U.S. Department of Justice

Civil Rights Division

Disability Rights Section
4 Constitution Square
150 M St., NE
Washington, DC 20530

December 16, 2024

VIA EMAIL & OVERNIGHT MAIL

David Lujan, DCS Deputy Director
Kathryn Ptak, DCS General Counsel
Arizona Department of Child Safety
P.O. Box 6030
Site Code C010-23
Phoenix, AZ 85005-6030

Re: The United States' Findings and Conclusions from Investigating the State of Arizona's Department of Child Safety under the Americans with Disabilities Act, DJ No. 204-8-264

Dear Deputy Director Lujan and Ms. Ptak:

The United States Department of Justice (the Department) has investigated the State of Arizona's Department of Child Safety (DCS) under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulations, 28 C.F.R. pt. 35. The Department opened this investigation in response to complaints that DCS discriminated against parents and other caregivers with disabilities by:

- Not giving effective communication and needed auxiliary aids and services to parents and children with hearing disabilities, as well as parents with vision disabilities and other disabilities that affect how parents communicate;

- Ending parental rights based only on parents' disabilities and making decisions based on assumptions, stereotypes, and generalizations about parents with disabilities; and

- Denying parents with disabilities reasonable modifications under the ADA.

Under the ADA, public entities, including DCS, may not discriminate against qualified individuals with disabilities. 42 U.S.C. §§ 12131(1), 12132; 28 C.F.R. §§ 35.104, 35.130(a). Prohibited discrimination includes excluding people with disabilities from participating in DCS services, programs, or activities, or denying them equal benefits of DCS services, programs, or activities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a) and (b)(1)(ii). The ADA authorizes the United States to investigate, make findings of fact and conclusions of law, and try to secure voluntary compliance when it finds violations. If the Department's concerns cannot be resolved through voluntary compliance, the Attorney General may file a lawsuit under the ADA to correct the deficiencies identified in this letter. 42 U.S.C. §§ 12133-12134; 28 C.F.R. §§ 35.170-35.174, 35.190(e).

The Department finds DCS discriminates against parents with disabilities and children with hearing disabilities.[1] The Department finds that DCS violates the ADA by:

- Denying effective communication and auxiliary aids and services to parents and children with hearing disabilities, as well as parents with vision disabilities or other disabilities that affect how parents communicate. For example, DCS does not consistently provide American Sign Language (ASL) interpreters to parents, caregivers, and children with hearing disabilities.

- Denying parents with disabilities the chance to equally participate in DCS programs and services to reunify with their children. For example, DCS relies on stereotypes and assumptions about parents with disabilities rather than considering objective information about particular parents' disabilities and parenting abilities.[2]

- Denying reasonable modifications to parents with disabilities. For example, DCS had safety concerns that parents with intellectual and developmental disabilities (I/DD) and a vision disability had trouble making bottles and testing bathwater temperature, but DCS never gave the parents an opportunity to accomplish those tasks with reasonable modifications like adaptive bottle-making equipment or an adaptive thermometer.

DCS cooperated with the Department during this investigation. The Department understands that protecting children and deciding on child safety is a serious and complicated job.[3] At this time, the Department makes no general factual findings about DCS's initial child safety decisions. The Department understands that some parents with disabilities, like some parents without disabilities, may not keep or get back custody of their children, even with effective communication and appropriate modifications.

---

[1] References to "parents" in this letter include parents, guardians, foster parents, and other potential caregivers with disabilities, as well as non-disabled co-parents.

[2] DCS's denials of effective communication to parents and children with disabilities and reasonable modifications to parents with disabilities also deny parents and children with disabilities and equal opportunity to participate in and benefit from DCS programs and services.

[3] At the same time, the United States Supreme Court has long recognized that parents' interests in the care, custody, and control of their children is a fundamental liberty. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court considers the right to raise one's children one of the "essential," "basic civil rights of man." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (citations omitted). Moreover, "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

But parents and children with disabilities deserve, and the ADA requires, that DCS treat them fairly. Regardless of the ultimate merits of a DCS case, DCS must follow the ADA's requirements whenever it interacts with parents and children with disabilities. When DCS assesses child safety, DCS must make sure that parents with disabilities can equally join in DCS services and show their parenting skills. Sometimes, this will require DCS to provide effective communication to parents with disabilities or to make reasonable modifications for them. Reasonable modifications (also called accommodations) are reasonable changes to the way DCS usually does things so that parents with disabilities can fully join in DCS services. It will also require DCS and its employees to stop making unfounded assumptions about how people with disabilities will parent. DCS and its employees instead must treat parents with disabilities individually, on a case-by-case basis, based on facts and objective evidence, not based on generalizations or stereotypes.

I. Findings of Fact

The Department's investigation found that DCS's discrimination against parents and children with disabilities is ongoing, occurs across Arizona, and impacts parents with many different disabilities and children with hearing disabilities. The experiences of families served by DCS show that DCS either failed to make modifications or inconsistently provided modifications, which prevented parents with disabilities from equally accessing and benefiting from DCS services. DCS also failed to provide effective communication, like ASL interpreters, and needed auxiliary aids and services, like large print documents, to parents with disabilities. DCS similarly failed to provide interpreters to children with hearing disabilities. These failures made it hard or impossible for parents and children to understand their DCS cases and share information with DCS. As a result, parents and children with disabilities do not receive the equal benefits of DCS's services, programs, or activities, which can have devastating impacts.

A. Discriminatory Treatment of Parents and Children with Disabilities

Below is a summary of some of the ways in which DCS has discriminated against many parents with varying disabilities, including the parents discussed here.

1. DCS Denies Effective Communication to Parents and Children with Disabilities.

Several parents who are deaf and communicate using ASL complained that DCS did not use interpreters to communicate with them or their children during removals, home visits, meetings, and other DCS services. The Department finds that DCS routinely does not provide interpreters to parents and children with hearing disabilities. The Department also finds DCS has misused Video Remote Interpreting (VRI)[4] and Video Relay Service (VRS)[5] when

---

[4] VRI is a service that uses video-conferencing technology to access an off-site interpreter that provides a real-time sign language interpreter to communicate with a person who is deaf or hard of hearing.

[5] VRS is a form of Telecommunication Relay Service that enables people with hearing or speech disabilities who use ASL to communicate with voice telephone users through video equipment, rather than through typed text. Video equipment links the VRS user with a communications assistant so that the

communicating with parents with hearing disabilities, denying those parents effective communication.

In one case, a couple served as emergency foster parents for a child who is deaf. One foster parent is deaf and communicates primarily through ASL. The other foster parent is hearing and fluent in ASL. When the child was placed with the foster parents, the child's disability affected her expressive communication—the child was only starting to learn basic ASL and had no way to share her thoughts, ideas, and feelings with others. The child needed a Certified Deaf Interpreter (CDI)[6] to communicate. From the start of the couple's time as foster parents, they asked DCS for interpreters for the foster parent, who is deaf, and for the child. The DCS Case Manager never brought an ASL interpreter or CDI to any home visits, claiming that the visits would only be fifteen minutes and they would only need to talk to the hearing foster parent. Yet during the visits, the DCS Case Manager wanted information from both foster parents, which forced the foster parent who is hearing to interpret for her partner. Similarly, the only way the DCS Case Manager could communicate with the child was through the hearing foster parent. Had the child wanted to share any safety or other concerns about the foster parents, the child could not have done so because DCS never provided the child an interpreter during these visits.

At other times, DCS also did not communicate effectively with the foster parent who is deaf. For example, sometimes DCS did not provide interpreters at meetings with the foster parents and other people involved in the case, even though the foster parents always requested an interpreter. Sometimes, DCS provided an interpreter through VRI. But poor connections, with lags that caused the interpreter to leave the meeting, or interpreters who did not fully interpret all details of conversations into ASL led to ineffective communication. The DCS Case Manager also repeatedly refused to take VRS calls from the foster parent who is deaf when he called to make mandated reports about safety incidents involving the child. The DCS Case Manager incorrectly claimed that VRS calls are not confidential and insisted that the foster parent who is hearing call instead, even though the foster parent who is deaf had more detailed information about the incidents. Because of these ongoing communication issues, the foster parent who is deaf felt frustrated and excluded from the parenting process. His partner, who often had to interpret for him and the foster child despite their requests that DCS provide qualified interpreters, similarly was frustrated and exhausted when she had to simultaneously interpret and directly participate in meetings and visits.

In two other cases, DCS knew parents were deaf and needed ASL interpreters, but DCS employees did not provide ASL interpreters when removing these families' children from the home. Because no ASL interpreter was present, one mother did not know that the people trying to talk to her were DCS investigators. She could not read the paper that DCS investigators

---

VRS user and the communications assistant can see and communicate with each other in signed conversation.

[6] CDIs are interpreters who are deaf or hard of hearing and have been certified as interpreters by the Registry of Interpreters for the Deaf. They understand the deaf community and Deaf culture, and they often work with a hearing interpreter to ensure accurate communication with people who are deaf and have unique communication needs, such as not being fluent in ASL or using signs specific to a region, culture, or age group.

gestured for her to sign. And that mother did not know who was taking her children or where they were being taken. This experience made it difficult for the mother and her children to understand what was happening and took a significant emotional toll on them.

For another mother, DCS did not provide an ASL interpreter during an investigation and instead tried unsuccessfully to use a hospital's VRI to communicate. The VRI kept freezing, and the VRI interpreter was not certified to interpret the legal discussion the investigator tried having with the mother. The meeting differed from meetings the investigator would have with parents who are not deaf because DCS removed this mother's children without ever communicating with her in a way that she could understand. When DCS later removed the children a second time, DCS again did not provide an in-person ASL interpreter. Instead, the DCS case manager tried to communicate with the mother by standing at the front door and calling the mother to talk through VRS, even though the mother asked for an in-person ASL interpreter. This is an inappropriate and ineffective way to use VRS, which is meant to give people with hearing disabilities access to telephone services. VRS cannot be effectively used in place of in-person interpreters or VRI because VRS is not designed to provide interpretation services when people are in the same room, where they would not use a telephone to communicate. In addition, VRS interpreters are not certified to interpret legal information. For this reason, VRS is not an effective substitute for VRI or in-person interpreters when DCS employees communicate important legal information to parents who are deaf or hard of hearing. Because the children being removed in this situation are also deaf, the lack of an in-person interpreter also meant the case manager could not explain the removal to the children.

DCS did not give these families ASL interpreters or CDIs (which some of the children needed) for other meetings or supervised visits. DCS sometimes asked a family's adult child, who served as a kinship foster placement for some of the family's younger children, to interpret during meetings instead of using an ASL interpreter. Other times, DCS canceled or rescheduled meetings because DCS did not have an ASL interpreter. Not having ASL interpreters and CDIs also adversely affected some children's DCS services; one mother had to interpret for the service provider, instead of focusing on learning from the services.

DCS also failed to provide needed auxiliary aids and services to parents with other types of disabilities. For example, DCS never gave a mother the large print written materials that she needed due to a vision disability, so important documents like her case plan were not in a format accessible or understandable to her. During the multiple psychological evaluations DCS required the mother to undergo, DCS similarly did not ensure that the DCS-contracted psychologists provided the mother with large print materials or made other modifications, like reading the print materials to her. As a result, the mother could not read and finish all the psychological evaluations' assessments. DCS also never provided the mother with accessible copies of the psychological reports.

Finally, DCS did not effectively communicate with other parents whose disabilities affect how they communicate, like parents with I/DD or mental health disabilities. For example, DCS knew that one mother had trouble reading and writing due to her disabilities, including bipolar disorder and attention-deficit hyperactivity disorder (ADHD), among others. But DCS did not change how they communicated with the mother or tailor communication to the mother's disability-related needs, even though the mother and her lawyer asked DCS to do so. As a result, the mother often did not understand the status of her case or what she must do to have her child returned.

2. DCS Denies Parents with Disabilities an Equal Chance to Show That They Can Safely Parent

DCS does not give parents with disabilities an equal opportunity to show that they can safely parent. This often means that parents with disabilities do not have the same opportunities as parents without disabilities to avoid having their children removed from the home or to reunify their families. DCS sometimes relies on stereotypes and generalizations about people with disabilities or makes decisions based only on the existence of a parent's diagnosis. As detailed below, the ADA requires that DCS, instead, treat parents with disabilities on an individualized basis and make decisions based on facts and objective information.

For example, a father of two children became involved with DCS when the children's mother died shortly after giving birth to their younger child, who was born early. The father lives independently and has a big support system. DCS knew from the case's start that the father had a learning disability. DCS removed the younger child because of concerns that the father was not feeding the baby properly. DCS did not identify any safety concerns about how the father took care of his older child, but removed the older child at the same time it removed the baby, based only on the father's disability. DCS records show that DCS sought the older child's removal because the father was his sole caregiver and DCS speculated that the father had "developmental delays." DCS returned the older child to the father a few months later. Since then, the father has cared for the older child with no issues. This removal was traumatic for the father and older child, especially because it happened shortly after the child's mother died.

In the younger child's case, which lasted for several years, DCS focused on the father's "cognitive limitations." DCS worried about the father's "adaptability" and whether he could take care of his younger child's medical needs throughout his case, even as those medical needs got less complex as the child grew. DCS employees made many decisions based on assumptions and stereotypes about the father's disability. They also did not consistently provide the father with the reasonable modifications he asked for or obviously needed, such as written summaries and oral explanations of the child's medical appointments, or parenting classes and other services tailored for a parent with a learning disability. DCS gave the father no services to help him build skills to raise a child with medical needs.

For disability-related reasons, DCS denied offers from some of the father's family friends to be his younger child's guardian. For example, DCS did not let family friends become guardians mainly because DCS thought one of them had a learning or cognitive disability. DCS also expressed concerns about the disability of the father's fiancée, who was a longtime family friend and helped to co-parent the older child after the mother died. She also joined visits with the younger child and went to many of the child's medical appointments. When she offered to be the younger child's guardian, DCS asked her to go for a psychological evaluation due only to her past treatment for an earlier episode of depression. DCS identified no specific concerns that her past depression affected her current parenting. Even after a favorable psychological evaluation showed that her depression was in remission and well-managed, DCS required her to go for a second evaluation. This request made the friend withdraw her guardianship offer. Even though she still wanted to co-parent with the father, she did not want to continue experiencing DCS's intrusive questioning about her mental health. The father tried for several years to have DCS return his younger child to him. After more than three years, he gave up his parental rights to his younger child.

DCS similarly referred a mother with a Traumatic Brain Injury (TBI) for a neuropsychological evaluation based solely on her diagnosis. Despite observing that the mother was very organized, DCS required her to go for a neuropsychological evaluation based only on her history of a TBI, without identifying any specific concerns that the mother's TBI was affecting her parenting. This not only distressed the mother, but likely prolonged her separation from her children.

In another case, DCS removed a newborn baby from a couple at the hospital based on generalized concerns that the mother's autism and ADHD made her an unsafe parent. A DCS employee who removed the child described the mother as "not on the same level as normal people," even though no one from DCS directly saw the mother with her baby before removal. Before removal, DCS never helped the mother with diapering and holding her child, which were things DCS thought she had trouble doing. DCS also did not consider how the mother's recovery from a Caesarean section and another major surgery done at birth may have affected how she took care of her baby. Despite both parents finishing out-of-home and in-home supervised visits for several months with no safety issues, DCS employees still expressed vague concerns that the mother's disabilities made her an unsafe parent, based mainly on stereotypes about parents with disabilities. In addition, although the mother successfully sought emergency care in the past for another child, DCS expressed concerns about the mother's general ability to stay focused because she has autism and ADHD and what she might do in an emergency because of those conditions. These worries are based solely on the mother's disability; there have been no actions or incidents that DCS could identify as the basis for these concerns.

At the time of birth, DCS had no safety concerns about the child's father (and mother's boyfriend, with whom she lives). Yet DCS removed the baby without seeing if the parents could take the baby home together, with a safety plan and services to help with parenting skills. DCS later labeled the parents as erratic, unpredictable, and impulsive, but did not cite any examples of when the parents have put their child in danger or caused safety concerns because they were erratic, unpredictable, or impulsive. It appears DCS's characterization of the parents is based on the parents' diagnoses of disabilities that affect impulse control rather than on observed behavior. Even though the child recently returned home, DCS still requires the father to always stay with the child and never leave the mother alone with their child. The DCS case has been devastating on the parents, who missed out on having their child home for almost two years, including holidays and the child's first birthday.

DCS similarly made assumptions and relied on stereotypes and generalizations in another couple's case after removing their child. There, the mother has a vision disability, I/DD, and other disabilities. The father also has I/DD and other disabilities. One parent aide who worked with the parents for nearly a year told DCS that the parents' parenting skills had improved and suggested the parents move to partially unsupervised visits. But DCS refused to move the parents to partially unsupervised visits based on generalized safety concerns even though DCS could not give specific examples of those concerns when the parent aide asked for examples. DCS also ignored that the parents might be able to parent successfully as a team, with occasional help from their support system, as many parents without disabilities do. The multiple psychological evaluations that DCS required also made assumptions about the parents' ability to safely parent in the future that were based on stereotypes and generalizations about parents with disabilities. These evaluations and assumptions were cited by DCS in court proceedings to end the couple's parental rights.

Finally, the derogatory and outdated terms that some DCS employees have used to refer to parents with disabilities show that DCS employees sometimes stereotype parents with disabilities. For example, DCS employees heard coworkers and supervisors call parents with mental health disabilities "crazy," "loony," or "psycho." One DCS supervisor described a parent's learning disability as "mental retardation" even though that term is outdated and an inaccurate description of a learning disability. The supervisor was aware that they should not use that term.

3. DCS Denies Reasonable Modifications to Parents with Disabilities

In many cases, DCS does not make needed reasonable modifications for parents with disabilities, which denies those parents an equal chance to improve their parenting skills or show that they can safely parent. For example, some of the parents identified in the prior section were denied such modifications. The father with a learning disability whose children were removed shortly after their mother died was denied reasonable modifications he asked for or obviously needed. DCS did not consistently give him written summaries and oral explanations of his child's medical appointments, which the father had asked for as a reasonable modification. DCS also did not provide the father parenting classes and other services tailored for a parent with a learning disability. And DCS gave the father no services to help him build skills to raise a child with medical needs.

DCS did not make timely or appropriate modifications for the mother with autism and ADHD discussed earlier. For example, DCS required the mother to take parenting classes and knew she needed hands-on lessons. But for the first eight months after imposing the parenting class requirement, DCS failed to arrange for lessons that enabled her to learn by being shown how to do things and having hands-on practice. The mother thus went without parenting skills lessons during those months. Because it was hard for the mother to understand her case plan or what DCS needed her to do, her advocate asked DCS to write a simplified case plan that the mother could understand. In response, DCS just put the existing case plan into bullet points without changing the plan's language.

The investigation substantiated multiple other complaints from parents with learning disabilities, I/DD, mental health disabilities, vision disabilities, and multiple sclerosis (MS), among others. For example, in the case discussed above involving the mother with a vision disability (who also has I/DD and other disabilities), DCS expressed concerns that the mother, along with her then-husband, who also has I/DD, could not safely judge water temperature when bathing their child. DCS did not consider whether something simple, like using an adaptive thermometer, might have helped them safely bathe the child. DCS similarly did not consider whether adaptive bottle-making equipment could help the mother address concerns that DCS had early in the case about whether she properly could make bottles.

In another case, DCS worried that a mother with MS could not keep up with her youngest child, who would run away in public places. Yet, DCS did not consider or make modifications to help the mother with balance and movement issues that MS causes so she could keep up with her child. And DCS employees did not offer her services or supports to address other questions they had about how MS might affect her parenting.

Finally, DCS did not make modifications for another mother with a learning disability even when she and her lawyer asked for modifications. Instead, DCS made the mother find a parenting class on her own, failed to arrange modifications for her during class, and then criticized her for not participating and engaging in the class without needed modifications. The mother often had to read out loud in a group, where classmates made fun of her reading. She also had trouble understanding some of what she read. The mother asked the teacher to talk one-on-one with her to show what she was learning and asked for other modifications, but the teacher did nothing differently. The mother failed the class. After the mother's attorney asked again for modifications, DCS agreed to some modifications but would not use a provider who had experience working with parents with I/DD. During this case, even when the official case goal was to return the children to the mother, a supervisor told a case worker that the case would be a "severance case." Only recently, with a change in the DCS case manager, did DCS begin to work with the mother's attorney to individually assess the mother based on objective evidence rather than stereotypes or assumptions about her disability. Recently, DCS returned the mother's children to her care and successfully asked the court to close the case.

B. DCS Does Not Properly Train Its Employees on the ADA and How to Work with Parents with Disabilities.

DCS employees regularly work with parents with disabilities, but DCS gives employees only limited guidance on the ADA's requirements or how to work with parents with disabilities, including how to make needed modifications and provide effective communication. Few DCS employees can identify when parents may have disabilities. Many DCS employees do not know about DCS's ADA Title II policy and get little training on the policy, the requirements of the ADA, and how to work with parents with disabilities. And DCS has no way for employees to consistently track information about parents' disabilities and modifications. While employees can, and do, reference other DCS policies and practice guides, discussion of disability in these documents is usually absent or based on generalizations about disability. This lack of guidance prevents both DCS employees and contracted third-party service providers from treating parents with disabilities fairly and providing them with the supports and communication they need. Further, no DCS employee could name a designated ADA Coordinator[7] and the person who DCS claims is its ADA Coordinator only works on internal employment matters under Title I of the

---

[7] Each public entity with 50 or more employees must designate at least one employee to coordinate its efforts to comply with the ADA. *See* 28 CFR § 35.107(a).

ADA. DCS also lacks a published grievance procedure to address complaints about disability discrimination.[8]

II. Conclusions of Law

The ADA prohibits a public entity from discriminating against people with disabilities. The State of Arizona and DCS are "public entities" under Title II. 42 U.S.C. § 12131(1). The ADA applies to all DCS services, programs, and activities. 28 C.F.R. § 35.102. Thus, it prohibits DCS from denying qualified parents with disabilities the benefits of DCS services, programs, or activities or discriminating against parents based on disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a)-(b). DCS must make sure that parents with disabilities have equal access to all DCS programs, activities, and services, including services that help parents keep their families together or reunify their families. *See* 28 C.F.R. § 35.130(b)(1)(ii); *see Pa. Dept. of Corrs. v. Yeskey*, 524 U.S. 206, 209-12 (1998) (discussing Title II's broad coverage).

Under the ADA, DCS must take appropriate steps to make sure that communication with parents with disabilities is as effective as communication with parents without disabilities. 28 C.F.R. § 35.160(a)(1). This means DCS must give "appropriate auxiliary aids and services where necessary to afford" parents with disabilities an equal opportunity to join in and benefit from DCS's services, programs, and activities. 28 C.F.R. § 35.160(b)(1). The type of auxiliary aid or service that will ensure effective communication will vary based on "the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place." 28 C.F.R. § 35.160(b)(2). "In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities." *Id.* Such aids and services must be accessible and timely, *id.*, and can include qualified interpreters or "other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing," 28 C.F.R. § 35.104.

To meet the ADA's nondiscrimination mandate, the ADA requires DCS to give parents with disabilities and parents without disabilities an equal opportunity to access and benefit from DCS's services, programs, and activities. 28 C.F.R. § 35.130(a)-(b). This requires DCS to treat parents with disabilities as individuals and make decisions based on facts and objective information. DCS cannot rely on stereotypes or generalized concerns about parents with disabilities or judge parental fitness based only on a diagnosis.[9] *See* 28 C.F.R. § 35.130(b). DCS also must reasonably modify policies, practices, or procedures to avoid disability discrimination, unless DCS can show that making those changes would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i). Finally, DCS must designate an ADA

---

[8] Each public entity with 50 or more employees must adopt and publish grievance procedures providing for prompt and equitable relief of ADA complaints. *See* 28 CFR § 35.107(b).

[9] "Taken 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 on presumptions as to what a class of individuals with disabilities can or cannot do." 28 C.F.R. pt. 35, app. B at § 35.130 (1991).

coordinator to oversee compliance with the ADA and publish a grievance procedure to promptly and equitably address complaints about ADA violations. 28 C.F.R. § 35.107(a)-(b).

After careful review, the Department finds that DCS has violated the ADA and that the violations continue. All parents mentioned in this letter have an impairment that substantially limits one or more major life activities or major bodily functions. Thus, each is a person with a disability under the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.108. In addition, most of these parents have a record of disability and DCS has also regarded them as having a disability. *See id.* Specifically, DCS, either directly or through contractual or other arrangements, has:

- failed to provide effective communication and auxiliary aids and services to parents and children with disabilities, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.160;

- denied parents with disabilities an equal opportunity to join in and benefit from DCS's programs and services, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(a)-(b);[10]

- not made needed reasonable modifications for parents with disabilities, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7); and

- failed to designate an ADA Coordinator and publish a grievance procedure to promptly and equitably address complaints about ADA violations, in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.107(a)-(b).

III. Relief

DCS must promptly act to remedy the violations this letter identifies. DCS must take steps to protect the civil rights of parents and children with disabilities going forward. At a minimum, DCS must:

1. Develop and implement changes to policies and procedures to ensure both that parents with disabilities have equal access to DCS's programs, services, and activities and that those programs, services, and activities comply with the ADA and do not lead to discrimination against parents or children with disabilities. This must include changes to policies and procedures about DCS assessments, case plans, psychological evaluations, service planning and implementation, visitation, reunification programs and services, and provision of effective communication.

2. Develop and implement for all DCS employees and contractors who work with parents and children with disabilities training on compliance with the ADA, including how to consistently document parents' and children's disabilities and how to

---

[10] As noted earlier, DCS's denials of effective communication to parents and children with disabilities and reasonable modifications to parents with disabilities discussed throughout this letter also deny parents and children with disabilities and equal opportunity to participate in and benefit from DCS programs and services.

determine and provide appropriate modifications and effective communication to parents and children with disabilities. This training must include investigators, case managers, supervisors, psychological consultants, psychological evaluators, and service providers.

3. Designate one or more employees to coordinate DCS's efforts to comply with and carry out its responsibilities under the ADA. These efforts must include developing a way to consistently document parents' and children's disabilities, track DCS efforts to make reasonable modifications for parents and children with disabilities, and track DCS efforts to provide effective communication to parents and children with disabilities. The designee(s) must also ensure that DCS investigates all complaints DCS receives alleging it has not complied with the ADA.

4. Adopt and publish grievance procedures that provide for prompt and fair resolution of all complaints alleging that DCS has not complied with the ADA.

5. Take all necessary actions to ensure that parents and children with disabilities who have been harmed by the violations identified in this letter, and who remain or again become involved with DCS, receive an equal opportunity to participate in and benefit from DCS's programs and services. This means DCS must give those parents and children all reasonable modifications, effective communication, or auxiliary aids and services they need, as the ADA requires.

6. Pay compensatory damages to complainants for injuries DCS caused by violating the ADA.

7. Provide the United States with regular written status reports and supporting information on compliance with these requirements.

Conclusion

We look forward to working with you to resolve the Department's findings. We hope to collaborate with Arizona and agree on changes the State will make to remedy the violations. We must inform you, however, that, if Arizona will not negotiate or if our negotiations fail, the United States may take appropriate action—including initiating a lawsuit—to remedy Arizona's ADA violations.

This letter is a public document and will be posted on the Civil Rights Division's website. Please contact Cheryl Rost, Trial Attorney in the Disability Rights Section of the Civil Rights Division (cheryl.rost@usdoj.gov, (202) 598-9620), within two weeks of receiving this letter if Arizona is interested in working with the Department to reach a solution along the lines described above.

Sincerely,

Rebecca B. Bond
Chief
Disability Rights Section

cc: State of Arizona, c/o Arizona Attorney General Kris Mayes (via email and overnight mail)
Mark Ewy, DCS Program Administrator for Legal Services (via email)
Bill C. Solomon, Assistant United States Attorney, District of Arizona (via email)