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Mass. State Police official testifying in Aaron Hernandez trial

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# Disability does not preclude parental rights



By **Joan Vennoch** | GLOBE COLUMNIST FEBRUARY 12, 2015

A LITTLE over two years ago now, state child welfare officials took an infant girl and placed her in foster care, saying the mother's developmental disabilities made her an unfit parent. As first reported by the Associated Press, federal officials are now telling Massachusetts this mother has the right to prove she can care for her daughter — and the state has a duty to help her try.

In a report issued last month by the US Departments of Justice and Health and Human Services, federal officials concluded that placing the child in foster care on the basis of her mother's disability amounted to discrimination under the Americans with Disabilities Act. They are calling on the state Department of Children and Families to withdraw a petition to terminate the mother's parental rights, to give her a chance to reunite with her child, and to pay compensatory damages. If these three things don't happen, the federal government could sue.

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It's important to note that this state agency has been under heavy fire lately for its lack of oversight of children placed in its care. This case goes further, challenging basic assumptions of who can be a loving, caring mom. From the start, the federal report

states, DCF wrongly relied on stereotypes and pre-conceived notions. But Cayenne Isaksen, a DCF spokesperson, said the agency “believes it acted in the best interests of the child.” The state will be responding to the report, she said.

To Robyn Powell, an attorney with the National Council on Disability, the federal findings are “a real game changer.” Losing custody is a widespread problem, said Powell, reflecting “society’s bias against people with disabilities raising children.”

According to a 2012 report by Powell’s employer, an independent federal agency that advises the White House and Congress, parents with disabilities “are the only community of Americans who must struggle to retain custody of their children.” Removal rates of parents with psychiatric disabilities are as high as 70 to 80 percent. Removal rates of parents with intellectual disabilities are as high as 80 percent. Parents with disabilities often lose custody after divorce. In some states, blind or deaf parents also must fight to keep their children.

Massachusetts is one of 37 states that allows termination of parental rights based on disability. In the Bay State, that includes intellectual or mental disability as well as alcohol and drug addiction. The test is whether the condition makes the parent “unlikely to provide minimally acceptable care of the child.”

The case that spurred this federal review dates back to November 2012, when a then 19-year-old woman identified in the federal report by the pseudonym “Sara Gordon” gave birth to a daughter. Two days later, the state agency removed the baby from the mother’s custody while she was recovering from childbirth. She lives with her parents, who do not have developmental disabilities, and her mother stands ready to help raise her grandchild.

According to the federal report, the mother has a “mild intellectual disability.” The state has a different view. In the hospital, the mother had problems holding and feeding the baby, had to be reminded to burp the baby, and was uncomfortable about changing the baby’s diaper.

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*The federal report states DCF wrongly relied on stereotypes.*

Let’s not forget that some new parents with no disability at all would still be struggling with these same activities in the first 48 hours. Yet, on the basis of such observations, DCF concluded that the mother “was not able to comprehend how to handle or care for

the child due to the mother’s mental retardation.” A DCF investigator later told federal officials that he based his conclusion about the mother’s fitness on “intuition . . . when you meet someone, you get a vibe whether they are going to be able to do it or not.”

Meanwhile, the federal report also contends that DCF staff “repeatedly overlooked numerous safety concerns” in the child’s foster home. Specific concerns include a black eye, bumps, bruises, scrapes, and burnt hands. She was also left unattended on a kitchen table at only a few weeks old.

A child’s “best interests” are always a judgment call. Federal officials recognize that but note the violations in the report “highlight systemic failures by DCF to ensure social workers follow appropriate policies and procedures and have necessary training to perform their duties without discriminating on the basis of disability.”

The bottom line: The right to be a parent does not automatically end because a parent has a disability. Judging when it should is a new battleground in Massachusetts.

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