Agency for Persons with Disabilities (APD) Application & Appellate Process

Ericka Garcia, Esq.
Developmental Disabilities Attorney

Bethanie Barber, Esq.
Litigation Coordinator

Legal Aid Society of the O.C.B.A., Inc.
Guardian ad Litem Program

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Overview

- Statistical Data
- Developmental Disabilities
- Agency for Persons with Disabilities Application Process
- Appellate Process
- GAL Advocacy
- Discussion/Q&A
National Council on Disability: Youth with Disabilities in the Foster Care System: Barriers to Success & Proposed Policy Solutions
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Statistical Data – National

- General Population
  - About 10% of children have a disability

- Children in Dependency
  - Between 20% to 60% have a disability
  - Children with a disability are 3 times more likely to be abandoned, abused or neglected

National Council on Disability: Youth with Disabilities in the Foster Care System: Barriers to Success & Proposed Policy Solutions
Why so Many Children with Disabilities?

- Parents have a disability themselves
- Abuse caused the disability
- Neglect suffered during pregnancy
  - Born drug-addicted, fetal alcohol syndrome or lack of prenatal care
- Parents/caregivers can no longer cope with the increasing needs of the growing child
What are Developmental Disabilities?

- A disorder or syndrome attributable to
  - Autism
  - Cerebral Palsy
  - Down Syndrome
  - Prader-Willi Syndrome
  - Intellectual Disability
  - Spina Bifida
- Must manifest prior to age 18
- Constitutes a substantial handicap that will likely be indefinite

*Florida Statute §393.063(9)*
Autism

A pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

Florida Statute §393.063(3)
Autism Spectrum Disorder (ASD)

- Classic
- Asperger’s
- Pervasive Developmental Disorder (PDD-NOS)

- Individual diagnoses no longer exist under DSM-V, they are all ASD
- 1 in 88 children affected per the CDC
- 1 in 54 boys and 1 in 252 girls

For more information, visit www.autismspeaks.org
Cerebral Palsy

A group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

Florida Statute §393.063(4)
Cerebral Palsy

- A number of disorders of the developing brain affecting brain movement, posture & muscle coordination
- Caused by damage to one or more specific areas of the brain
- Not a disease, not progressive, nor communicable
- Can also have other disabilities such as seizure disorder, visual impairment, hearing loss and intellectual disabilities
- 2 out of every 1,000 babies born will develop CP

For more information, visit www.ucp.org
Down Syndrome

- A disorder caused by the presence of an extra chromosome 21
- Most commonly occurring chromosomal condition & diagnosed through genetic testing
- Common physical traits include low muscle tone, small stature, upward slant to the eyes, and a mild to moderate intellectual disability
- 1 in every 691 babies in the US

Florida Statute §393.093(13)

For more information, please visit: [www.ndss.org](http://www.ndss.org)
Prader-Willi Syndrome

- An inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.


- Likely affects 1 in 15,000 children.

Florida Statute §393.063(24)

For more information, please visit: [www.pwsausa.org](http://www.pwsausa.org)
Spina Bifida

- A person with a medical diagnosis of spina bifida cystica or myelomeningocele
- During pregnancy, the spine doesn’t close causing mobility, nerve, build-up of fluid in the brain among other complications
- It can cause physical and learning disabilities
- Usually easily identified during pregnancy or upon birth
- Most common birth defect in the US
- 1 in 2,500 children affected

Florida Statute §393.063(36)

For more information visit: www.sbaa.org
Intellectual Disability

- **Significantly subaverage general intellectual functioning** existing concurrently with deficits in **adaptive behavior** which manifests before the age of 18 and can reasonably be expected to continue indefinitely.

- Adaptive behavior – effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group and community.

- **Significantly subaverage general intellectual functioning** – two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

Florida Statute §393.063(21)

For more information, please visit: [www.thearc.org](http://www.thearc.org)
Intellectual Disability

- IQ under 70 and
- Adaptive Behavior Score under 70
- Deficits in Adaptive Behavior include
  - Self-Care, Learning, Self-Direction, Understanding and Use of Language, and Capacity for Independent Living
How do we identify children that may have developmental disabilities?
Documents to Review

- Dependency Petition
- Comprehensive Behavioral Health Assessment (CBHA)
- School records including psycho-educational and Individual Education Plans (IEPs)
- Medical records including Child Health Check-Up
- Psychological evaluations for child and parents
- Mental health treatment for child and parents
Interviews

- Child
- Parents
- Family members
- Teachers
- Case Manager
- Foster Parents
- Other invested individuals
What is the Agency for Persons with Disabilities (APD)?

State of Florida agency that provides an array of services for those with developmental disabilities
Some Available APD Services

- Adult Day Training (older than 21)
- Behavior Analysis Services
- In-Home Support Services (Mentors)
- Personal Care Assistance (older than 21)
- Residential Habilitation (Group Home)
- Respite Care
- Supported Employment (older than 21)
- Transportation
Qualifying for APD

- Live in Florida
- U.S. Citizen or qualified noncitizen
- Meet the statutory definition of a developmental disability
- Age three (3) and up
  - High Risk until age 5 in some instances
- Waiver services must be needed for the person to remain in the community
- Meet “level of care” criteria for placement in an ICF/DD
- Asset and Income Limits
Application Process for APD

- **Required**
  - Three page application
  - Documentation to support Developmental Disability
- **Vital Documents**
  - Birth Certificate and Social Security Card
- **Recommended**
  - Client Information Sheet
  - Consent for Release of Information
  - Paperwork from the Dependency Court that shows who the child is placed with
- You can find these at [www.apdcares.org](http://www.apdcares.org)
APD Application for Eligibility

APDF-10-007-application-for-services.doc

APDF-10-005-client-information-sheet.pdf
Acceptable Documentation

- Spina Bifida, Prader-Willi Syndrome
  - MD diagnosis that it began at birth or early childhood
  - 5 pages of other medical records confirming diagnosis
- Cerebral Palsy
  - MD diagnosis that it began before age 18
  - 5 pages of other medical records confirming diagnosis
- Down Syndrome
  - Genetic Testing

For all above, they must have severe functional limitations in at least **three** major life activities, including self-care, learning mobility, self-direction, understanding and use of language and capacity for Independent Living.
Acceptable Testing for Autism Spectrum Disorder (ASD)

- Testing can be done by
  - Psychiatrist
  - Licensed Psychologist
  - Pediatric Neurologist
  - Developmental Pediatrician
- Autism Diagnostic Observation Schedule (ADOS)
  - Referred to as the Gold Star testing
- Autism Diagnostic Interview – Revised (ADI-R)

- The youth must have severe functional limitations in at least **three** major life activities, including self-care, learning mobility, self-direction, understanding and use of language and capacity for Independent Living
Acceptable Testing for Intellectual Disability

- Intelligence Quotient (IQ) test score below 70
  - Standford-Binet Intelligence Scale
  - Wechsler Adult & Infant Intelligence Scale

- If given the condition of the individual to be tested, the Standford-Binet or Wechsler Adult & Infant Intelligence Scale are not valid and reliable, an alternative test or evaluation...may be used

Fla. Admin. Code 65G-4.012
Other Tests Which May Be Acceptable

- Young children
  - Stanford-Binet
  - Wechsler Preschool and Primary Scale of Intelligence
  - Differential Ability Scales (DAS) Preschool edition

- Older Children up to 15 years, 11 months
  - Stanford-Binet
  - Wechsler Intelligence Scale for Children (WISC)
  - Differential Ability Scales (DAS)

- Adults
  - Stanford-Binet
  - Wechsler Adult Intelligence Scale (WAIS)

- Nonverbal, children and adults
  - TONI-3, C-TONI, UNIT, Leiter-R
Acceptable Testing for Adaptive Behavior

- Adaptive Functioning Test score below 70
  - Vineland-II
  - Adaptive Behavior Scale (AAMR)
  - Adaptive Behavior Assessment System (ABAS)
  - Adaptive Behavior Evaluation Scales (ABES)

- Both IQ and Adaptive Behavior scores must be below 70 to be diagnosed with an Intellectual Disability
Submission of Application

- Recommend that Point of Contact with APD sign and submit it
  - Utilization Manager from CBC
- Ask for confirmation from CBC as to when it was submitted and how
What’s next?

Child Under 6
• APD has 45 days to determine eligibility

7 and older
• APD has 60 days to determine eligibility
Eligibility

- If child is eligible, they go on the Waitlist

- If the child is denied, the decision can be appealed
Appellate Process
Appellate Process
What can be appealed?

- Eligibility denial
- Crisis tool enrollment denial
- Prior services authorizations
  - Whether denied, reduced or terminated
- Rebasing
Appellate Process
Deadlines to File Appeal

- Must request a hearing within ten (10) days of receipt of notice to continue services at existing level
- Otherwise, Thirty (30) days
- Failure to timely request waives the right to a hearing
Notifying APD of your Intent to Appeal - First Steps

- Fill out the Hearing Request form included with the denial letter and submit it within the 10 or 30 day deadline; or
- Send a request in writing
  - Draft of letter with requirements is attached
- Include a reference to, or copy of the agency’s decision and the date you received it
- An Authorization and Waiver of Confidentiality or a similar document signed by the Legal Guardian
- If received by fax or mail after 5 pm, it’s noted as received the next business day
- Case Managers or even the CBC can file this
Appellate Process
Next Steps

- File a Notice of Appearance
- Standard of review is *de novo*
- The burden is on the petitioner if an application for benefits is denied. The burden of proof is on APD when it sets out to reduce or terminate services already in place.
- Standard of Proof is preponderance of the evidence
- Hearsay evidence may be used to supplement or explain other evidence, but it shall not be sufficient to support a finding
- Generally proceeds like any other fair rights hearing
  - Sample pleadings are included
Considerations Before Filing Appeal

- Was the application filed sufficient?
- Experts
  - Do you have one?
  - Are they willing to testify?
  - Who’s going to pay for it?
- Is the dependency case going to close shortly?
- Is the child actually going to accept APD services?
APD Waitlist

- There are approximately 21,000 people waiting for APD services
- About 30,000 are receiving waiver services
- Florida law requires that children in the foster care system receive priority for enrollment over all others, except those deemed in crisis
- According to APD, the youth keeps this classification if they exit the dependency system 18+
Why Apply if the Child is going on the Waitlist?

- Family is now on the radar of APD if case closes
- Child can access services if he or she reaches certain types of permanency
- Child can access APD Placements and other services
  - Regardless of who pays
- Purposes of crisis tool
New Legislation on Permanency for Children Eligible for APD

- At the time of finalization of an adoption with placement in the family home, reunification with family members with placement in a family home, or permanent placement with a relative in a family home, **shall** be moved to the waiver.

- Families will likely only qualify for a Waiver Support Coordinator (case manager) and respite

Chapter 2013-41, SB 1502 (2013)
A crisis tool can be filed at any time, regardless of how long they have been on the waiting list.

Criteria for filing a crisis tool:
- Homeless
- Danger to self or others
- Caregiver unable to care

APD will require substantial documentation.

If successful, the child will be taken off the waitlist and begin receiving APD services.
Who Can Request a Crisis Tool?

- The individual, family or Waiver Support Coordinator (WSC)
- Once submitted and approved locally, it goes to Tallahassee for approval/denial
- If approved
  - Another crisis tool is filed requesting the services the youth needs
- If the crisis tool under homelessness or the cost plan is denied
  - Decision can be appealed
What’s Usually Included in a Crisis Tool?

- Ninety (90) days prior to the youth turning 18, the Dependency Case Manager should begin requesting documentation from the providers:
  - School records
  - Treatment Plans
  - Psychiatric Records
  - Medical records

- Sixty (60) days prior to the youth turning 18, the CBC Utilization Manager can submit the documents to APD

- APD will then complete a Questionnaire for Situational Information (QSI) if necessary
How Can GALs/Attorneys for Kids help?

- If you suspect a child has a Developmental Disability, ask for the appropriate testing to be completed.
  - The evaluation MUST be completed prior to the youth turning eighteen (18)
- If the youth does have a Developmental Disability, ask for an application for APD to be submitted
- Ensure that the crisis tool is completed and submitted to APD sixty (60) days prior to the youth aging-out
- Work with the youth to formulate several back-up plans in case the first one does not pan out
Questions?

Ericka Garcia, Esq.
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Bethanie Barber, Esq.
Litigation Coordinator
Legal Aid Society of the OCBA, Inc.
Guardian ad Litem Program
100 E. Robinson Street
Orlando, Florida 32801
(407) 841-8310 ext. 3176
egarcia@legalaidocba.org
bbarber@legalaidocba.org