



Disability Rights

WASHINGTON

Washington's protection and advocacy system

**VIA EMAIL**

March 6, 2020

Secretary Ross Hunter  
Department of Children Youth and Families  
1500 Jefferson St. SE  
P.O. Box 40975  
Olympia WA 98504-0975  
[ross.hunter@dcyf.wa.gov](mailto:ross.hunter@dcyf.wa.gov)

**RE: Civil Rights of Parents with Disabilities**

Dear Secretary Hunter,

As you may be aware, the U.S. Health and Human Services (HHS) Office of Civil Rights recently announced an agreement with the State of Oregon's child welfare agency regarding its practices for parents with disabilities.<sup>1</sup> HHS and Oregon entered into this agreement after HHS opened an investigation into allegations and media reports that Oregon's child welfare agency had been separating children from their parents on the basis of the parents' disabilities.<sup>2</sup>

Unfortunately, the problem of the child welfare system's discrimination and bias against parents with disabilities is not unique to Oregon. Disability Rights Washington (DRW) decided to focus on our constituents' rights to keep their families together in response to national findings that social service systems across the country have generally neglected to develop appropriate supports and tools for parents who are not physically or neuro-typical.<sup>3</sup> In our view, child welfare systems should not continue to ignore the unique needs of parents with disabilities based on obsolete and disproven assumptions that parents with disabilities lack the capacity to safely raise their own children, and that children are categorically better off being adopted or raised by other people who

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<sup>1</sup> VOLUNTARY RESOLUTION AGREEMENT BETWEEN U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE FOR CIVIL RIGHTS AND OREGON DEPARTMENT OF HUMAN SERVICES, attached hereto and available online at <https://www.hhs.gov/sites/default/files/odhs-vra.pdf>; see also Paige Winfield Cunningham, *The Health 2020: Oregon seized kids from low-IQ parents. The federal government wants to avoid future discrimination*, THE WASHINGTON POST (Dec 4, 2019), <https://www.washingtonpost.com/news/powerpost/paloma/the-health-202-oregon-seized-kids-from-low-iq-parents-the-federal-government-wants-to-avoid-future-discrimination/5de6cb0b88e0fa652bbdb85/>.

<sup>2</sup> See Samantha Swindler, *Judge determines couple with low IQs can parent both their boys*, THE OREGONIAN (updated Jan. 12, 2018), [https://www.oregonlive.com/pacific-northwest-news/2018/01/judge\\_determines\\_couple\\_with\\_l.html](https://www.oregonlive.com/pacific-northwest-news/2018/01/judge_determines_couple_with_l.html).

<sup>3</sup> National Council on Disabilities, *Rocking the Cradle* (2012) Ch. 5, available online at <https://www.ncd.gov/publications/2012/Sep272012/Ch5> (comprehensive report discussing overrepresentation of parents with disabilities in child welfare systems, biases, and stereotypes).

are typically not identified as having disabilities.<sup>4</sup> These assumptions, when unchecked and perpetuated, then turn into self-fulfilling predictions that individuals with disabilities cannot have families of their own. Multiple generations suffer as a result.

DRW has learned about several Washington families who have been separated and are at risk of being permanently separated because DCYF has employed methods of administration that result in discrimination and defeat its purpose of safely preserving and reunifying families.<sup>5</sup> In each of these cases, DCYF identified the parents as having disabilities, but is not fulfilling its obligations to their families under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.<sup>6</sup> Therefore, we are writing to request that DCYF ***voluntarily agree to implement a plan of reform, which at minimum contains elements similar to that of the HHS/Oregon agreement***, so as to obviate any further need to seek administrative or legal remedies.

### **Families Being Separated**

Disability Rights Washington (DRW) has already filed civil rights complaints with the U.S. Department of Justice (DOJ) regarding two parents with disabilities in our state.<sup>7</sup> In both cases, DCYF took the mothers' infants and placed unreasonable barriers to the mothers' progress towards reunification, including delays in identifying and delivering services, use of inappropriate measures such as IQ to assess parenting capacity, and application of unreasonable standards for visits to be increased or liberalized. DRW has continued to receive reports of discriminatory actions by DCYF, including three recent cases discussed herein. In each of these cases, DCYF documented throughout its records that the parents and children in these families expressed love and affection for one another, as well as observations of the parents' compliance and deep

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<sup>4</sup> See e.g. Tymchuk, A. J., Andron, L. & Unger, O. (1987). Parents with mental handicaps and adequate childcare – a review. *Mental handicap*, 15, 49 – 53; Azar, Sandra T et al. “Intellectual Disabilities and Neglectful Parenting: Preliminary Findings on the Role of Cognition in Parenting Risk.” *Journal of mental health research in intellectual disabilities* vol. 5,2 (2012): 94-129; Collentine, A. (2005). Respecting intellectually disabled parents: A call for change in state termination of parental rights statutes,” *Hofstra Law Review*, 34, 542-543; Keyes MA, Sharma A, Elkins IJ, Iacono WG, McGue M. The mental health of US adolescents adopted in infancy. *Arch Pediatr Adolesc Med*. 2008;162(5):419–425; Keyes MA, Malone SM, Sharma A, Iacono WG, McGue M. Risk of suicide attempt in adopted and nonadopted offspring. *Pediatrics*. 2013; 132(4):639–646.

<sup>5</sup> The ADA Title II and Section 504 implementing regulations prohibit state agencies from utilizing “criteria or methods of administration” that have the “effect of subjecting qualified persons with disabilities to discrimination on the basis of disability,” or that “have the purpose or effect of defeating or substantially impairing accomplishment of the objectives” of the state agency’s program with respect to people with disabilities. 28 C.F.R. § 35.130(b)(3)(i)-(ii); 45 C.F.R. § 84.4(b)(4)(i)-(ii); See RCW 13.34.020 (“The legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized.”).

<sup>6</sup> DOJ and HHS have provided a detailed description of the obligations of child welfare agencies under these statutes in, “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,” available online at [https://www.ada.gov/doj\\_hhs\\_ta/child\\_welfare\\_ta.pdf](https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf).

<sup>7</sup> See Attached Complaints.

motivation to have their children returned home. Below are summaries of how DCYF's actions are also denying these three families a fair and equal chance to stay together.<sup>8</sup>

### B.B.

**In the first case, DCYF sought termination of B.B.'s parental rights before she had a reasonable opportunity to benefit from its services.** In that case, B.B. agreed to a dependency for her four children and to accept services to address her needs for mental health treatment and parenting skill development. However, DCYF did not provide B.B. the neuropsychological assessment that had been recommended until a year later, and did not begin provide her with the evidence-based DBT treatment recommended by the neuropsychological assessment until a month before the termination trial began. B.B.'s parenting skill instructors began to note observable improvements in her parenting abilities, but DCYF proceeded to request termination of her parental rights based on estimates by its contractors that it could be at least a year before B.B. could independently parent her high-needs children. As DCYF argued on appeal, the trial record demonstrated that at least two of her children required intensive supports in their schools and foster care placements to keep them from engaging in unsafe or destructive behaviors. Her third child also exhibited behavioral health needs and required more supervision than a typical child of her age.

Nevertheless, DCYF did not acknowledge that any parent would likely continue needing professional help, as well as time to gain the skills to raise multiple children exhibiting significant behavioral health challenges. Instead, DCYF ascribed the children's behaviors during family visits to B.B.'s parenting skills, and is persistently arguing that its own delay in delivering recommended services should not prevent it from being able to permanently sever B.B.'s connection to all four children before she had a chance to complete more than a month of treatment.<sup>9</sup> Here, DCYF's delay in delivering services to address B.B.'s mental health needs combined with its haste in terminating B.B.'s parental rights is resulting in the defeat of its goals to keep family units together.

### S.U.

**In another case, DCYF is seeking to terminate S.U.'s parental rights before offering all reasonably available services.** DCYF took S.U.'s child based on concerns about the child's "failure to thrive." DCYF received reports that her child was refusing to eat and became malnourished. Because she continued to refuse to eat, S.U.'s daughter had to have a feeding tube placed, which requires additional and exceptional care tasks. DCYF had a parenting psychological evaluation administered, and asked its contractor to make recommendations for how S.U. could "be taught to care for- and protect herself and her child." The evaluator, however, did not observe S.U.'s parenting skills or specify any methods for teaching S.U. how to

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<sup>8</sup> We are using initials to protect privacy but enclosing key pleadings and records as confidential attachments for each of these examples.

<sup>9</sup> See February 13, 2020 Oral Argument, available online at <https://www.tvw.org/watch/?eventID=2020021136>.

learn the tasks necessary to care for her daughter. Instead, the report indicates the evaluation relied on various tests and metrics, including a “short version” of the WAIS IQ test to determine that S.U. lacked the ability to care her child’s needs “due to her own developmental disability.” DCYF used this evaluation in support of its unsuccessful attempt to change the child’s permanency plan from reunification to adoption, characterizing the report to say “the parenting dimensions used by the evaluator does not support the mother resuming care of the child.”

Moreover, DCYF sought to change the permanency plan without fully exploring what Medicaid or other disability services could be available to S.U.’s daughter to address her medical needs if in S.U.’s care, such as personal care services. There also is no evidence DCYF explored how other early intervention or other public health services could implement accommodations and environmental or equipment changes to help S.U. successfully care for her daughter. Rather than searching for ways to enable S.U. to properly care for her child, such as resources to help or check premeasured doses or simpler methods for S.U. to track her child’s food intake and bowel output, DCYF sought and is continuing to seek to change its own goals from reunification to termination based on her unaccommodated disabilities. Although the Department’s Response denies this is based solely on S.U.’s disability, citing her inability to properly feed her during a visit on November 26, 2019, the “Family Time Report” for this visit as well as other visits did not document any failures in feeding her child and indicates the supervisor did not have to intervene for safety. In this case, DCYF’s actions with respect to the individuals with disabilities in this family are not aligned with DCYF’s program objectives to preserve family units.

#### A.H.

**Even where A.H. consistently demonstrated parenting skill progress over time with no safety concerns, DCYF has sought to keep her visits from progressing towards reunification.** A.H.’s children were taken based on allegations that DCYF later determined were likely motivated by the reporter’s desire to obtain custody of her children. Nevertheless, DCYF had noted she has intellectual disabilities that it determined were preventing her from being involved in parenting her children. She compliantly completed the services and evaluations DCYF offered, including a psychological evaluation with a parenting component, a neuropsychological evaluation, substance abuse evaluation, and “Triple P” training recommended by the psychological evaluation.

In June of 2019, DCYF wrote in its notes that A.H.’s “Triple P” provider stated that she believed A.H. “connected with the information she conveyed” and that A.H. “was able to manage and focus on the three girls.” From July through December 2019, DCYF consistently wrote in its notes, “Mother’s skills have significantly improved during parenting time with the children this month” and “Mother is showing early improvements in parenting time.” Nevertheless, despite months of progress and no documented safety concerns, DCYF did not support A.H. to increase her visits or advance to having monitored visits in her home. When she filed a motion for the location to be in her home, the Department opposed her motion. In DCYF’s supporting declaration, the social worker could cite to only one incident in which A.H. reportedly let one of her children go to the bathroom of the DCYF office unattended (unspecified which child or how

old or when incident occurred), but also wrote that the neuropsychological evaluation “makes it sadly clear” that A.H. “is intellectually disabled” and asserted that she “operates at the level of a second grader.”

In January 2020, after the court granted A.H.’s request for visits to be held at her apartment complex, the Department again documented that her skills had “significantly improved,” but added results from her neuropsychological evaluation that “cognition is low and needs ADA services.” Despite being court ordered to provide visits at her apartment site, the Department continued holding visits at its office because it had “no providers willing to go” to her residential complex. To date, visits are still being held at DCYF’s office. For A.H., DCYF’s refusal to liberalize her visitations is based on assumptions about her abilities, and is defeating its purpose to support prompt family reunifications.

### **Request for Change**

In light of the case examples discussed above, DRW is deeply concerned that DCYF’s policies, forms, and organizational structure do not reflect a system to combat the institutional ableism that has been embedded for far too long in child welfare systems here and elsewhere. For instance, in response to its request for “all written policies describing DCYF’s practices or protocols to prevent discrimination prohibited under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act,” DCYF produced no documents about how it ensures compliance with these laws with respect to parents. Similarly, none of the representative contracts contained provisions prohibiting discrimination by contractors. In addition, DCYF produced no policies describing how DCYF satisfies its obligation to coordinate with the Developmental Disabilities Administration (DDA) to assist parents with intellectual disabilities in obtaining parenting supports tailored to their needs.<sup>10</sup> DCYF’s policy for terminations includes no specific safeguards to ensure parents with disabilities have adequate time to access and benefit from services.<sup>11</sup> Some DCYF guidance that lists mental illness or disability as “safety threat” risk factors without regard to treatment or modifications may even perpetuate powerfully harmful myths that disability or mental illness - regardless of treatment or accommodations - create safety risks for children.<sup>12</sup> And, we believe cases referenced herein illustrate a need for DCYF social workers, supervisors, administrators, and contractors to receive robust and intensive trainings about implicit as well as explicit biases against various disabilities. Absent a targeted and deliberate effort to address bias and develop appropriate practices, multi-layered and compounding acts of discrimination will

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<sup>10</sup> RCW 13.34.136(2)(b)(i)(B).

<sup>11</sup> DCYF Practice and Procedures 43061, Termination of Parental Rights (TPR) – Compelling Reasons, <https://www.dcyf.wa.gov/4306-filing-petition-terminate-parental-rights/43061-termination-parental-rights-tp- compelling>.

<sup>12</sup> See e.g. “Present Danger Guide” referenced in Policy 1110, <https://www.dcyf.wa.gov/1100-child-safety/1110-present-danger> (defining a “parent out-of-control” to include actions that do not involve children and may be observed “as behavior, caused by emotional or apparent mental health conditions”); “Safety Threshold” referenced in Policy 1120, <https://www.dcyf.wa.gov/sites/default/files/pdf/SafetyThresholdHandout.pdf> (one of five criterion may be automatically met where “no able, responsible adult is present”). In these examples, the presence of disability or mental health symptom is unqualified and the guidance materials do not explicitly require the individual’s condition to be related to the specific risk or alleged maltreatment.

continue to result in the same traumatic outcome of children losing their natural parents, and parents losing their fundamental rights to raise their own children.

Given the focus of the Department of Children Youth and Families (DCYF) on preventing and reducing the number of foster children in out of home care, we believe our interests in preventing unnecessary removals and terminations are fundamentally aligned. Additionally, we were delighted to hear Frank Ordway speak last October at the conference hosted by The Association for Supported Parenting (TASP). As he acknowledged, DCYF was created to change how the child welfare system serves families in Washington. Considering DCYF's public support of parents with disabilities, we would welcome an opportunity to work collaboratively with DCYF to modernize child welfare approaches to better protect families and prevent family separations that compound trauma for both parents and children.

If DCYF would be willing to develop a plan to reform its policies and practices, we have every reason to hope that Washington will be able to serve as a model for reform without federal or judicial intervention. We would encourage DCYF to engage affected individuals, including parents with disabilities and mental health conditions as well as child welfare advocates who represent parents and children. We would propose these discussions begin next month and would request a formal response to our request no later than March 31, 2020.

Thank you for reviewing these enclosed materials, and we look forward to receiving your response.

Sincerely,



Susan Kas, Attorney  
Community Inclusion and Services Program Director

CC: Carrie Hoon Wayno, Washington State Assistant Attorney General  
Joanne Moore, Office of Public Defense  
Counsel for B.B., S.U., and A.H.  
Patrick Dowd, Washington State Office of Family and Children Ombuds

Encls: DOJ Complaints  
Excerpted records for B.B., S.U., and A.H.