

**Using the ADA to protect the rights of individuals with
disabilities in TANF programs**

NLADA Substantive Law Training Conference

July 24-28, 2002

Colorado Springs

**Cary LaCheen
Welfare Law Center
275 Seventh Avenue, Suite 1205
New York, NY 10001-6708
(212) 633-6967
(fax) (212) 633-6371
www.welfarelaw.org
lacheen@welfarelaw.org**

I. Who is subject to Title II of the ADA?

- The ADA applies to the programs, services and benefits of all state and local governments and their agencies and departments. (42 U.S.C.A. § 12131)
- The ADA applies to these programs and services whether they are provided **directly** by the government agency **or indirectly**, by other organizations under contract, licensing or other arrangements. (28 C.F.R. §§ 35.130(b)(1); 35.130(b)(3)).
- The overall responsibility to ensure that the program doesn't discriminate against people with disabilities lies with the TANF (or other government) agency. This means agency must:
 - Instruct the private organization under contract on how to comply with the ADA
 - Make sure the private organization does comply with the ADA
 - Welfare agencies can use contracting process to build in ADA requirements & monitoring measures.
- At a time when many welfare services have been privatized and it is more difficult to use other legal theories to obtain improvements in welfare programs, the ADA can be used to obtain improvements in privatized services.
 - The non-governmental organizations who are providing these services under contract are also places of public accommodation that are subject to Title III of the ADA. (42 U.S.C.A. 12181 et seq.)

II. Who is protected under the ADA?

The ADA definition of disability is different than the definition of disability other laws. This is important because:

- You can't tell if someone has a disability under the ADA just by knowing the person's diagnosis. You need to know about the person's functional limitations.
- People who aren't receiving, or don't qualify for SSI/SSD, may still be protected by the ADA.
- Disability exemptions from work requirements in welfare programs are often not the same as the ADA definition of disability.
 - There may be people entitled to reasonable modifications under the ADA who are not entitled to exemptions/deferrals under state welfare law. In this situation, welfare agencies must comply with the ADA regardless of what state law says.
 - There may people entitled to work exemptions who are not covered under the ADA (e.g., welfare recipients eligible for temporary work exemptions for short term conditions under state law).

A disability under the ADA is:

- a physical or mental impairment (diagnosis)
 - that substantially limits (plus)
 - at least one major life activity (functional limitation)
- 42 U.S.C.A. §12101(2)

What is a physical or mental impairment?

- Clinical depression, post traumatic stress disorder, schizophrenia, bipolar disorder, anxiety disorder, etc.
- Mental retardation, other developmental disabilities, learning disabilities

What is a major life activity?

- Walking, talking, hearing, seeing, speaking, breathing

- Learning, concentrating, thinking
- Interacting with other people, sleeping, eating, taking care of oneself

- Must be of central importance to most people's daily lives¹

What does it mean to be substantially limited?

- the impairment must prevent or severely restrict the individual from doing activities of central importance to most people's daily lives

The Supreme Court has held² that to be protected by the ADA, the limitation must be measured **after** the effects of corrective measures (glasses, medication, etc.) are taken into account.

This has very little effect on the ADA obligations of state/local government programs because:

- Many poor people are not receiving treatment for their physical/mental health problems
- People with undiagnosed disabilities are certainly not receiving treatment for them
- Some treatment does not eliminate all substantial limitations
- Some treatment *causes* substantial limitations (e.g., medication has side effects)
- **Title II applies to the way the government program is designed and operated, not just to individuals.** Government programs have to assume people with substantially limiting impairments are out there and design and operate programs accordingly.

When you are doing individual advocacy, however, you should think through how your client meets the ADA definition.

What about people with substance abuse problems?

¹ *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

² *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999); *Albertsons Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

- Alcoholism is an impairment under the ADA. 28 C.F.R. § 35.104

- People who are currently engaging in illegal use of drugs are not protected from discrimination under the ADA when the employer/government program acts on the basis of the illegal drug use. 42 U.S.C.A. §12210; 28 C.F.R. §35.131
 - “current” has been defined very broadly by courts. It isn’t limited to the same, day, week or even month

- However, individuals currently participating in drug rehab program and those who have successfully completed drug rehab program who are not currently engaged in use **are protected** by the ADA. 42 U.S.C.A. §12210

- Current users **are protected** against discrimination by health care or other services provided in connection with rehabilitation on the basis of their drug use. 42 U.S.C.A. §12210

- People who use illegal drugs and have another substantially limiting impairment **are protected** on the basis of the other impairment (unless the government agency action is taken on the basis of the drug use).

The ADA does not protect people who pose a “direct threat” to health and safety:

- This includes threat to self, at least in the employment context.³

- The “direct threat” test is difficult to meet:
 - Proof of threat must be based on current, objective individualized evidence on
 - nature
 - duration
 - severity of risk

³ *Chevron U.S.A., Inc. v. Echazabal*, 122 S. Ct. 2045 (2002).

- probability that harm will occur
- Threat must be one that cannot be eliminated with reasonable modifications (i.e., the program must try to find ways to reduce risk before excluding)

What about disruptive and inappropriate behavior that doesn't rise to the level of "direct threat"?

- Case law: **employers** can fire/demote/suspend (etc.) on the basis of conduct even when conduct is the result of a disability
- **State and local government agencies** have a greater obligation to the people they serve. To avoid discriminating on the basis of disability, an agency must, before it excludes/expels (etc.) an individual:
 - consider the possibility that the person may have a disability that's causing the behavior
 - give the individual an opportunity to find out whether he/she person has a disability
 - determine whether there is a reasonable modification that could reduce the behavior or its effects
 - if there is, the agency must provide the reasonable modification and cannot exclude/expel the individual
 - if the individual refuses to find out whether he/she has a disability, the agency can act based on the conduct

The ADA also protects people with:

- **A past history of a disability**, if the government agency/employer (etc.) knows about it and discriminates on the basis of that knowledge

- **Wrongfully regarded as having a disability**, if the government agency/employer (etc.) acts on the basis of that wrong assumption
- **Associated with someone with a disability**, if the government agency/employer (etc.) acts on the basis of that association. If a parent with a disability can't work and the welfare benefits of everyone in the family are sanctioned, the child has a discrimination claim.

III. How prevalent are disabilities in the welfare population?

Studies use a variety of methods, and ask a variety of questions, but the results consistently show that:

Health and mental health problems are very common in the TANF population, much higher than in the population that is not receiving TANF:⁴

In an October 2001 GAO report,⁵ 44% of individuals interviewed in a Census Bureau survey who are receiving TANF reported having a physical or mental impairment. This was almost 3 times as high as in population not receiving TANF. In the GAO report, 29% of adults receiving TANF reported a mental impairment.

⁴ Many of the studies on the prevalence of disabilities and health and mental health conditions in current and former TANF recipients are summarized in, Eileen Sweeney, *Recent Studies Indicate that Many Parents who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, Center on Budget and Policy Priorities, (Feb. 2000), available at www.cbpp.org.

⁵ *Welfare Reform: More Coordinated Federal Effort Could Help States and Localities Move TANF Recipients with Impairments Toward Employment*, GAO-02-37, available at www.frwebgate.access.gpo.gov/cgi-bin/multidb.cgi.

In an Urban Institute national survey, 48% reported poor general health or mental health. 32% reported very poor health that limits work or poor mental health.⁶

Common diagnoses of those in TANF programs with mental health problems: depression, post-traumatic stress disorder, anxiety disorders.

Learning disabilities are extremely common in the TANF population:

Kansas study: 25% had learning disabilities

Utah: 23% had learning disabilities

Washington: 32% had learning disabilities

There are also many people with low IQ as well (22-27%).

The Kansas study found that many adults in TANF programs with learning disabilities had not been diagnosed before.

Studies also suggest gender bias in the diagnosis of learning disabilities: although these disabilities are equally prevalent in boys and girls, boys are 3 to 4 times more likely to be diagnosed with a learning disability.

Together, this data suggests there are likely to be many women with undiagnosed learning disabilities in TANF programs.

Substance abuse problems may be prevalent as well:

It is very hard to determine the prevalence of substance abuse problems in the TANF population for many reasons. However, Mathematica surveyed

⁶ Sheila Zedlewski, *Work Activity and Obstacles to Work Among TANF Recipients*, Urban Institute, (Sept. 1999), available at www.urban.org.

the research and found that studies have found that 11% to 27% of the TANF population abuses alcohol or drugs.

People with disabilities are less likely to leave TANF:

A July 2002 GAO report found that from July 1997-July 1999, people with disabilities were half as likely to leave TANF.⁷

People with health/mental health problems are much less likely to be working:

The July 2002 GAO report found that people with disabilities were 1/3 as likely to work when they left TANF, and more likely to have no household income.

In state studies, 33-36% **receiving TANF & not working** said they weren't working because of a health problem or disability.

In state studies, 25-28% who are **no longer receiving TANF and not working** said they couldn't work because of a disability or health problem, or primary barrier to work was a health problem.

Many people have more than one health or mental health problem, or a health and mental health problem and other barriers to employment (such as domestic violence, limited education or skills, or lack of transportation or child care). Studies show that the more barriers someone has, the less likely he or she is to be working.

Many people with disabilities are sanctioned off of TANF:

In studies 1/4 to 1/2 of the people who are no longer receiving TANF because of a sanction said that they were unable to comply with a program

⁷ U.S. General Accounting Office, *Welfare Reform: outcomes for TANF Recipients with Impairments* (July 2002), available at www.gao.gov/.

rule because of a disability or health problem.

Families with lower education levels are more likely to be sanctioned.

Many who are sanctioned off TANF were unable to understand program rules.

Given the prevalence of learning disabilities and people with low IQ in the TANF population, it is likely that many individuals have been sanctioned because they were not able to understand program rules for reasons related to their disabilities.

Many children in families receiving TANF have disabilities and health problems:

A child's disability or health problem makes it more difficult for parents to work, or to work full-time, because:

- Some parents are needed at home to care for their children

- Some parents are needed to take their children to frequent Drs. appointments and other treatment
- Some parents are called to school frequently to pick up their children with health or behavior problems
- Appropriate child care for children with disabilities is difficult to obtain

IV. Title II requirements

Under the Title II of the ADA, welfare agencies (and other state and local government programs) must:

- Must provide an **equal and meaningful opportunity to participate in and benefit from** cash assistance and other public benefits. 28 C.F.R. § 35.130(b)(1)(ii)

- **Can't design or administer program** in a way that has a **discriminatory effect**. 28 C.F.R. § 35.130(b)(3)(i)

- Must make **reasonable modifications in policies & practices to avoid discrimination**. 28 C.F.R. § 35.130(b)(7)
- Another ADA concept, which is not stated in the regulations but underlies everything in the regulations, is the right to **individualized treatment** based on abilities and needs, not myths, fears and stereotypes.
- **Freedom** of choice is also a fundamental concept embodied in the ADA. People have the right to refuse reasonable modifications (28 C.F.R. §35.130(e)(1)); even if we don't think it's in their best interest to do so. Even if separate programs for people with disabilities can exist, people with a disabilities have the right to go to the integrated program (28 C.F.R. 35.130(b)(2)).

Other Title II prohibitions (28 C.F.R. § 35.130):

- Exclusion from a program on the basis of disability
- Providing separate services, unless it is necessary to provide services that are as effective as those provided to others
- Using eligibility criteria that screen/out tend to screen out people with disabilities
- Failing to provide services in the most integrated setting appropriate to the individual's needs (this is the "integration mandate" that was one basis for Olmstead).

Physical access:

- New construction must be accessible (28 C.F.R. §35.151)
- **Program in its entirety** must be accessible to & usable by people with disabilities. (28 C.F.R. § 35.150)
- Each building need not be accessible, as long as the program is accessible. Program access can be achieved by:

- relocating services
- home visits
- assigning aides to beneficiaries
- redesigning services
- redesigning equipment

Communication access:

- The agency must take steps to **ensure that communication** with applicants, recipients, and members of the public with disabilities is **as effective as communication with others** (this requirement is not limited to speech, hearing and vision impairments). (28 C.F.R. § 35.160(a))
 - In welfare agencies, where there are many people with learning disabilities and other disabilities that affect the ability to read and understand, this means that agencies may need to send notices to both the client and a designated family member, or call the client in addition to sending a notice, etc.
- The agency **must provide auxiliary aids and devices** when necessary to ensure effective communication (i.e., qualified interpreters, readers, equipment. (28 C.F.R. § 35.160(b))
- When agency communicates by phone, it must **use TDDs or equally effective means of communication** with speech and hearing-impaired individuals. (28 C.F.R. § 35.161)

Exceptions/defenses (28 C.F.R. §§ 35.130(b)(7); 35.150(3); 35.164):

An agency doesn't have to do anything that would be a fundamental alteration or undue burden. **This is a difficult standard to meet:**

- The burden is on the agency to show that something would be a fundamental alteration/undue burden. Courts have held that saying "It's expensive" is not sufficient.
- Agency has to put decision in writing & explain why it is a fundamental alteration/undue burden.

- Even if something is a fundamental alteration/undue burden, agency has to do other things to accommodate the person that wouldn't be a fundamental alteration.
- When it comes to making exceptions to rules. If the agency makes an exception to a rule in other situations it will be hard to show it would be a fundamental alteration to do so for a person with a disability.
- Some courts have held that an agency has to do an **individualized analysis** of fundamental alteration, i.e., ask whether the purpose of the rule be fundamentally altered if the rule is modified **for the particular individual** the with a disability. If the purpose of a rule is to encourage/discourage behavior (such as work, or self-sufficiency), and the person with the disability is incapable of doing what is required because of a disability , modifying the rule for that individual should not fundamentally alter that rule.

Notice requirements (28 C.F.R. § 35. 106):

- The agency must give applicants, recipients and members of the public notice of their rights under the ADA **as it applies to the particular program**. "You may not have to do job search if you can't do it because of a physical or mental health problem," is better than "The ADA requires reasonable modifications."
- To be effective, notice must be in many formats. That means giving notice verbally because some people can't read.
- Notices must be written so that people with low IQ and learning disabilities can understand them.
- To be effective, people must be told what they can do if they think their rights have been violated.
- To be effective, notice must be given to everyone, not just people agency staff think it applies to (the regulations require agencies to give notice to "applicants, participants, beneficiaries and other interested persons").
- Agencies must train staff on what the ADA requires & how & when to

provide ADA notice.

Other Title II requirements:

- If >50 employees, must adopt and publish an ADA grievance procedure and have an ADA coordinator to coordinate ADA compliance and investigate complaint. (28 C.F.R. § 35.107)

Title II Planning requirements (28 C.F.R. §§ 35.105; 35.150(d)):

Title II requires all state/local government agencies to create 2 plans:

- A **transition** plan, which addresses “structural” changes needed to come into compliance (or that a program chooses to make voluntarily) if had >50 employees.
- A **self-evaluation** plan, which evaluates current services, policies and practices, and their effects, that do not or may not meet the requirements of Title II, and identifies the changes made in policies and practices to provide this program access. (The agency must do an evaluation of **each program or service** provided by the agency).

Due dates:

- **Transition** plan due by 1992; changes to be made by 1995.
- **Self-evaluation** plan by January 1992; no specific deadline for changes (regulations assume that changes made by the time plan is drafted)

Other planning requirements:

- Must be opportunity for public participation in plan development
- If >50 employees, self-evaluation plan must be kept on file for 3 years
- If agency had a Section 504 transition/self-evaluation plan, only had to draft

& implement plans for policies and practices that weren't covered by agency's Section 504 plan

Case law:

- Many government agencies have been sued for drafting no/inadequate plans
- Courts have ordered agencies to draft plans long after these deadlines have passed
- Failure to address a particular issue in a plan (like the integration mandate, or whether a program is accessible to people with psychiatric or learning disabilities) means the plan is not adequate

Plans for TANF programs:

Though TANF programs didn't exist in the early 1990's, advocates can still use ADA planning obligations to obtain improvements for TANF clients.

- Though TANF programs did not exist in the early 1990's, Medicaid and food stamp programs did. Did the agency draft plans for the Medicaid and food stamps, many of which have the same application processes, notices, appeal process (etc.)?
- The OCR Guidance on the application of the ADA and Section 504 to TANF programs (discussed below) say that many TANF agencies may need to conduct a "diagnostic review," which is similar to Title II planning requirements.
- As a practical matter, there is no way an agency can operate its programs in a non-discriminatory manner unless it does some type of systemic review of the policies and practices of its programs and services.

What should be included in an ADA plan? How can advocates know what to ask/look for?

- DOJ contracted with a private organization to draft a guide: “ADA Title II Action Guide for State and Local Governments” which has a 5-step process for doing a plan. The Welfare Law Center has a copy.
- The Welfare Law Center website has a survey developed by private consultants for the San Francisco Mayor’s Office on Disability for all city agencies to use to help them with drafting self-evaluation plans, as well as a shorter checklist developed by advocates. www.welfarelaw.org.
- My manual, *Using Title II of the Americans with Disabilities Act on Behalf of TANF Recipients*, discusses the DOJ Title II TA Manual and ADA Title II Action Guide and the components of a self-evaluation plan. The manual is available at www.welfarelaw.org.
- The OCR Guidance has a sample diagnostic review checklist.
- The Workforce Investment Act requires agencies to draft a “Method of Administration” which is similar to an ADA self-evaluation plan. The regulations detailing what a Method of Administration must contain are useful guidance in developing a self-evaluation plan. (29 C.F.R. § 37.54)

V. **The OCR Guidance on the Application of the ADA and Section 504 to the Administration of Temporary Assistance to Needy Families (TANF)** (Jan. 19, 2001), available at www.hhs.gov/ocr/prohibition.htm.

Scope of the Guidance:

The Guidance was issued by one agency (HHS) about one particular type of State or local government program (TANF). However,

- Many issues addressed in the Guidance are **applicable to other programs** run by other government agencies (such as modifications in the application process).

- The general principles in the Guidance apply to **all programs at all agencies**, & other agencies should use it as a guidepost for what the ADA requires.

Significance of the Guidance:

- Recognizes that the ADA and Section 504 apply to every aspect of TANF programs (application process, screening and assessment, work activities, time limits, education and training, etc.).
- Addresses several different types of discrimination that can occur (exclusionary rules, separate programs, administrative practices that tend to screen out, etc.).
- Provides many examples of reasonable modifications for people with the disabilities most prevalent in TANF programs (i.e., mental health problems, learning disabilities) instead of just focusing on physical access and mobility impairments.
- Gives many specific examples of the types of modifications and design changes programs may need to make.
- Includes examples of states that are implementing these practices and information on where to get further information.

Legal weight of the Guidance:

- The Guidance says that the failure to implement a particular “promising practice” described in the Guidance is not necessarily an ADA/Section 504 violation.
- My view: if the TANF agency doesn’t do the things discussed in the guidance or something equivalent, there is no way the program can be in compliance with the ADA/Section 504.
- There may not be a substitute for some of the things discussed in the Guidance.

How the guidance applies the ADA concepts to TANF programs. It says:

- **Equal access** is achieved by **providing appropriate services**; and **ensuring** that people with disabilities have **access to the entire range of services** with or without reasonable modifications.
- **Equal opportunity** is achieved by **modifying policies and practices**, which may be required at all stages of a program.
- **Non-discriminatory methods of administration** is achieved by **training staff and staff and service providers** at contract agencies; having a **clear written policy** incorporating modifications to policies and practices; and **conducting regular oversight** of programs and practices.

Screening and assessment. The Guidance says:

- PRWORA itself requires an assessment of “skills, prior work experience and employability”
- People with disabilities have a right to an assessment that gives them an equal opportunity to benefit from TANF programs and the assessment process
- Workers should be trained to recognize potential disabilities and conduct an initial screening using validated screening tools
- Screening must be voluntary
- People should be offered a comprehensive assessment by qualified personnel
- An individual’s plan should be based on the results of the screening and assessment

Best Practices that would assist TANF agencies:

- **Appropriate services:**

- **providing counseling** to those with mental or emotional problems who have barriers to employment
 - **specialized instruction** for individuals with learning disabilities and mental retardation
 - **creating linkages and partnerships with other agencies** for assessments and follow-up services
 - forming partnerships with **non-profit organizations** that have experience serving individuals with disabilities to provide support services
 - **reimbursement scheme must facilitate**, not impede, **equal opportunity** for people with disabilities. Reimbursement should take into consideration the additional cost of serving people with disabilities
 - **conduct exit interviews** with clients
-
- **Appropriate services by contract agencies:**
 - **obtaining information from contractors** about accessibility, reasonable modifications
 - **providing training and technical assistance** to contractors
 - monitoring contractors for compliance with the ADA and Section 504
-
- **Modifying policies and practices to ensure equal access:**
 - **conducting a diagnostic review** may be necessary
 - review includes **assessing the prevalence of various disabilities** in the program
 - **modifying application process** so that it's accessible by people with learning disabilities and mental retardation
 - **providing help** completing the application
-
- **Work requirements, time limits, and sanctions:**
 - **making reasonable modifications** to facilitate compliance (**instead of sanctioning** for non-compliance)
 - **exempting** individuals from **work requirements or time limits** if they can't participate in work even with reasonable modifications
 - **suspending time limits** during the assessment process for those with suspected disabilities

- **granting temporary extensions** of requirements
- **broadly defining countable work activities**
- **letting people do activities even if they aren't countable**
- **modifying** requirements for **job search** (such as the number of contacts that must be made)
- **providing a flexible work schedule** so someone can participate in mental health treatment
- **facilitating compliance of parents whose children have disabilities** that make it difficult/impossible to comply with employment plan because they need to care for the child, by **giving parent an extension of time to meet work requirements** or **helping the parent find appropriate child care**

- **Notice:**
 - If agency sends notice & agency knows person won't be able to understand because of a disability, try to reach the person by phone or a home visit before taking negative action based on the notice

VI. A few examples of best practices for TANF programs:⁸

Screening and assessment:

California has adopted a comprehensive policy on screening, assessment and accommodation of individuals with of learning disabilities in TANF programs.⁹

Linkage with non-governmental entities:

⁸ Many examples of best practices for serving individuals with disabilities in TANF programs can be found in: *Screening and Assessment in TANF Welfare-to-Work: Ten Important Questions TANF Agencies Should Consider*, Urban Institute (Mar. 2001), available at www.urban.org.

⁹ A copy of this policy is available at www.dss.cahwnet.gov/getinfo/acl01/pdf/01-70.pdf.

Kansas contracts with private psychologists to conduct assessment of learning disabilities. In several counties, **Kentucky** has placed experienced clinical professionals employed by the University of Kentucky in welfare centers to assess clients for particular barriers to employment (including mental health problems and learning disabilities) and link clients with appropriate services.

Linkages with other government agencies:

In **Phoenix, Arizona**, TANF funds pay for staff of the vocational rehabilitation agency to work with TANF recipients.

Broadly defining allowable activities:

Montana allows individuals to receive treatment and to work as much as they can.

Extensions of education and training:

New Hampshire grants extensions of time for individuals with learning disabilities to receive benefits while they complete education and training if they are unable to complete education and training within the allotted time because of their disabilities.

Sanction avoidance/support services/modifications of work requirements/time limits:

Tennessee welfare case managers refer individuals who cannot comply with work activities to **Family Service Counselors (FSCs)**, who are trained social workers for private contract agencies, who conduct further assessments for mental health problems, learning disabilities, child health or behavior problems, domestic violence and other family relationship problems. Case managers **must** refer those who are non-compliance with program requirements to FSC, and **may** refer others, & clients can request a referral. Referrals can occur at any time.

- **FSCs have the power to modify work plans** (including work hours, activities, sanctions, and time limits **for clients with major barriers**).
- **FSCs arrange for mental health/substance abuse treatment and help clients apply for SSI and other services.**
- People who are exempt from work requirements can also get FSC services.
- Some information the FSC gets is not shared with the welfare program.

Staff training:

Missouri used a national training organization to provide mental health and substance abuse awareness training to welfare agency staff at one pilot site.

VII. Some ways to use the ADA in welfare advocacy

- Incorporate into letters written on behalf of individual clients
- Raise ADA issues at fair hearings
- File ADA grievances with the welfare agency
- Raise systemic ADA issues during informal advocacy with an agency

- Raise in local welfare and disability agency advisory committees
- Raise when commenting on State or local legislation or proposed regulations
- Raise in State or local legislative oversight hearings
- File an OCR complaint (on individual or systemic issues, seeking individual or systemic relief)
 - Must file within 180 days from discrimination unless a continuing violation
- File a Lawsuit

VIII. Selected advocacy efforts on behalf of people with disabilities in TANF programs:

Ramos v. McIntire, (OCR Complaint No. 01-98-3055) (Letter of Findings) (Jan. 19, 2001), available at www.masslegalservices.org/OCR-to-McIntire.pdf. Complaint was brought on behalf of two individuals with learning disabilities against Massachusetts Department of Transitional Assistance by Ruth Bourquin at Massachusetts Law Reform Institute (617-357-0700), rbourquin@mlri.org. Some highlights of Letter of Findings:

- The failure to screen and assess learning disabilities and failure to identify barriers to employment faced by people with learning disabilities was a denial of equal opportunity under the ADA/Section 504.
- General questions to applicants about whether they have “barriers to employment” are not sufficient.
- Failure to have an exemption policy for people with learning disabilities, to train staff about learning disabilities, to determine the prevalence of learning disabilities in its welfare program and to determine the services available for these individuals all contributed to the denial of equal opportunity.

- Failure to train staff on the ADA, on programs available for clients with cognitive impairments and the failure to monitor its own ADA compliance and that of contractors was a discriminatory method of program administration.
- Failure to have policies and procedures for serving individuals with disabilities and to have an ADA policy that mentions specific disabilities or give examples of accommodations contributed to the failure to provide reasonable modifications to people with learning disabilities.
- **None of the modifications required to provide equal access to people with learning disabilities would fundamentally alter the program.**
- Corrective action required by OCR includes: provide for screening, and where appropriate, assessment of learning disabilities; modify policies and practices to avoid discrimination against individuals with learning disabilities; provide adequate training for staff and contractors; monitor its own compliance and contractor compliance with any voluntary compliance agreement; determine what other relief is appropriate for the individual complainants and others.

Voluntary Compliance Agreement between Office for Civil Rights, U.S. Department of Health and Human Services, and Georgia Department of Human Resources, Division of Children and Family Services, (OCR Complaints Nos. 04-00-7015, 04-00-7016, 04-00-7017, 04-00-7054, 04-00-7055, 04-00-3068, 04-00-3069, 04-00-3129 (Feb. 28, 2001), available at www.welfarelaw.org. Complaints were filed by Nancy Lindbloom at Georgia Legal Services (706-369-5922). Some highlights of voluntary compliance agreement:

- Spells out duties that will be delegated to an ADA/Section 504 Coordinator.
- Spells out modifications that will be made to DCFS ADA/Section 504 implementation plan.

- Requires DCFS to invite Georgia Legal Services to participate in its ADA/Section 504 Workgroup.
- Requires DCFS to develop ADA/Section 504 staff training agenda & submit it to OCR for approval.
- Requires DCFS to develop an ADA/Section 504 monitoring tool.
- **DCFS agreed to conduct outreach to clients that may have been terminated from the program without proper assessments, starting with people with lifetime sanctions.**
- Contains strict deadlines by which actions must be taken.
- OCR agreed to provide ongoing technical assistance to DCFS (State welfare agency).

IX. Other selected advocacy efforts on behalf of people with disabilities in TANF programs:

- OCR Complaint filed by Welfare Law Center, Urban Justice Center, Brooklyn Legal Services Corp. A and MFY Legal Services against NYC Human Resources Administration on behalf of people with psychiatric disabilities (filed Apr. 2, 2001), available at www.welfarelaw.org.
- OCR complaint filed by ACLU of Wisconsin Foundation and Milwaukee chapter of the NAACP against the W-2 program (filed Feb 18, 2002) , available at www.welfarelaw.org.
- OCR complaint filed by Legal Action of Wisconsin against Wisconsin Department of Workforce Development and four contract agencies (filed Feb. 8, 2002), available from Patricia DeLessio at Wisconsin, Legal Action of Wisconsin (414-278-7722).
- OCR Complaint filed by Legal Aid Services of Wisconsin on behalf of eight individuals against Oregon Department of Human Services (Oct. 31, 2001), available at www.welfarelaw.org.
- *Request to Office for Civil Rights, HHS, for review of the Massachusetts Department of Transitional Assistance's compliance with the ADA and Rehabilitation Act on behalf of individuals with mental disabilities* (filed Feb. 7, 2001) by Greater Boston Legal Services, available from Michelle Lerner, Melanie Malherbe, or Brian Flynn (607- 371-1270).
- Letter from Office of Kentucky Legal Services Programs to OCR on a wide range of issues (July 3, 2001), available at www.welfarelaw.org.
- Letter from Homeless Persons Representation Project (Maryland) to OCR (Oct. 2, 2001) on assessments, access, accommodations and computer limitations, available at www.welfarelaw.org.