated, “I am vaguely familiar with it, and I actually do not know a whole lot about it.” Other child welfare workers expressed knowing that the ADA applied to physical accessibility but did not appear to understand the law’s other mandates. One child welfare worker, for instance, explained, “Well, it’s about accessibility for one thing, like physical accessibility. So, buildings have to be accessible.” Another child welfare worker discussed her understanding of how the ADA applied in the employment context. Meanwhile, a few child welfare workers said they understood the ADA to only apply to services for children with disabilities in schools. One child welfare worker, for example, said, “Like if we need a certain therapy, it is because the child qualifies under the ADA. That’s all we know.”

A few child welfare workers described a more in-depth understanding of the ADA. One child welfare worker, for example, said, “I mean my understanding of how the ADA works is that we have a responsibility to make accommodations if somebody identifies themselves as having a disability.” That same child welfare worker went on to note, “So we also have the responsibility to make accommodations if somebody doesn’t identify as having a disability.” While this child welfare worker seemingly understood she was required to accommodate disabled parents, she went on to explain that she was supposed to support all parents whether they have disabilities or not. Similarly, another child welfare worker explained, “[People] have certain rights due to their disability; the Americans with Disabilities Act and certain things have to be afforded to them based on their disability. That’s my understanding.” Describing her familiarity with the ADA, another child welfare worker remarked, “You know, I think on the outside, I think I understand it.” She explained that agencies that receive funding are “all obligated to make accommodations for the parent with a disability or whoever the consumer with the disability is.”

Notably, some parents with disabilities and parents’ attorneys felt child

welfare workers lacked knowledge about the ADA's application to the child welfare system. When one parent was asked whether she believed child welfare workers understood the ADA, she said, "They don't. That's the unfortunate part. If you haven't experienced [disability], it doesn't really concern you." Several parents' attorneys similarly felt child welfare workers lacked understanding of the ADA. One parents' attorney said that child welfare workers understand the ADA "[m]aybe a third of the time." When asked if child welfare workers were familiar with the ADA, another attorney responded: "In a word, no." Another parents' attorney said,

I think they're not too aware of it. I think there's a desire to comply with a law, but I don't think anyone is that familiar with it. And I think there's also a concern maybe it's going to stop a termination of parental rights case because they haven't complied with it. So, it's always a concern.

Likewise, another parents' attorney stated,

I'm sure the upper management would have some idea, but like I can't tell you working in a business what my obligations are, so I sincerely doubt that the people that are on the frontlines with like the social workers with these people would be able to tell you the Americans with Disabilities Act requires X, Y, and Z.

All participants underscored the importance of information and training for child welfare workers about the ADA. Several child welfare workers reported receiving no instruction about the ADA. One child welfare worker stated, "Even with the best social work degrees, you don't get this kind of training." Another child welfare worker explained that although she had seen non-discrimination language "listed on some of the paperwork," she was "not familiar with any of the policies and wasn't trained on any." Similarly, one child welfare worker described the importance of information to inform practice:

I definitely think that there's always room for improvement. Policy implementation and even from the highest level if there is information that exists even at the federal level that goes down to the state to kind of guide that information. That would be helpful to know. And so, knowing that that exists is just one area where we can always have room to grow. And so, having information I think on hand to know how maybe those cases could be handled in a different way or even with more supports to be able to fully understand just the impact, and sources that are available of supports, and making sure that the person's individual rights are being respected, that training and information would probably be beneficial.

Other child welfare workers reported receiving minimal training or education about the ADA and parents with disabilities. One child welfare worker, for example, said she sought out training and attended a few webinars related to working with parents with child welfare workers. She also explained that she attended a few trainings related to disabled parents and the ADA that were geared toward parents' attorneys rather than child welfare workers. However, she went on to remark, "I don't think there is a whole lot out there." Another child welfare worker said she learned about the ADA during a "policy class." That participant,



nonetheless, went on to explain that she still only understood the law very broadly.

Moreover, even when child welfare workers received information about the ADA, it did not always translate into increased knowledge. For example, when asked about whether she had received the DOJ/HHS guidance about the ADA and the child welfare system,<sup>135</sup> one child welfare worker remarked,

I think they sent it to us. And what they do, honestly, is they'll send us things like that, and they'll be like, "You got to sign off on this by such and such a date." And it'll be like a six-page, single-spaced typed document. Honestly, it's like that kind of thing because there are mandates, and they make us sign off on things. But when you're working a caseload or doing my job, like you don't have time for that a lot of time. And I'm kind of ashamed to say it, but it's true. And then your supervisor will send out the bad list, like you didn't sign off that you read this yet, so you just sign it. It's not a good system. It's like you constantly have to pick and choose from one thing to the next, like which fire are you going to put out?

Only two child welfare workers reported being aware of the guidance. Other child welfare workers explained that even when training or information about the ADA is technically available, child welfare workers often lack time to learn about the issues. One child welfare worker remarked, "It's just it's hard to stay on top of everything when you are not totally focused in one area." Another child welfare worker said that most trainings were simply online videos "that you just watch" and confirm attendance. Likewise, one child welfare worker noted that the training or information she received was inadequate: "And we'll get something about it like once a year or a training. That's it."

Not surprisingly, then, many child welfare workers described a keen interest in learning about the ADA. One child welfare worker, for example, said, "I would be very interested in learning more about it, and hopefully, I will be able to learn some more about it and maybe be able to assist the family that I am working with in some way by learning more about that." Some child welfare workers identified specific topics they would like to learn more about, including the ADA and how to work with particular populations of disabled parents. One child welfare worker, for example, said she would like to receive training and information on the "basic rights" of parents with disabilities. Other child welfare workers said they would like to learn strategies for working with parents with intellectual or psychiatric disabilities. When asked what she needed to improve her ability to work with disabled parents, one child welfare worker said, "Training. Training. Training. Training. I've been doing this work for 18 years, and I don't remember ever anybody offering a training specifically on working with parents with disabilities in child welfare."

Parents with disabilities and parents' attorneys similarly agreed that child welfare workers needed access to information and training about the ADA. For example, one parent said, "Having the social workers trained in [the] ADA. It

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135. TECHNICAL ASSISTANCE, *supra* note 115.

would have really shifted my whole case. And instead of retaliating against me for having a disability, [they would have understood] that my disability didn't have an adverse impact on my kids." Likewise, a parents' attorney posited that training for child welfare workers about the ADA would "create a shift in their thinking" about parents with disabilities.

### 3. Knowledge, Information, and Training for Legal Professionals

Knowledge, information, and training for legal professionals (i.e., judges and attorneys) about the ADA emerged as a prominent barrier or facilitator to compliance with the law. Parents' attorneys described varying levels of knowledge about the ADA and its application to the child welfare system, with many reporting a lack of understanding as well as a shortage of information or training about the topic. Participants also opined about judges' knowledge of the ADA and its application to the child welfare system, with many reporting that judges often lack familiarity with the law and how to accommodate disabled parents.

Some parents' attorneys described having no knowledge about the ADA's application to the child welfare system or strategies for working with parents with disabilities. For example, when one parents' attorney was asked to describe her knowledge of the ADA, she remarked, "I don't know how to identify that or what constitutes a disability or when I should be asking for the ADA." Asked to explain her understanding of the ADA, another parents' attorney responded, "When did this ADA, if I may ask, when did this come into the forefront to be focused on parents with the state's involvement?" Meanwhile, one parents' attorney explained that while she understood that the ADA applied to access to public buildings, she said that she and her colleagues were not familiar with how they applied to the child welfare system: "Like I've never seen, unless you were litigating a case that's all about 'I'm handicapped, and you didn't provide handicap access to this public building,' I don't think any of us are on a day-to-day basis aware of the ADA and how it would impact those things."

Another parents' attorney noted that she was "not as prepared as [she'd] like to be" and would need to consult with outside counsel if she were to raise the ADA in a case. Similarly, one parents' attorney said she would need to "be refreshed on the ADA" before raising it in a case. Further, when asked if she felt adequately prepared to use the ADA in cases effectively, one parents' attorney remarked, "No. I feel like I'm trying and learning as I go." Notably, one parents' attorney candidly described how her limited knowledge of the ADA might have adversely affected her ability to represent a parent with a disability adequately:

I've had to learn the hard way how to do that. I actually had one case go up on appeal, and I raised an ADA issue on appeal, and I ended up losing it, interestingly enough. I'll just be direct because I hadn't handled it correctly. Like it was a learning curve for me. And I don't know how it is in other places, but here in [state], unfortunately, they put the onus on the disabled person and their attorney to figure out what accommodations need to be given to that parent.

Conversely, a few parents' attorneys reported understanding the ADA and its application to the child welfare system. For example, when asked about her familiarity with the law, one attorney stated, "Now that I know how to raise it and what I should be doing at the beginning of a case, it has been helpful." Another parents' attorney said that she has a "stock brief" that was written by a disability rights attorney who works at the local protection and advocacy organization,<sup>136</sup> which she regularly uses to raise the ADA. Meanwhile, one parents' attorney explained, "Back in law school at the [university], certainly I took a couple of disability law classes that dealt with all sorts of topics. I would say I've had some degree of formal training in that, yeah."

A few parents' attorneys felt that child welfare agencies' attorneys sometimes lack knowledge about the ADA, which is a significant barrier. For example, one parents' attorney described what happened when she emailed an agency attorney a request for a reasonable modification for one of her clients:

And the reply that I got from the [agency] attorney was something along the lines, "What is an ADA? We're not familiar with that." I was flabbergasted. She's an old-timer. She's been there as long as me or even more working for [agency]. I'm like, "Okay, this must be part of the wall that keeps building against this case." I was like, "Are you kidding me?" ADA stands for Americans with Disabilities Act. And then since then, there's some movement . . . It's just alarming—how could they even be supporting this family if she doesn't know what the ADA is?

Moreover, some parents and parents' attorneys reported that judges often lack understanding about how the ADA applies to the child welfare system or how disabilities impact parenting, which can be detrimental for cases involving disabled parents. One parent, for example, said that the judge in her case had "no understanding" of the ADA. Similarly, when asked if she thought judges understood the ADA's application to the child welfare system, one parents' attorney responded, "Probably not, no." Another parents' attorney said that one of the barriers to the ADA effectively protecting the rights of parents with disabilities was judges' "lack of knowledge" about the law. Other parents' attorneys provided more complex responses, explaining that while judges may understand the basics of the ADA, they lack in-depth awareness of how it implicates certain types of disabilities or situations. For example, one parents' attorney stated,

Yeah, yeah. I think they don't. Like if you ask the judges themselves, I bet they would say, "Oh, no, I definitely apply the ADA. You know, I definitely am conscious of that." And I think they are in the sense of making sure that an interpreter is made available at the courthouse. I think they are in the sense of if I were to bring an action and say, 'Hey, they're not providing an interpreter for the visits . . . .' Something that's like that super black and white type of issue.

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136. Protection and Advocacy (P&As) are federally mandated agencies that provide legal representation and advocacy on behalf of people with disabilities. Gary P. Gross, *Protection and Advocacy System Standing—To Vindicate the Rights of Persons with Disabilities*, 22 MENTAL & PHYSICAL DISABILITY L. REP. 674, 674-676 (1998).

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Yeah, they would get mad at the [child welfare agency.] But I don't think for the issues that seem to be more of the mental health or the low IQ types of issues or even, like I said, the fact that you know, my client who's wheelchair-bound, like cannot walk except for a few feet, they won't accommodate her. They won't help give her special accommodations. And I'm sure there would've been a way to have done it but no.

Many parents' attorneys described the importance of legal professionals having access to ongoing training and information about the ADA and parents with disabilities. For example, some parents' attorneys discussed how the DOJ/HHS guidance<sup>137</sup> affected their practice. One parents' attorney stated,

Well, it helped out a lot. We immediately went back and applied it. I think if we had a case where that was implicated—a new case where that was implicated, I think we might do well to re-review that. But I think that all of us in that particular court will be more mindful of that from now on. It gave us new knowledge and new awareness of what was acquired.

Similarly, another parents' attorney described how the guidance helped her feel more confident:

So, I guess part of the value for me was that I realized when I read it that I wasn't missing something like, it really did apply and that they were supposed to be doing this. They were supposed to be accommodating people and they were supposed to be helping the disabilities. [The child welfare agency] wasn't saying that they didn't have to, but they weren't acting like they had to at that point. Yeah, so I guess it gave me a little more confidence to make arguments better. But I don't remember that I quoted it or anything.

Although the guidance appeared useful for participants who were aware of it, interviews suggested that it may not have been widely disseminated to legal professionals. Indeed, only four parents' attorneys were confident that they had seen the guidance, and two others had "maybe" seen it. One parents' attorney, for example, stated, "I stumbled across it when I was doing some research for a case I had that got really close to termination." Other parents' attorneys said they were not sure if they had reviewed the guidance.

Some parents' attorneys had attended training about representing disabled parents and the ADA. In particular, a few parents' attorneys mentioned attending workshops about parents with disabilities at the biennial American Bar Association's National Parent Representation Conference. Others discussed participating in one-hour online training. Few parents' attorneys reported receiving training from their employers.

Some parents' attorneys described having limited access to training and information. For some, this dated back to their post-secondary education. One parents' attorney, for instance, said that most of her knowledge about working with people with disabilities came from her training as a teacher:

What I draw upon personally, I go back to when I was a teacher...I had a lot of that type of training in the process of becoming a certified teacher. And then,

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137. TECHNICAL ASSISTANCE, *supra* note 115.

with my ongoing continuing education requirements that I was required to keep my teaching license. But I haven't taught since 2000. I went to law school, so my teaching certification lapsed almost twenty years ago . . . . So again, I personally had some additional training on ADA and people with disabilities that I don't think a lot of other attorneys have.

Likewise, one parents' attorney explained that most of what she knew about working with people with disabilities she learned on the job:

But certainly, I have learned, from some trial and error, which is somewhat embarrassing. Even for us, I think our training internally could be better. Lawyers don't really graduate from law school unless they've really gone out of their way and really prepared to work with a population that is . . . that may need extra support and that may not learn in the ways that we learned and may not interact in the ways that we're used to interacting.

Even when parents' attorneys had attended training, they reported mixed experiences. Some raised concerns about the instruction they had received, stating that the trainings were brief, not "hands-on," and one-time-only, which limited the knowledge and skills they could acquire. Other parents' attorneys described how receiving training improved their representation of parents with disabilities. One parents' attorney, for example, gained information about adaptive parenting assessments and requesting reasonable modifications for parents. Other parents' attorneys learned about the ADA's application to the child welfare system by attending training.

Ultimately, most of the parents' attorneys felt that legal professionals needed ongoing access to training and information about a range of topics relating to parents with disabilities and the ADA. Several parents' attorneys stated that they would benefit from having more information about reasonable modifications and services for parents with disabilities. Others reported needing training about specific disability types, primarily intellectual or psychiatric disabilities. A few parents' attorneys recommended having on-call experts in representing parents with disabilities as a resource for parents' attorneys who have not themselves received substantial training.

## B. Institutional Support

This Study also investigated how institutional support—or the lack thereof—might affect compliance with the ADA. Study findings reinforce the importance of strong institutional support to facilitate ADA compliance by the child welfare system. This Subpart describes the experiences and perspectives of parents with disabilities, child welfare workers, and parents' attorneys as relating to how institutional support—or lack thereof—translates into barriers or facilitators to compliance with the law. First, this Subpart describes the necessity of well-defined agency policies and procedures concerning parents with disabilities and the ADA. Second, this Subpart discusses ways in which agency culture and leadership supports or hinders compliance with the law. Finally, this Subpart examines how the availability of community-based resources influences

compliance.

### 1. Policies and Procedures

Most participants reported that their local child welfare agencies lacked well-defined policies and procedures about the ADA or working with parents with disabilities, which adversely affected compliance with the law. One parent, for example, described how the lack of established guidelines was detrimental to her case: “When they put in place supervised visits, I asked for guidelines, ‘What am I supposed to be doing here, what is the purpose of this?’ And they just summarily refused. And here I am walking in with panic attacks, which makes my disability impulse worse.” This parent explained that the scarcity of established policies and procedures made her experience more difficult because she felt they were unprepared to meet her needs. Other parents similarly reported that the child welfare agencies they had worked with lacked policies and procedures concerning disabled parents or the ADA.

Tellingly, child welfare workers reported limited awareness as to whether their agencies had policies and procedures relating to working with disabled parents. For example, one child welfare worker remarked, “I do not really know of any policies. I mean, they have to, of course, adhere to the ADA and any sort of federal and state policies as far as not discriminating. I do not know if there are policies in place specifically in child protection.” Likewise, another child welfare worker stated, “I’m not familiar with any exact policies. Of course, there’s the Discrimination Act, and that’s listed on some of the paperwork that we have. But in regards to any policies, I’m not familiar with any of the policies and wasn’t trained on any.” Another child welfare worker explained that she was not aware of specific policies relating to disabled parents and that there were no particular procedures when working with these families:

I am not super familiar with the department’s policies around parents with disabilities. I know when I am assigned to an investigation, and we have concerns for intellectual delays or that there is some developmental limitation that prevents a person from being able to care for their child, that case is handled in a way that is very similar to any other case.

Parents’ attorneys also raised concerns regarding the lack of child welfare agency policies and procedures relating to the ADA or working with parents with disabilities. For example, one parents’ attorney said, “I have a number of cases where I have found that I feel like the agency really is either not trained or equipped, and they do not care. I do not know what it is.” She explained that when working with parents with disabilities, her local child welfare agency “chose the services which are not designed to address their particular needs and disabilities.” When asked whether her local child welfare agency had policies and procedures about the ADA or parents with disabilities, a parents’ attorney responded, “It’s terrible. They’re not set up for it. They’re not focused on it. They’ve got a certain roadmap they want everyone to take. And parents with

disabilities just aren't going to follow that roadmap in the same way." Likewise, another parents' attorney described instances where her clients were provided "cookie-cutter" services that did not meet her clients' needs because the agency lacked well-defined policies and procedures. She went on to discuss the need for "systemic" change:

Simple things should go a long way, but the truth is that the turnover in child welfare caseworkers is so high, and they are so poorly funded that it really is hard to talk about these tiny, bite-sized issues that I think would make a huge improvement. They all are systemic, so they would require huge changes, but educating frontline workers, training supervisors and frontline workers, funding programs, and offering services that are actually tailored to and meet the needs of the population that they're charged with assisting; those are some of the easy, low-hanging fruit changes that I think would be tremendous. They would go a really long way.

One parents' attorney, similarly, explained that although her local child welfare agency technically had policies and procedures, they were inadequate: "They have three paragraphs about the Americans with Disabilities Act in their manual, and it's just like parents with disabilities can't be excluded or discriminated against. I mean it's not explaining the accommodations that could be requested and here's what you can do."

Some child welfare workers also described what policies and procedures relating to the ADA and parents with disabilities should include. Many child welfare workers, for example, explained that reduced caseloads would allow them more time to work with disabled parents. One child welfare worker, who recommended that child welfare workers have smaller caseloads, explained: "I think that one of the biggest challenges of working with people that have a disability of some sort is that it's just really complicated and usually any kind of accommodation is just going to take more time." Other child welfare workers suggested that agencies have employees that specialize in parents with disabilities. One child welfare worker thought extra compensation for those working with disabled parents would facilitate smaller caseloads: "if they could get paid a little bit more working with somebody with intellectual disabilities so they can pick up less cases, that would be amazing."

## 2. Agency Culture and Leadership

Child welfare workers and parents' attorneys also described limited "buy-in" or support from their agency's leadership about how to comply with the ADA and adequately work with parents with disabilities. Child welfare workers and parents' attorneys described ways in which the culture of their agency supported or hindered compliance.

Some participants believed their supervisors or colleagues promoted ADA compliance, while others felt unsupported. For example, when asked if her supervisor or colleagues ever discussed the ADA, one child welfare worker responded, "Yes, because we're all social workers, so, of course." Other child

welfare workers were less favorable in their responses. One child welfare worker simply said, “I would assume” and another replied, “I don’t think that I’ve ever heard anybody printing off the Americans with Disabilities Act. I don’t think that it’s even considered.” Strikingly, one child welfare worker remarked: “No, it’s never a conversation ever. Like it literally never happened in a meeting where they’ve talked about parents with disabilities that I can remember, that parents have any sort of protection . . . . Like a single time. I have been in countless [agency] meetings.”

Child welfare workers and parents’ attorneys described other examples of how their agency’s culture and leadership supported or hindered their ability to comply with the ADA and work with parents with disabilities. Access to training and information,<sup>138</sup> for example, was identified as an essential factor. Specifically, those who had ongoing access to training and information reported feeling better supported in their work with disabled parents. Child welfare workers and parents’ attorneys also discussed how child welfare agencies’ legal counsel was a notable barrier or facilitator. For instance, one parents’ attorney felt that agency attorneys gave “lip service” to the ADA but did not train child welfare workers on their legal obligations. Some child welfare workers, similarly, reported not being aware of their mandates.

Child welfare agency culture and leadership also included negative attitudes toward parents with disabilities. For example, one child welfare worker said that her colleagues held negative opinions relating to accommodating parents with disabilities: “They see some sort of line as like this is coddling or hand-holding, rather than thinking about what it means to have an accommodation.” A parents’ attorney, similarly, described her experience requesting accommodations for a client as “very hostile.” These attitudes could also translate to parents with disabilities being afraid to request needed accommodations, as explained by one parent: “To be honest, I am afraid to ask for accommodations because I am afraid to lose my son... I do not want to draw attention to myself that I cannot handle things or that I need help with things.” Another parent noted, “You just don’t get support.”

### 3. Resource availability

Participants described the availability of resources as another barrier or facilitator to ADA compliance. Some participants explained that agencies and communities with adequate services and supports for parents with disabilities were able to comply with the ADA more efficiently, especially the ADA’s mandate for individually tailored services and supports for disabled parents. However, most participants reported that there was a shortage of services and supports for disabled parents in their agencies and communities.

Many participants described instances where the child welfare system was

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138. *See supra* Subsection III.A.



unable to accommodate parents with disabilities because services and supports for disabled parents were not available. For example, one parents' attorney discussed her experience representing a parent with an intellectual disability:

Basically, they just said, "We don't have the resources. Or, we don't have anyone who can teach a parenting course like that. This is a unique situation. Resources don't exist." She had done all of the normal services that she was provided. She took all of the parenting classes. She did everything that was asked of her. She was required by the court to keep going to see the neuropsychologist and make sure that she was taking her medication for seizures, and for her epilepsy, things like that. She was doing all of those things. It just wasn't enough, apparently, for the court. Then, we argued at the appellate level that under ADA, she was not given a meaningful opportunity to reunite with her children. Because she was not given reasonable accommodations. The standard that she was being held to in the court was a standard she could never have achieved because it wasn't a standard that was realistic for her disabilities. The court basically said that ADA doesn't apply. She had the chance. "Even if it does apply, we think she did have a meaningful opportunity because she was given all of these services, which were all that they could offer at the time."

In other words, the court decided that the parent was not entitled to any additional accommodations because appropriate services and supports were not available in her community. Another parents' attorney, similarly, remarked, "It's pretty easy for them to kind of skate by, and for the judges to think, 'Our hands are tied.' If they're telling you they don't have these resources, then what are we to do?" Furthermore, another parents' attorney explained that many of the parents with disabilities she represented underwent parenting assessments, and the psychiatrist often recommended dialectical behavioral therapy (DBT). However, that parents' attorney noted that not one of these clients had actually received DBT because of the lack of qualified service providers in the area:

So, although that gets recommended a lot and I do a lot of advocacy trying to get my clients the actual full DBT therapy, and I've been doing that for years, I still haven't been able to find—or actually succeed and actually get my clients that type of full evidence-based therapy.

A few participants also explained that the lack of services and supports for parents with disabilities significantly limited the ADA's efficacy. One parents' attorney, for example, felt that more funding needed to go toward the development and implementation of services and supports for parents with disabilities:

I also think having teeth would also mean like it's great they would issue federal guidance, but we would also need funding for the kinds of programs that I'm talking about that are missing... That requires funding and money to have really well-equipped interventions. Even pilot programs in the right direction would be great. I think there are some, but there is like a dream world where there are psychologists and psychiatrists who are doing these interventions, and then there's an intermediate world. That would also help for this piece of guidance to be meaningful if there were services that existed, and there was a will to have those kinds of services available.

That parents' attorney went on to explain the significant effort she and her colleagues put toward getting appropriate services and supports for their clients:

I think we actually get favorable outcomes in these cases even though they're some of our hardest cases. It's because the social workers in our office and the lawyers in our office do the work themselves. They find the programs. We file motions, and we get the court to force [the child welfare agency] to pay for it or we pay for it ourselves.

Child welfare workers, similarly, described difficulties in obtaining services and supports for parents with disabilities. One child welfare worker, for example, explained her unfamiliarity with available services and supports: "I know that specific accommodations may exist I'm not aware of." She stated that services and supports were crucial to keeping families together or reunifying them when separated.

Participants also reported challenges related to accessing professionals skilled in providing parenting assessments for parents with disabilities. Some parents' attorneys, for example, had difficulties getting parenting assessments funded. One parents' attorney explained:

It's tough to get [the child welfare agency] to pay for these evaluations. And I'm a private attorney on contract, so I can't tap some of the resources that [the public defender's office] has in-house for their own attorneys. So sometimes, I'm in a real dilemma because it's just I know these people need these services. And I even might ask the court to say, "Could you order this?" And [the child welfare agency] says, "Well, we can't afford to do it." Then, the judge says, "Well, sorry. They can't afford to do it, so I'm not going to order it." And I'm just throwing up my hands in despair.

Likewise, a parent explained that she had requested a parenting assessment from someone trained to evaluate disabled parents but instead was assessed by "a local guy." In other words, rather than have the parent evaluated by a professional who was specially trained in assessing disabled parents, the child welfare system had her evaluated by the person they regularly used.

In particular, participants reported a significant scarcity of services and supports for parents with disabilities in rural areas. For example, one parents' attorney remarked, "There is still the issue of access to the resources and services that we in our rural area just lack." Likewise, another parents' attorney noted, "It's harder here to do some of the accommodations that are suggested . . . most of the state is very spread out, and it has very small communities without services."

### C. Legal and Social Context

The final goal of this research was to elucidate how the legal and social context surrounding cases involving disabled parents produces barriers or facilitators to compliance with the ADA by the child welfare system. In other words, this research aimed to understand how principles of disability law and child welfare law converge. Study findings suggest that legal and social

contextual factors, specifically tensions in policies and practices, as well as in interactions between disability and child welfare laws, are barriers or facilitators to compliance with the ADA. This Subpart examines these legal and social contextual factors and how they affect ADA compliance by the child welfare system. First, this Subpart explores ways in which tensions between children's rights and parents' rights results in noncompliance. Second, it describes issues relating to the intersection between disability and child welfare law.

### 1. Tensions Between Children's Rights and Parents' Rights

Several participants described implicit and explicit tensions between children's rights and parents' rights that hindered the child welfare system's compliance with the ADA. Many participants felt that there was a false dichotomy between children's rights and parents' rights that sometimes allowed for discrimination toward disabled parents. One parent explained, "It's like if you have a disability, you're already a bad parent. So, then they go about proving that instead of being helpful . . . [T]hey say that they are there for the children to help the children and really, it's not." A child welfare worker agreed, stating,

If you are just focusing on the child and not looking at what the parents' needs are to be able to parent the child the best they can, it can kind of skew the dynamic. It always seems against the parents versus really supporting the parents, which is what I think is supposed to be happening.

Many participants explained that the child welfare system's goal of permanency for children could be used against parents with disabilities, especially to justify not accommodating disabled parents. In these instances, biases about parents with disabilities and their capacity to provide safe and stable homes may lead to judges believing that a better and more permanent placement for children would be with nondisabled individuals. Hence, judges are sometimes less inclined to require child welfare agencies to accommodate disabled parents because they assume that children will not have permanency with their birth parents. One child welfare worker, for example, explained:

So, I think that there's a lot of times where yes, there can be good arguments made and a lot of judges are understanding to parents' special needs. But I think that there's also that whole trend to where you've got a child who's in a pre-adoptive home potentially, then they're going to look at best interest of the child. And is it in the best interest of this child to wait and be in the system for a longer period of time rather than have permanence?

Another child welfare worker similarly described the "pressure" child welfare agencies have "to stick to certain guidelines of when they are supposed to be making decisions about permanency for children," which can be used against parents with disabilities who may require additional time or resources to reunify with their children. A parents' attorney also raised concerns relating to permanency and how it may interact with the ADA:

I think, at that point, if I had to guess, and our judges are pretty good about focusing on parents' rights at the beginning of a case. There's always that shift

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at the end when things aren't going well to look at kids' rights. But I kind of think they look at these differently. Like how is this ever going to work? You know, like my [name] case. How is that ever going to work? He can't take care of her. I don't care about the ADA. I care about permanency for this kid. What's going to work for the kid? Not thinking so much about the parent/child relationship.

Some participants also noted ways in which the "best interest of the child" standard may conflict with the ADA. In other words, the perceived tension between children's rights and parents' rights often shifted the focus away from ensuring that the disabled parents received reasonable modifications. One child welfare worker explained, "I truly believe the focus has to be the wellbeing and care of the children, but [it's important] to keep the parents' issues also on the table and not forget they have their own issues and they're unique." A parents' attorney, meanwhile, stated that even when requesting accommodations for disabled parents she sometimes chose to not use the ADA because of the best interest of the child standard: "Because it's more based on what is in the best interest of the child, so I've argued it, but not specifically saying ADA." Moreover, another parents' attorney described the ADA as "a very complicated federal statute," and said that how the law interacts with state child welfare laws is equally "complicated." That parents' attorney then explained how the ADA does not always protect the rights of disabled parents because of the best interest of the child standard:

Especially once a finding of neglect or abuse has been made, the standard is best interest as opposed to imminent risk. Best interest can be a real vehicle for stereotypes and prejudice and subjective beliefs, so what would be the best for a child really depends on how you see any number of factors. I think often judges understand the law, but it's heavily infused with fear about being responsible for what might happen to a child if the worst case were to happen with a subjective misunderstanding with beliefs about what a parent is capable of or what would be best for a child.

Relatedly, participants explained ways in which concerns about the safety or wellbeing of children limited the effectiveness of the ADA in ensuring the rights of parents with disabilities. Specifically, decisions about parents with disabilities based on bias and speculation violate the ADA's individualized treatment mandate. One child welfare worker, for example, reported that some parents with disabilities do not feel they need services and supports and disagree with the child welfare system's opinion that their children are at risk:

I feel that the majority of the clients I've worked with who have had disabilities are wanting to improve, and they want to be able to have the same access to their child that any other parent should have. And so, the independence can be a challenge because sometimes we're not aligned in what we believe or what we see as the safety concerns. And we have to really hope parents understand how this, you know, could impact their child's well-being. But typically, they are working to have the same home life and family situation that anybody else would want.

Meanwhile, some parents' attorneys described the child welfare system as "risk-

averse,” which detrimentally affects parents with disabilities. In these instances, participants explained, presumptions that disabled parents cannot safely care for their children prevent child welfare agencies and courts from reunifying parents and children. One parents’ attorney explained,

I think there’s a lot of risk-averse stuff when you have parents with disabilities. Perhaps that can play into the thinking that “oh, we have this mom with limited cognitive capacity or whatever you want to call it,” and that’s just a ritual where the judge might be subjectively less comfortable with reunification because the parent is off or the parent is different or the parent has whatever I’m representing in court.

Another parents’ attorney, similarly, stated,

It certainly is my take that I think that parents with disabilities are particularly vulnerable to the excesses and the risk of error and risk of erroneous deprivation of parental rights. I think that risk is particularly for whatever reason when we as a society have decided that we’re going to err on the side of ‘protecting children’ even if that means that some people are going to wrongfully lose their kids. If I could put it in sort of a criminal context, it’s better to let ten guilty men go free than lawfully condemn one. I think the opposite is true in child welfare proceedings.

## 2. The Convergence of Disability Law and Child Welfare Law

Finally, participants described issues relating to how disability law and child welfare law intersect. Specifically, participants described ways in which the ADA and its mandates conflicts with child welfare laws and practice. Several participants explained that the child welfare system’s strict timelines for permanency often conflict with the ADA and noted that that the timelines are often challenging for disabled parents to comply with. For example, one child welfare worker noted,

We have time limits. I mean, we’re bound by the Adoption and Safe Families Act. So, I think that’s another layer . . . . One of my moms with special needs, with the special needs’ kids, she was looking at facing a termination of her parental rights because it was slower for her to demonstrate that she could take care of these children . . . . When she would go to court, it was often compliance or marginal compliance, but making no progress because nobody really spent the time to see that she could demonstrate progress. And sometimes it’s just going to take longer, and I think that that’s another issue that we face . . . not everybody fits into a box or mold. And the timelines aren’t always going to fit. Some parents it’s just going to take a little bit more time.

Another child welfare worker described the time-consuming process for providing reasonable modifications. She explained that these requests go through several departments and that “there are all sorts of silly timeframes that really makes a lot of time pass.”

Many parents’ attorneys also described timelines as challenging for parents with disabilities. One parents’ attorney said that the deadlines are the “biggest problem”: “[W]hen you’ve got someone who’s chronically and persistently

mentally ill, for example, and it takes a lot longer to deal with those issues.” Another parents’ attorney explained that because of the imposed timelines, child welfare agencies must refer clients to appropriate services while simultaneously providing direct services. That parents’ attorney discussed her experience representing parents with intellectual disabilities:

[The child welfare agency’s] focus was on reasonable accommodation and referring these parents to the experts on working with people with intellectual disabilities. We were saying “[N]o, no, no. [Y]ou also need to be making your accommodation in addition to just referring, because there is like that ticking clock of child welfare.” So that was kind of the back and forth. They really saw themselves as this is the best thing that they could do would be to get these other experts involved. But they weren’t thinking about how long the process would take . . . . So I feel like that’s what we are up against constantly.

Likewise, some parents’ attorneys said that they do not bother requesting reasonable modifications because child welfare agencies often take a while to provide them, creating a delay which interacts with child welfare timelines. One parents’ attorney explained that courts in her area were currently considering whether extensions to timelines constituted a reasonable modification.

Moreover, several participants described ways in which the child welfare system’s legal mandate to provide parents “reasonable efforts” to reunify with their children intersects with the ADA’s requirement that parents with disabilities receive reasonable modifications. Participants explained that parents with disabilities are often provided “cookie-cutter” services that do not meet the parents’ disability-related needs. For example, parent training classes that do not provide sign language interpreters for Deaf parents or specialized education for parents with intellectual disabilities would be inaccessible. In these instances, although the child welfare agency technically provided reasonable efforts, parents cannot benefit from them because the classes are not accessible. One parents’ attorney noted, “There’s very little in the way of tailoring or making accommodations of those services and how those services are offered . . . They just kind of do a one-size-fits-all.”

Many parents’ attorneys also explained that while “reasonable efforts” must be individually tailored to meet the needs of disabled parents, courts often do not require services to be tailored to parents’ needs. For example, one parents’ attorney stated, “The judges either try to skate around it by saying what’s happening is reasonable under the circumstances. Even if the ADA did apply, what they’re doing is a reasonable accommodation. “It’s the best they can do.” That’s usually what we hear the courts say.”

Other parents’ attorneys, similarly, reported that courts often find that any efforts made by child welfare agencies are reasonable, even when they are not. One parents’ attorney explained, “I think that judges will often find that the [agency] has made reasonable efforts when they really haven’t or they’ve made very little effort or no effort because judges are often afraid or improperly considering the collateral consequence of finding [that reasonable efforts weren’t made]. They’d lose funding.”

Another parents' attorney discussed a recent court ruling that held that efforts by the child welfare agency were reasonable so long as the agency was trying. She explained that the court showed little deference to the fact that the agency had taken extensive time to accommodate disabled parents in that case:

The Court of Appeals found that they didn't have to have done it within the six-month increments as long as they were doing it at all. Even if it took longer or was slower, as long as they were working on it—and even if the attorney for the mother or father had been the one to actually do the service—that they were making reasonable efforts to do the referral for the service . . . the Court of Appeals was essentially saying, 'It's okay for disabled parents if they don't get the services within the six-month period, as long as they get them eventually.'

In sum, several participants recounted ways in which the principles of disability law and child welfare law converged and created barriers or facilitators to compliance with the ADA by the child welfare system. In particular, the child welfare system's stringent timelines were problematic. Some parents were unable to comply with the strict timelines, especially since securing appropriate services and supports often take considerable time. Further, parents' attorneys sometimes decided not to request reasonable modifications for their clients because they knew that the time it would take to do so would exceed the child welfare system's deadlines. Moreover, participants described inconsistencies between the ADA's reasonable modification requirements and the child welfare system's reasonable efforts requirement. For example, some parents' attorneys explained that although child welfare agencies may assert that they satisfied their duties to provide reasonable efforts if they offer parents services and supports, such services and supports are not reasonable if they are not accessible. Hence, reasonable efforts must include reasonable modifications to be meaningful.

#### IV. IMPLICATIONS FOR RESEARCH, POLICY, AND PRACTICE

This Article reports on a qualitative study to investigate barriers and facilitators to compliance with the ADA by the child welfare system. The data were drawn from semi-structured telephone interviews with parents with disabilities, child welfare workers, and parents' attorneys. The present Study adds to the burgeoning body of scholarship about parents with disabilities who are involved with the child welfare system. While extensive research has documented the adverse experiences parents with disabilities and their families have when engaged with the child welfare system, no study has empirically elucidated why the ADA is not effectively safeguarding these parents' rights. In particular, no research concerning the ADA and the child welfare system has collectively examined the experiences and perspectives of the individuals most intimately involved in these cases: parents with disabilities, child welfare workers, and parents' attorneys. Hence, this Study complements existing scholarship by offering new information relating to the ADA and the child welfare system and shining a light on the barriers and facilitators to compliance with the law.

Although one study alone cannot answer the many unanswered questions about ensuring the rights of parents with disabilities involved with the child welfare system, this research has offered critical insights into the barriers and facilitators to ADA compliance by the child welfare system as perceived by disabled parents, child welfare workers, and parents' attorneys. We learned that knowledge, training, and information about the ADA are critical barriers or facilitators to compliance with the ADA by the child welfare system. We discovered that institutional support—or lack thereof—impacts compliance with the ADA. We found that the legal and social context in which cases involving disabled parents occur influence ADA compliance.

In this Article, we do not explain the experiences and perspectives of all parents with disabilities, child welfare workers, or parents' attorneys, nor do we make broad generalizations based on the Study's findings. Instead, we offer insights provided by a group of individuals who have direct personal or professional experience relating to child welfare system involvement among disabled parents. Second, we attempt to understand the barriers and facilitators to ADA compliance, based on the experiences and perspectives of the disabled parents, child welfare workers, and parents' attorneys who participated in the Study. Finally, we suggest implications for future research and policymaking and practice. In this Part, we consider areas warranting further attention by legal scholars, policymakers, and the legal profession.

#### A. Future Research

Study findings provide an essential foundation for future research about child welfare system involvement among parents with disabilities, especially the intersection of the ADA and the child welfare system. Research concerning disabled parents and the child welfare system is rapidly emerging. Nevertheless, the need for additional scholarship is significant. Accordingly, the potential for follow-up studies is considerable. This Subpart highlights topics warranting further investigation.

Further scholarship concerning knowledge, information, and training about the ADA's application to the child welfare system is needed. In this Study, all three participant groups—parents with disabilities, child welfare workers, and parents' attorneys—reported limited understanding of the law. All participant groups also described inadequate access to training and information about the rights of disabled parents. Accordingly, future research must investigate barriers to knowledge, information, and training for these populations and identify opportunities to increase their familiarity with the law. For example, what opportunities exist to educate parents with disabilities about their rights under the ADA? Is information about the ADA available in various formats to meet the unique needs of parents with different disabilities (e.g., plain language for parents with low literacy, or captioning and sign language for Deaf or hard of hearing parents)? What are the best practices for educating child welfare workers



and parents' attorneys about the rights of disabled parents? Research should also explore opportunities to improve child welfare workers' and parents' attorneys' understanding of the ADA through interdisciplinary collaborations.

Future scholarship must additionally study the types of information about the ADA that are available to child welfare workers and parents' attorneys and whether they are useful. Notably, in the present Study, eighty percent of the child welfare workers and parents' attorneys reported little to no familiarity with the DOJ/HHS guidance,<sup>139</sup> which was issued five years ago. Researchers must explore the reasons why professionals are unaware of this guidance and what can be done to increase dissemination. Moreover, most child welfare workers and parents' attorneys were not aware of other resources for getting information about the ADA's application to the child welfare system. Thus, scholarship is needed to explore what training and information are available for child welfare workers and parents' attorneys about the ADA. In the same vein, scholars should investigate whether existing resources are useful for educating child welfare workers and parents' attorneys about the law. Certainly, information and training are only helpful if they are widely available.

Scholars must further investigate issues relating to institutional support. In the present study, all three participant groups—parents with disabilities, child welfare workers, and parents' attorneys—agreed that the presence or absence of institutional support resulted in barriers or facilitators to compliance with the ADA. Hence, researchers should conduct a large-scale review of child welfare agencies' policies and procedures to see how, if at all, they address working with disabled parents or the ADA. Scholars should also conduct qualitative interviews with supervisors at child welfare agencies to explore how they support child welfare workers in complying with the ADA. Resource availability also requires further exploration. Specifically, research is needed to understand the types of services and supports that are available, as well as the unmet needs of parents with disabilities involved with the child welfare system. Are disabled parents receiving individually tailored services and supports, and what are courts doing to ensure these parents' needs are being met? What are the barriers to providing appropriate services and supports to parents with disabilities? Are family preservation services available to prevent unnecessary child welfare system involvement among disabled parents and their families? How do geographical differences affect the availability of resources to support these families? Are there differences based on settings (e.g., urban, suburban, or rural)? Opportunities for collaborations with disability services providers should also be further examined. Specifically, how can disability services providers and child welfare agencies work together and what, if any, barriers constrain these relationships?

Further research is also needed to understand how factors relating to the legal and social context serve as barriers or facilitators to compliance with the ADA.

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139. TECHNICAL ASSISTANCE, *supra* note 115.

Scholars must conduct additional analysis to explore inherent tensions between children's rights and parents' rights, as applied to disabled parents. How is the ADA being circumvented in the name of children's rights? Also, how is the ADA being raised or applied in termination of parental rights cases involving parents with disabilities? Empirical analysis is needed to investigate trends in case law. Qualitative scholars should study case law to elucidate how these issues are being framed in judicial opinions. Interviews with judges should also be conducted.

These are just a few of the many crucial areas for future scholarship. As research regarding disabled parents involved with the child welfare system continues to increase, we expect that these questions and many others will begin to be addressed. Moreover, future legal scholarship must continue to include the perspectives of members of marginalized communities, including people with disabilities. As this Study demonstrates, insights from those most deeply involved with parents with disabilities with child welfare system involvement—notably, the parents themselves—should inform research about their experiences and perspectives if the legal profession is genuinely interested in effectively supporting them and protecting their rights.

## B. Policy and Practice Considerations

As scholarship on parents with disabilities involved with the child welfare system expands, areas of potential policy and practice intervention will continue to emerge. This Article attempts to provide a better understanding of the barriers and facilitators to compliance with the ADA by the child welfare system. In turn, findings from the Study can inform the development and implementation of policies and practices that might begin to address some of these barriers. Although a complete agenda is beyond the scope of this Article, this Subpart offers three policy and practice areas worthy of consideration: (1) increased knowledge; (2) building institutional capacity; and (3) regulatory, statutory, and judicial considerations.

### 1. Increased Knowledge

This Study highlights the need to devote considerable attention to expanding knowledge, training, and information about the ADA for child welfare workers and legal professionals as well as parents. Indeed, findings from the present Study suggest that child welfare workers and legal professionals lack an understanding of the child welfare system's obligations vis-à-vis the ADA. Addressing the knowledge, training, and information needs of these professionals will require a multi-pronged effort.

- a. Child welfare workers should receive training about the law and people with disabilities

Participants described several instances where increased understanding of the ADA and parents with disabilities by child welfare workers would have resulted in greater compliance with the law. Child welfare workers' improved understanding of the law must begin during their formal education. Both legal and social work scholars have written about the need for social workers to be educated about the law and how the social work curriculum lacks this training.<sup>140</sup> It is commonly understood that "most social workers possess insufficient knowledge and skills to be effective participants in the legal systems that are part of the practice environment in every social work setting."<sup>141</sup> The lack of training about the law in the social work curriculum is perhaps the most problematic for those who go on to work in the child welfare system, the "most legally intensive specialty within the social work profession."<sup>142</sup> In addition to failing to educate social work students about the law, scholars assert that the social work curriculum also does not adequately train social workers about working with people with disabilities.<sup>143</sup> A review of the curricula of the top fifty schools of social work found that only thirty-seven percent of the schools offered at least one course that broadly covered disability-related content.<sup>144</sup> In contrast, an analysis of course descriptions from the top twenty-five schools of social work found that eighty percent of the schools included disability content in their curricula.<sup>145</sup> Hence, while higher ranked schools offer some opportunities for social work students to learn about working with people with disabilities, people who do not attend these schools may lack this exposure. Accordingly, social work education must play a more active role in training child welfare workers about their legal obligations, including those relating to the ADA, as well as how to work with people with a range of disabilities. In particular, course content

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140. See, e.g., Robert G. Madden, *Legal Content in Social Work Education: Preparing Students for Interprofessional Practice*, 20 J. TEACHING SOC. WORK 3, 5 (2000) (internal citation omitted) ("The continuing deficiency may be due to the failure of schools to provide most students with essential legal content for practice . . .").

141. *Id.*

142. Kathleen Coulborn Faller, et al., *Child Welfare Workers Go to Court: The Impact of Race, Gender, and Education on the Comfort with Legal Issues*, 31 CHILD. & YOUTH SERVS. REV. 972, 972 (2009) ("Child welfare practice is perhaps the most legally intensive specialty within the social work profession.").

143. Kristen Faye Bean & Taylor E Kreck, *The Integration of Disability Content into Social Work Education: An Examination of Infused and Dedicated Models*, 13 ADV. SOC. WORK 633, 633 (2012) ("Disability content has been slowly integrated into social work curricula despite the large proportion of social workers supporting people with disabilities and its requirement in social work education by the Council on Social Work Education Educational Policy and Accreditation Standards.").

144. Jason Laws et al., *Preparation of Social Workers to Support People with Developmental Disabilities*, 30 J. TEACHING SOC. WORK 317, 326 (2010).

145. Bean & Kreck, *supra* note 143, at 637.

should provide a broad understanding of both child welfare and disability law, and how the fields intersect.

Child welfare agencies also should provide ongoing and up-to-date training and information for child welfare workers. Indeed, child welfare workers “must constantly be mindful of legal expectations and requirements.”<sup>146</sup> Most child welfare workers in this Study reported receiving limited training about parents with disabilities or how the ADA applies to the child welfare system. In turn, the parents with disabilities and parents’ attorneys who participated in this Study described the many ways in which this lack of training or familiarity negatively affected cases involving disabled parents. All participant groups agreed that child welfare agencies must educate their staff about the ADA as well as best practices for supporting disabled parents, especially those with intellectual or psychiatric disabilities. Child welfare workers also need to understand adaptive parenting strategies and available services and supports so that treatment plans can be individually tailored to meet parents’ specific needs. Furthermore, child welfare agencies should ensure that their staff has access to information, such as the DOJ/HHS guidance<sup>147</sup> and evidence-based practices for supporting disabled parents and their children, so that their staff can comply with the ADA.

b. Legal professionals should receive training about the ADA and people with disabilities

Study findings also underscore the need for legal professionals to have greater access to training and information about the ADA.<sup>148</sup> Indeed, many of the parents’ attorneys reported lacking understanding about the ADA. Law schools, for example, should introduce future judges and attorneys to information about the ADA and other federal disability rights laws. While there appears to be an increasing number of disability law courses available at law schools,<sup>149</sup> scholars note that courses on more specialized issues, such as mental disability law, remain limited.<sup>150</sup> While one law school course dedicated to disability law is

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146. Mark Hardin, *Role of the Legal and Judicial System for Children, Youth, and Families in Foster Care*, in *CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS* 687, 689 (Gerald P. Mallon & Peg McCartt Hess eds., 2005).

147. TECHNICAL ASSISTANCE, *supra* note 115.

148. See Gwillim, *supra* note 49, at 343 (“[I]nsufficient judicial education of family court judges may contribute to unequal or ineffective treatment of parents with mental disabilities in the court system.”); ROCKING THE CRADLE, *supra* note 30, at 32 (“Many attorneys lack the skills and experience to meet the needs of parents with disabilities.”); see also Kay, *supra* note 49, at 31.

149. Laura Rothstein, *Forty Years of Disability Policy in Legal Education and the Legal Profession: What has Changed and What are the New Issues*, 22 AM. U. J. GENDER SOC. POL’Y & L. 519, 604 (2014) (“Today there are many courses on disability law taught in law schools, and several law schools have a center or clinic focusing on such issues.”).

150. Michael L. Perlin, *Online, Distance Legal Education as an Agent of Social Change*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 95, 100 (2011) (“Most law schools either do

important, the law school curriculum should incorporate disability law into other classes as well. Continuing legal education may also be an appropriate mechanism for providing judges and attorneys with current information about parents with disabilities and the ADA. Legal professionals in nearly all states are required to complete continuing legal education training annually to maintain their licenses to practice law,<sup>151</sup> and jurisdictions should consider mandating legal professionals who work within the child welfare system to undergo training regarding disabled parents. State agencies that contract with private counsel to represent parents in termination of parental rights cases should also require attorneys to receive this training and have ongoing access to information. Finally, attorneys should develop partnerships with disability rights attorneys who can advise them on strategies for effectively using the ADA in these cases.<sup>152</sup>

c. Parents with disabilities should receive training about their legal rights

Parents with disabilities must also have increased opportunities to learn about their legal rights under the ADA and other relevant laws. In this Study, few parents reported familiarity with how the ADA applies to the child welfare system, and some parents explicitly felt that their lack of awareness of their rights detrimentally impacted their cases. Existing research suggests that some people with disabilities may possess limited knowledge about the ADA<sup>153</sup> and that disabled people's limited understanding of their legal rights impedes their ability

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not offer at all or offer only one course in mental disability law, and those that do offer the course often offer it sporadically.”).

151. See *MCLE Information by Jurisdiction*, AMERICAN BAR ASS'N, <https://perma.cc/7UL6-VDS8> (documenting that continuing legal education training is not currently required of legal professionals in Maryland, Massachusetts, Michigan, South Dakota, and the District of Columbia).

152. One such opportunity for attorneys to partner with disability rights organizations is through the Protection and Advocacy (P&A) system. P&As are federally mandated agencies that provide legal representation and advocacy on behalf of people with disabilities. *About*, NAT'L DISABILITY RTS. NETWORK, <https://perma.cc/Y3QF-32E6> (last visited December 15, 2020). P&As are located in every state and U.S. territory and have a broad mandate to advance the rights of people with disabilities in all areas of life. *Id.* Historically, P&As have not played a substantial role in advocating on behalf of parents with disabilities. *ROCKING THE CRADLE*, *supra* note 30, at 215. However, in light of P&As' strong knowledge about the ADA and other disability rights laws, it would be beneficial for parents' attorneys to partner with these agencies in some capacity, such as co-counsel or providing technical assistance. As the National Council on Disability noted, “Given the P&As' extensive experience representing people with disabilities, a stronger collaboration between P&As and the attorneys who represent parents in termination and custody proceedings would undoubtedly generate more positive results for these parents.” *Id.*

153. James W. Madaus et al., *Adults with Learning Disabilities in the Workforce: Lessons for Secondary Transition Programs*, 23 *LEARNING DISABILITIES. RES. PRACT.* 148, 149 (2008) (“However, research is demonstrating that adults with [learning disabilities] are not familiar with the ADA.”).

to self-advocate effectively.<sup>154</sup> Organizations serving people with disabilities must provide educational opportunities for disabled people to learn about their rights as well as how to enforce these rights. Training must be ongoing and accessible to people with a range of disabilities. Moreover, parents' attorneys can empower their clients by helping them to understand their legal rights.<sup>155</sup>

## 2. Building Institutional Capacity

Study findings indicate that there is an urgent need to increase institutional support to ensure that the child welfare system complies with the ADA. All participant groups—parents with disabilities, child welfare workers, and parents' attorneys—reported that child welfare agencies often lack well-defined policies and procedures for supporting disabled parents or complying with the ADA. According to participants, the absence of policies and procedures resulted in noncompliance with the ADA and inadequate support for disabled parents. Due to the shortage of established policies and procedures, some child welfare workers felt unsure of how to work with disabled parents and where to access services and supports.

### a. Child welfare agencies should develop detailed policies and procedures for their staff about the ADA

Most child welfare workers and parents' attorneys reported that their agencies lacked policies and procedures about the ADA, which limited their ability to comply with the law. These findings suggest that agencies must dedicate resources to developing and implementing detailed policies and procedures for their staff about the ADA and working with parents with disabilities. Policies and procedures should explain the staff's responsibilities when working with disabled parents as well as resources to contact for services and supports. Policies and procedures should also include training obligations, to ensure that all staff are prepared to work with disabled parents and are aware of their legal obligations. Well-defined policies and procedures can help lessen uncertainty by child welfare workers, increase knowledge, and ensure that families promptly receive individually tailored services and supports.

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154. David W. Test et al., *A Conceptual Framework for Self-Advocacy for Students with Disabilities*, 26 REMEDIAL SPECIAL EDUC. 43, 49, 51-52 (2005) ("Our conceptual framework suggests students need to have knowledge of themselves and know that they have rights before they can self-advocate effectively.").

155. See generally David M. Engel & Frank W. Munger, *Rights, Remembrance, and the Reconciliation of Difference*, 30 LAW & SOC'Y REV. 7 (1996) (exploring how the Americans with Disabilities Act shaped the self-conceptions of people with disabilities).

b. Agencies must foster a culture that supports ADA compliance

All participant groups also described issues relating to agency culture and leadership. Findings, therefore, indicate a need for agencies to create cultures where staff feel supported in working with disabled parents and complying with the ADA. In particular, child welfare workers and parents' attorneys described ways in which the culture of their agency supported or hindered compliance. Some participants stated that their supervisors or colleagues promoted ADA compliance, for example, while others felt unsupported. Building institutional capacity to improve compliance with the ADA will require attention to both organizational culture and organizational climate. In short, "organizational culture[] reflects the way things are done in an organization[,] whereas "organizational climate is a reflection of the way people perceive and come to describe the characteristics of their environment[.]"<sup>156</sup> Research demonstrates "organizational culture and climate affect current employees' work behaviors as well as new employees' work attitudes in an organization. An organization's existing behavioral expectations and norms, as well as co-workers' perceptions of their work environment, guide how they behave within an organization and interact with their clients."<sup>157</sup>

As such, a culture and climate of ADA compliance must permeate through institutions. Child welfare workers and parents' attorneys must be supported by their supervisors to comply with or enforce the ADA and the rights of disabled parents and must be provided the tools to do so, such as access to training and information. There must be attitudinal shifts at the leadership-level that recognize the rights of parents with disabilities. Further, child welfare workers and parents' attorneys should feel comfortable regularly discussing strategies for working with parents with disabilities, including opportunities for dialogue about challenges and solutions.

c. Services and supports for disabled parents must be developed, implemented, and readily available

Building institutional capacity to ensure compliance with the ADA also requires addressing the availability of services and supports for disabled parents and their families. Study findings suggest resource availability may be a barrier or facilitator to ADA compliance. Specifically, all participant groups—parents with disabilities, child welfare workers, and parents' attorneys—explained that agencies and communities with adequate services and supports for parents with

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156. Willem Verbeke et al., *Exploring the Conceptual Expansion within the Field of Organizational Behavior: Organizational Climate and Organizational Culture*, 35 J. MGMT. STUD. 303, 319-20 (1998).

157. Miseung Shim, *Factors Influencing Child Welfare Employee's Turnover: Focusing on Organizational Culture and Climate*, 32 CHILD. & YOUTH SERVS. REV. 847, 853 (2010).

disabilities were able to comply with the ADA more efficiently, especially its mandate for individually-tailored services and supports for disabled parents.<sup>158</sup> Nevertheless, many participants found that services and supports for disabled parents lacked in their agencies and communities. Community-based services and supports, which may be reasonable modifications required by the ADA, should be provided to disabled parents as soon as they are involved with the child welfare system. However, research shows that disabled parents are often not offered family preservation or reunification services by the child welfare system,<sup>159</sup> and even when services are provided, they are often inadequate because they are not individually tailored to meet the needs of parents with disabilities.<sup>160</sup> Accordingly, attention and resources should be allocated to improving services for disabled parents. Moreover, as the findings from this Study demonstrate, parents' attorneys need to advocate fervently for their clients to receive individually tailored services and supports.

Interestingly, the Family First Prevention Services Act of 2017 (Family First Act)<sup>161</sup> may offer opportunities to expand the availability of resources and to develop and implement family preservation services for parents with disabilities. Specifically, the Family First Act provides Social Security Title IV-E funds for twelve months of in-home parenting skills programs, substance use treatment, and mental health services to keep families intact and children out of foster care.<sup>162</sup> If these services and supports are individually tailored to meet parents' specific needs, these programs could serve as reasonable modifications for some parents with disabilities. Nonetheless, the Family First Act does not mandate states to provide services using Title IV-E funds; they must "elect" to do so, and the federal government will match a state's contribution fifty percent until the

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158. See 28 C.F.R. § 35.130(b)(7)(i) (2018); see also 28 C.F.R. § 35.130(b) (2018); 28 C.F.R. pt. 35, App. B (2018), at 706 (explaining in the 1991 Section-by-Section guidance to the Title II regulation that, "[t]aken together, the[] provisions [in 28 C.F.R. § 35.130(b)] are intended to prohibit exclusion . . . of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not presumptions as to what a class of individuals with disabilities can or cannot do.").

159. IASSID SIRG, *supra* note 41, at 301; Powell & Nicholson, *supra* note 37, at 209-10; ROCKING THE CRADLE, *supra* note 30, at 71-107; Elspeth M. Slayter & Jordan Jensen, *Parents with Intellectual Disabilities in the Child Protection System*, 98 CHILD. & YOUTH SERVS. REV. 297, 300-01 (2019).

160. Phillip A. Swain & Nadine Cameron, 'Good Enough Parenting': *Parental Disability and Child Protection*, 18 DISABILITY & SOC'Y 165, 170 (2003). Examples of services include in-home training for parents, adaptive parenting equipment, respite services, and mental health treatment.

161. Family First Prevention Services Act, H.R. 253, 115th Cong. § 1 (2017).

162. *Id.* Before the enactment of the Family First Act, states could only spend Title IV-E funds on foster care and adoption assistance. See Asheley Pankratz, *What About Florida's Children? Analyzing the Implications of the Family First Preservation Services Act of 2018*, 44 NOVA L. REV. 63, 68 (2019).



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year 2026.<sup>163</sup> Hence, the Family First Act, if implemented correctly, could expand access to individually tailored services for disabled parents through additional federal monies for child welfare agencies.

### 3. Regulatory, Statutory, and Judicial Considerations

Finally, findings from this Study suggest the need for regulatory, statutory, and judicial attention to address factors related to the legal and social contexts of cases involving disabled parents that are barriers or facilitators to the child welfare system's compliance with the ADA. Many participants described examples of conflicting policies and practices that affected ADA compliance. For example, implicit and explicit tensions between children's rights and parents' rights often shifted the focus away from ensuring that disabled parents received necessary reasonable modifications. Participants also recounted experiencing difficulties relating to the intersection between disability and child welfare law. For instance, some participants described matters related to ASFA's reasonable efforts requirement and how it implicated the ADA's reasonable modifications provisions.

#### a. States should pass legislation to support the rights of disabled parents

Findings from this Study suggest a need for legislators to consider ways to protect the rights of parents with disabilities. Notably, to address discrimination against parents with disabilities involved with the child welfare system, including issues relating to complying with and enforcing the ADA, states have begun reforming their laws.<sup>164</sup> According to the National Research Center for Parents with Disabilities, nearly 30 states have introduced or passed legislation aimed at ensuring the rights of disabled parents.<sup>165</sup> For example, in 2017, South Carolina enacted the Persons with Disabilities Right to Parent Act.<sup>166</sup> This law adopted the ADA's definitions of covered entities and disability; defined adaptive parenting equipment, adaptive parenting techniques, and services and supports; required the child welfare agency and courts to comply with the ADA and ensure that reasonable efforts to prevent removal and reunify a family is individualized and based on a parent's disability; and mandated that child welfare

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163. *Id.* at § 111(a)(5)(A), § 111(c).

164. Kay, *supra* note 108, at 812 ("While the ADA has had a rocky history in child protection courts, particularly as a defense to termination of parental rights, there are signs of progress in state statutes and court decisions.").

165. Nat'l Rsch. Ctr. for Parents with Disabilities, *Map of Current State Legislation Supporting Parents with Disabilities*, BRANDEIS HELLER SCHOOL (Oct. 9, 2020), <https://perma.cc/N68W-6JUN>.

166. Persons with Disabilities Right to Parent Act, S.C. CODE ANN. § 63-21-10 (2017).

agencies make reasonable modifications.<sup>167</sup> Further, the Act amended the state's termination of parental rights statute to require a nexus between a parent's disability and their ability to care for the child and prohibited termination of parental rights based solely on disability.<sup>168</sup> Similarly, in 2018, Colorado passed the Family Preservation for Parents with Disability Act.<sup>169</sup> This law prohibited a parent's disability from serving as the basis for denying or restricting custody, visitation, adoption, foster care, or guardianship when it is otherwise considered to be in the best interest of the child; required courts to consider the benefits of providing services and supports when determining custody, visitation, adoption, foster care, or guardianship; and mandated the state's child welfare agency to provide reasonable modifications to parents with disabilities based on individual need.<sup>170</sup> Findings from this Study underscore the importance of comprehensive state legislation that explicitly requires compliance with the ADA and addresses perceived tensions between children's rights and parents' rights.

b. Statutory or regulatory reforms on the federal level should be considered

With respect to issues relating to ASFA's timelines, which participants in this Study described as a significant barrier to ADA compliance, the National Council on Disability recommended: "Statutory time periods need to be extended to reflect the needs of parents with disabilities and their children. Specifically, ASFA must be amended to fully accommodate parents with disabilities."<sup>171</sup> The National Council on Disability also suggested the need for federal legislation to protect the rights of parents with disabilities or amendments to the ADA to include the child welfare system explicitly.<sup>172</sup> Indeed, any state or national statutory or regulatory change should address the intersection of the ADA's reasonable modifications requirement and ASFA's reasonable efforts mandate.

c. Judges should address tensions between disability law and child welfare law

Several parents' attorneys in this Study expressed concerns that judges did not understand the ADA's application to the child welfare system and that some judges refused to apply the law appropriately. Parents' attorneys reported issues relating to ASFA's reasonable efforts requirement. However, recent decisions in Michigan and Colorado have created a roadmap for addressing these tensions,

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167. *Id.*

168. *Id.*

169. Family Preservation for Parents with Disability Act, CO. REV. STAT. § 24-34-805 (2018).

170. *Id.*

171. ROCKING THE CRADLE, *supra* note 30, at 88.

172. *Id.* at 234-239.

holding in both cases that reasonable efforts cannot be achieved without reasonable modifications.<sup>173</sup> Judges across all jurisdictions must make similar findings.

#### CONCLUSION

Although the ADA should guarantee that the child welfare system treats parents with disabilities justly, longstanding research indicates that discrimination against disabled parents is a significant issue. This Study elucidated barriers and facilitators to compliance with the ADA by child welfare system. First, knowledge, training, and information about the ADA by parents with disabilities, child welfare workers, and legal professionals impede or enable ADA compliance. Second, institutional support—especially well-defined agency policies and procedures about the ADA, agency culture and leadership, and resource availability—impact compliance with the ADA. Third, factors related to the legal and social context in which cases involving disabled parents occur—particularly tensions between children’s rights and parents’ rights and issues relating to the intersection between disability and child welfare law—are barriers or facilitators to ADA compliance.

Unquestionably, many challenges persist for policymakers, the legal profession, and scholars to resolve. Our study suggests an urgent need for increased knowledge, training, and information about the ADA’s applicability to the child welfare system for parents with disabilities, child welfare workers, and legal professionals. Further attention must be given to building institutional support that promotes ADA compliance among child welfare agencies. Regulatory, statutory, and judicial consideration is also necessary to address factors related to the legal and social contexts of cases involving disabled parents that are barriers or facilitators to the child welfare system’s compliance with the ADA. Finally, future scholarship is essential to better understanding these issues.

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173. *In re Hicks/Brown*, 893 N.W.2d 637, 640 (Mich. 2017); *People ex rel. S.K.*, 440 P.3d 1240, 1249 (Colo. App. 2019).

