



Finding Equitable Solutions to Disability Discrimination in Colorado Child Welfare

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Why are we here?

People with disabilities are overrepresented in all the wrong places.

Poverty



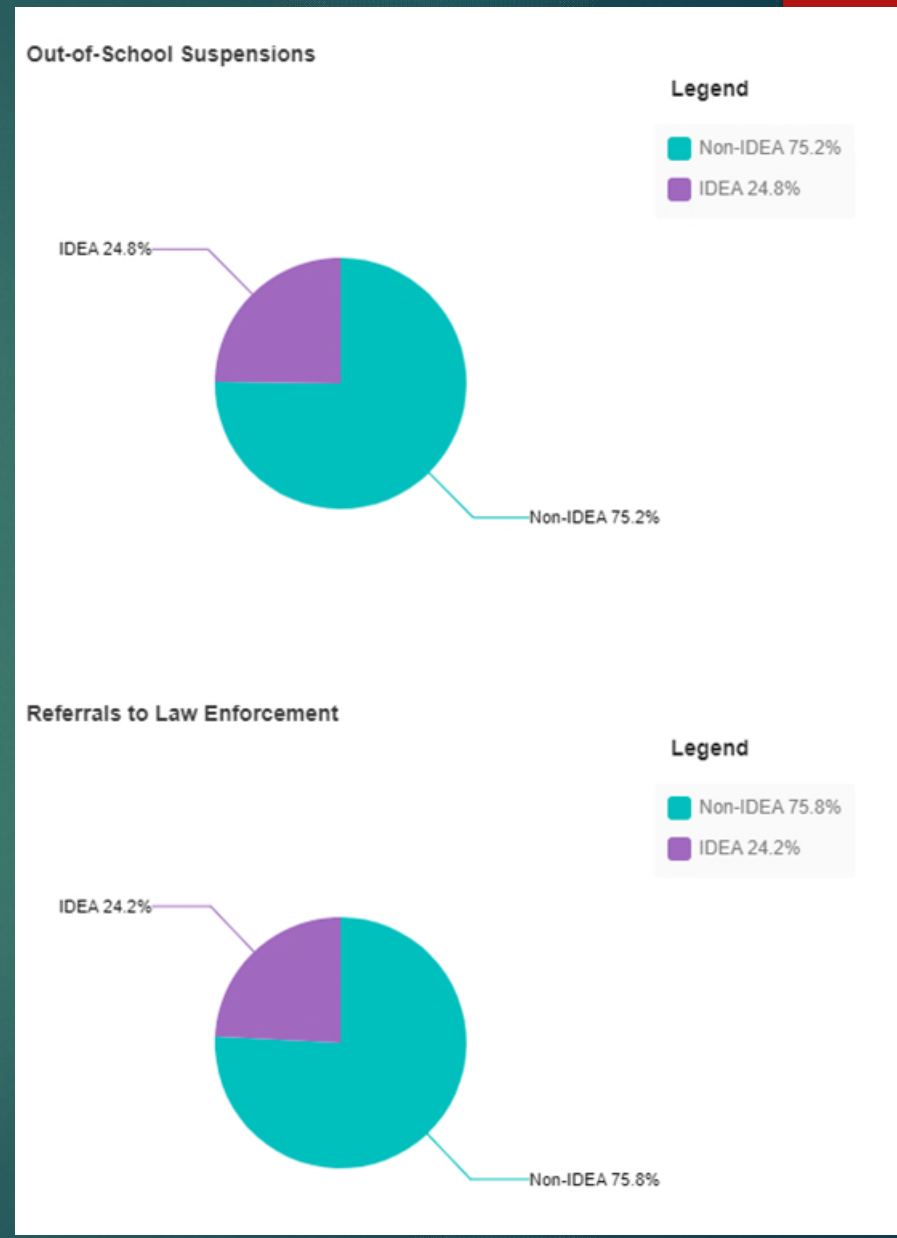
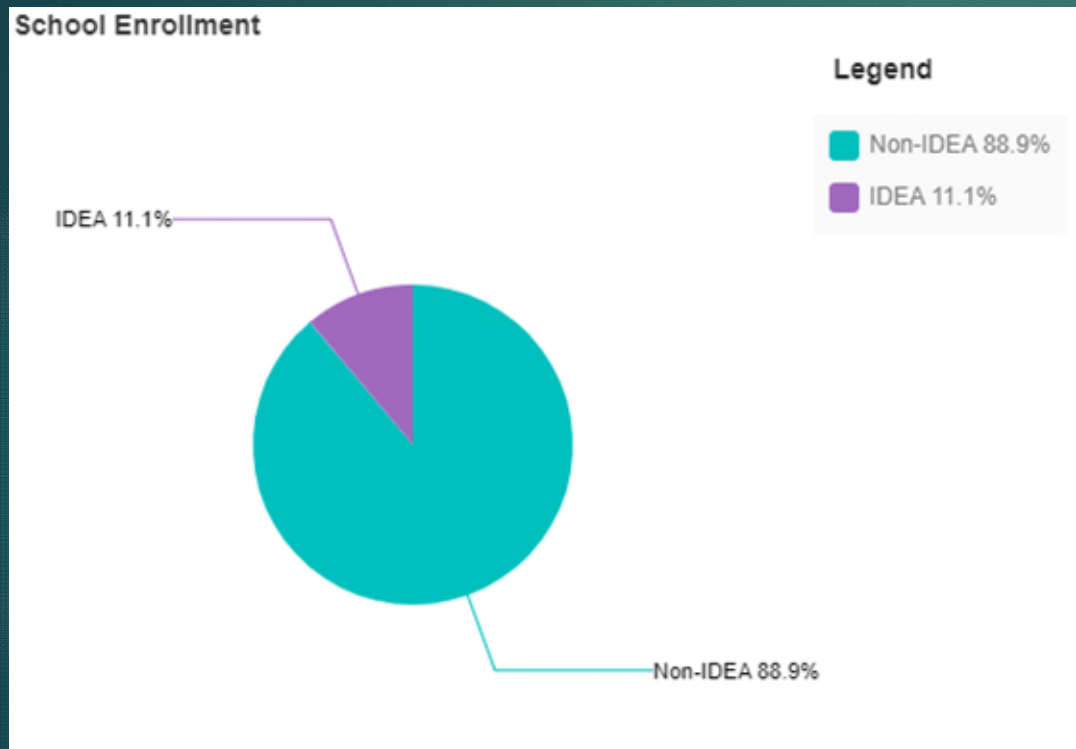
29%



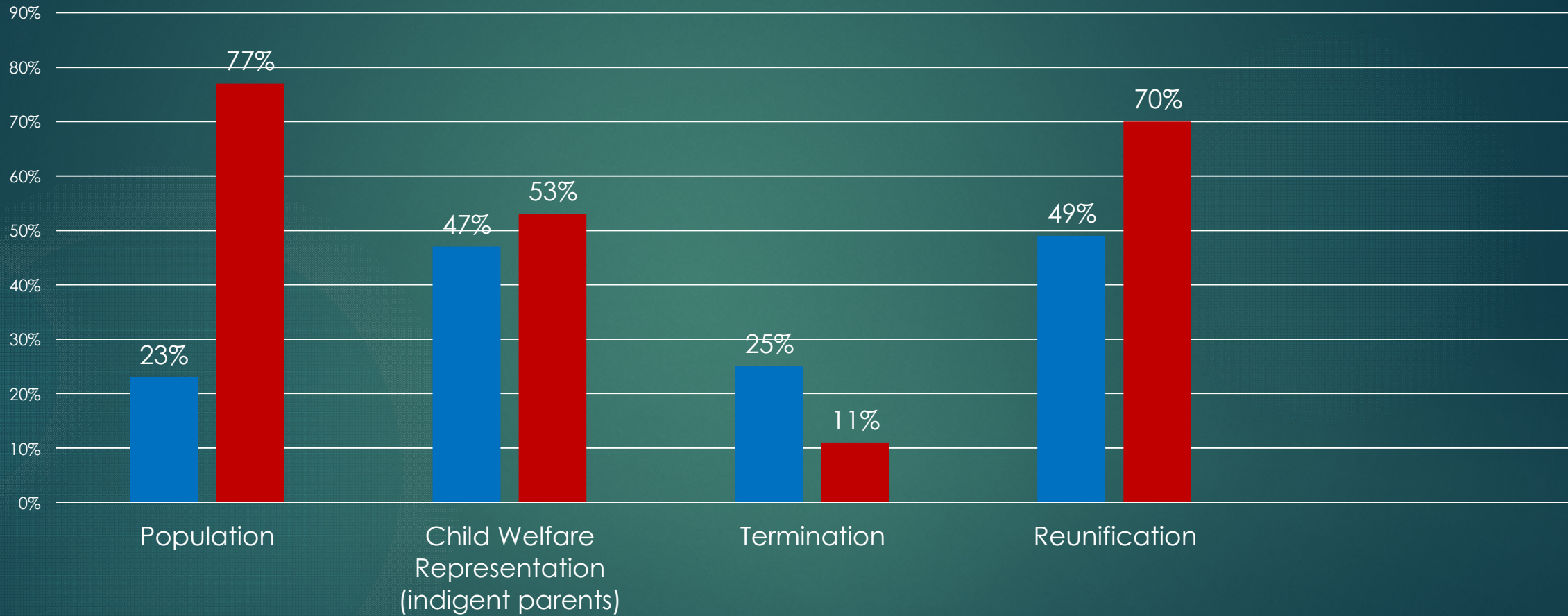
12%

People with disabilities live in poverty at **MORE THAN TWICE** the rate of people without disabilities.

School-to-Prison Pipeline



Colorado Child Welfare System



■ Disabilities ■ No Disability



Parenting
disabled
while inside
the child
welfare system

Serving parents with disabilities: Ethics

Ethics Rule 1.14: Client with Diminished Capacity

Maintain normal client-lawyer relationship as far as reasonably possible, especially respect & communication

Adult GAL in narrow and rare circumstances when the client is not able to provide direction to their attorney

19-1-111, C.R.S.

(c) For a parent . . . in dependency or neglect proceedings who has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction; except that, if a conservator has been appointed, the conservator shall serve as the guardian ad litem.

[§ 19-1-111, C.R.S.](#)

A juvenile court must appoint a GAL for a parent who “lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest.” *M.M.*, 726 P.2d at 1120. But a “client who is making decisions that [a] lawyer considers to be ill-considered is not necessarily unable to act in his [or her] own interest.”

[People In Interest of T.M.S., 2019 COA 136, ¶ 9](#)

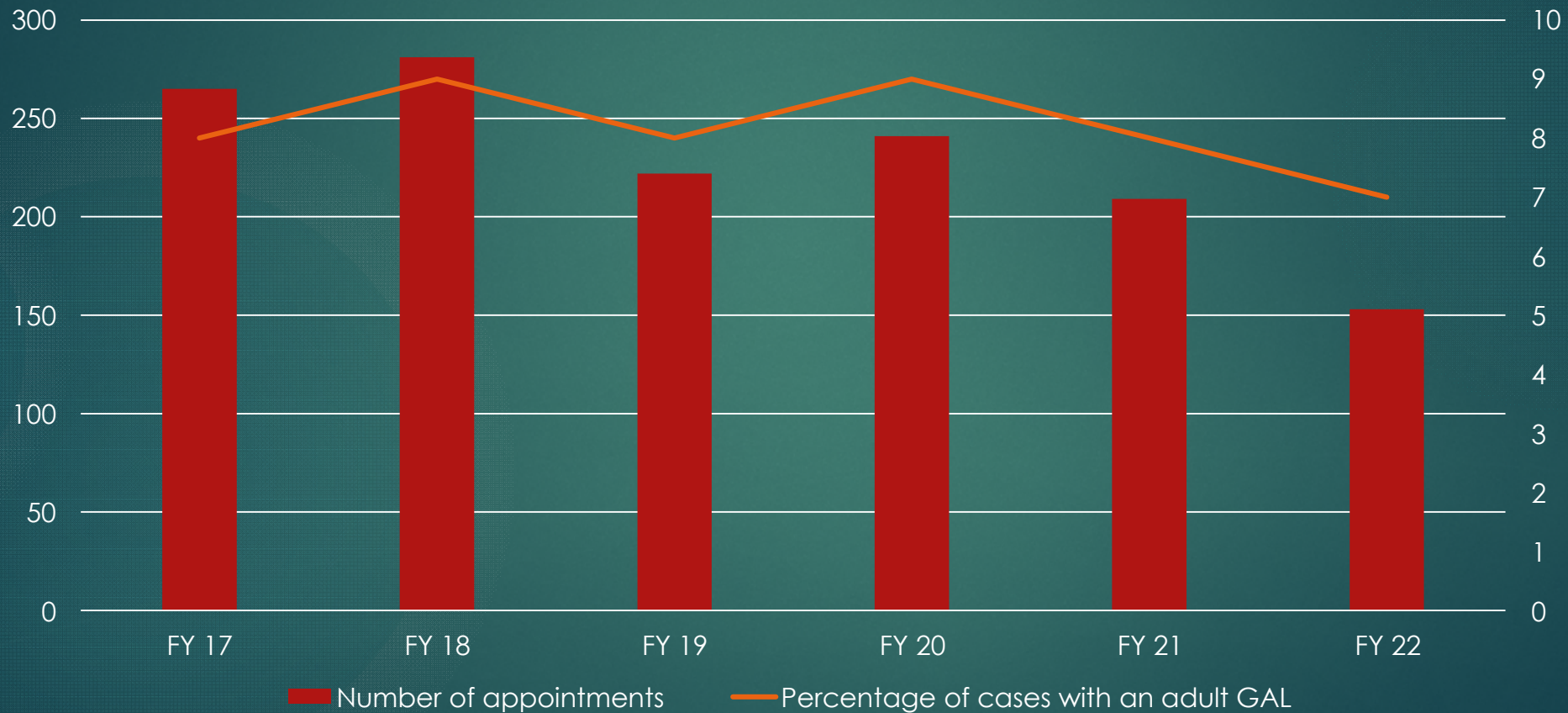
GALs for parents

Only qualification is to be a lawyer

No specialized training

No oversight

D&N cases with GALs appointed for respondent parents



Shared knowledge equals power & equity

- ▶ When first entering ORPC I found myself asking, how can I accomplish for my clients what I have achieved in my own life?
- ▶ Mentorship, guidance
- ▶ Programs and Services
- ▶ Advocacy and Activism



Reasonable efforts must comply with ADA



Accommodations in:

Treatment plan

Non-emergency removal
based on disability

NATP / TPR based on
disability



Can't restrict parenting time/parental responsibilities
based on disability, unless impacts child's
health/welfare

Colorado Law:

Carrie Ann Lucas
Parental Rights for
People with
Disabilities Act

(H.B. 18-1104)



Parents with Disabilities Losing Their Parental Rights

“A study from the National Council on Disability estimates that more than six million children in the U.S. have parents with disabilities, and those with psychiatric or intellectual disabilities lose custody of their children at an incredible rate, as much as 80 percent of the time”.

ADA's Examples of Disability

28 CFR § 35.108

Substance use disorder

Alcohol use disorder

Intellectual disability (IDD)

Traumatic brain injury (TBI)

Diabetes

Autism

Blindness

Deafness

Major depressive disorder

Bipolar disorder

Post-traumatic stress disorder (PTSD)

Obsessive compulsive disorder

Schizophrenia

Cancer

Epilepsy

Dyslexia / other specific learning disability

Attention Deficit Hyperactivity Disorder (ADHD)

Serving parents with disabilities: Stereotypes to avoid

The only reason to deny a disability is if you don't have one.

People with IDD cannot learn.

People with x disability can't parent (such as blindness, IDD, schizophrenia).

Misconstruing symptoms of psychiatric disabilities as not complying, not trying hard enough.

People with some disabilities are dangerous.

Psychiatric disabilities are easily, often faked.

Disability symptoms never change or fluctuate.

Parent doesn't "seem like" they have disability.

Serving parents with disabilities:

Generalities to avoid

Parent's burden alone to identify disability, accoms.

- Civil rights laws regulate depts, courts & require accommodations upon notice of disability.
- Depts, courts must work with parent to identify accommodations & offer alternatives if rejecting.

Parent's disability is a threat.

- NARROW, CASE-SPECIFIC inquiry required (28 CFR §§ 35.130(h), 35.139).

Accoms are too costly, or "cheating."

- "Different" treatment is often required.
- Cost alone is not a defense. Fundamental alteration may be.
- Volume VII requires purchase of necessary services.
- Consider specific case & family.

Discrimination against Children with Disabilities

Olmstead re
placement

Delays in
evaluating for
disabilities

Different
treatment (incl.
placement)

Failure to
accommodate

Misconstruing
behaviors

Over- & under-
identifying

Over-medicating

Educational
discrimination

Federal [courts](#) & [agencies](#) are
taking note.

Discrimination against Parents with Disabilities

Parents with IDD
“don’t
understand”

Parents with TBIs
are “scary”

Parents with SUD
can never recover

Ignoring notice of
disability

Excluding
family/chosen
supports

Unadapted /
inappropriate
assessments

Refusing to
consider
accommodations
/ modify policies

Denying
accommodations

Ordering
unnecessary
services

Misconstruing
symptoms of
disability as non-
compliance

Delaying services
until diagnosis

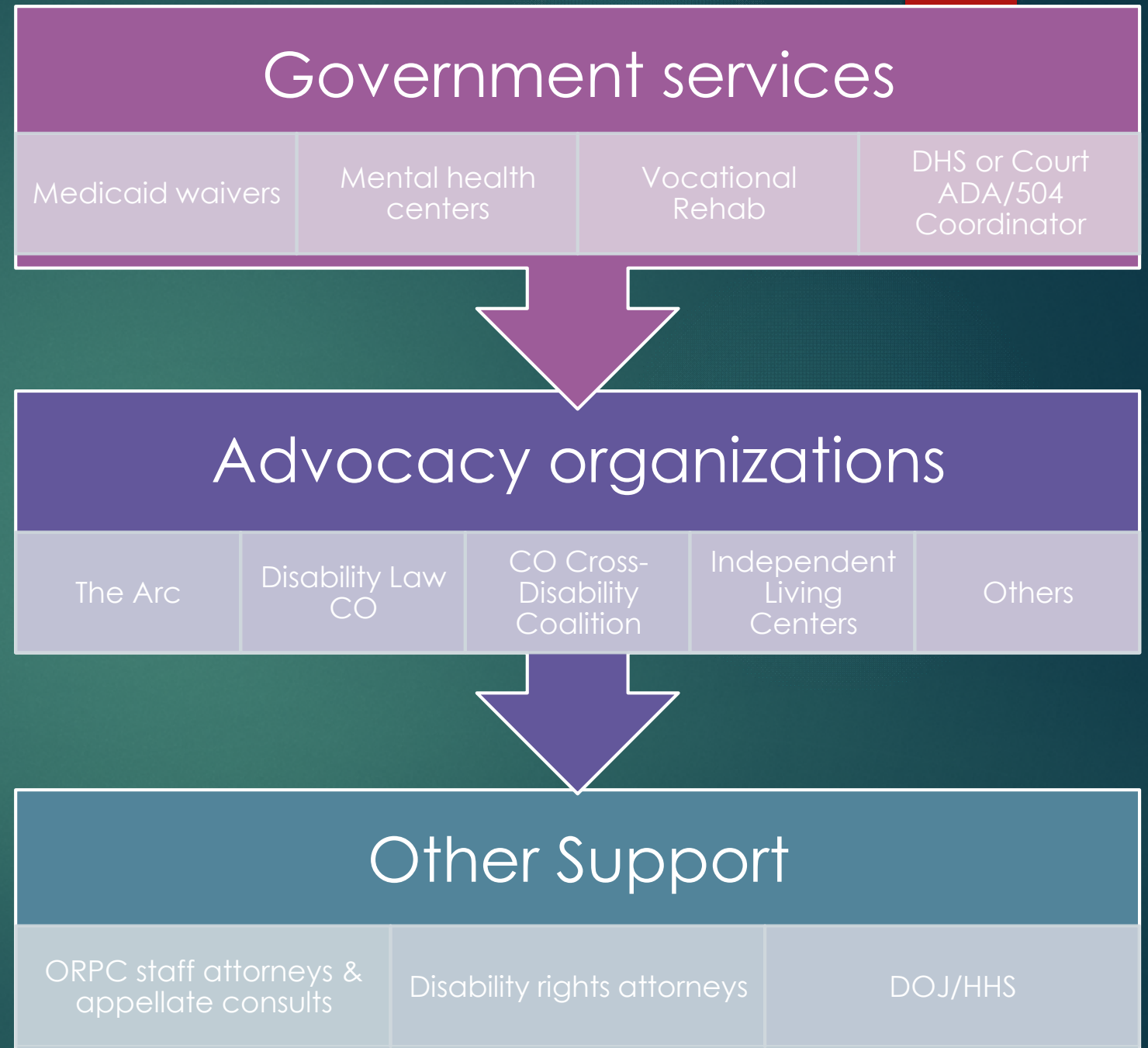
Failing to apply
ADA “direct
threat” provision

Retaliation

Disability as a
safety concern

Identifying accommodations & services

REASONABLE ACCOMMODATIONS



Adult and Children's Medicaid Waivers

- One example of a large umbrella program that can aid in the reunification of families affected by disability status
- Where DHS and RPC can connect to aid in the cohesion of the family unit



Medicaid Waivers

- Most underutilized tool to aid parents and children who have identified or suspected disabilities within the DHS system
- Waivers offer countless programs for both children/adults with differing disabilities
- A route to increase income in-home for parental/guardians and caregivers thus reducing stress and increasing chances for reunification
- Extreme lack of knowledge from both DHS and community mental health centers on waivers

Long Term Care Medicaid

- ➔ The client does NOT have to have SSI/SSDI to be accepted onto a waiver, however, it is a simpler process if they are already connected
- ➔ If the client does NOT have SSI/DI the client will need to fill out a 14 page document
- ➔ Following the application will often be necessary (Jef CO)
- ➔ CAN hold County/Accountable for the 90 day deadline
- ➔ **The county or LTC Dept inside of DHS has a minimum of 90 days to process the application once all paperwork has been submitted.**
- ➔ **Contact Colorado Cross Disability Coalition if counties go over the 90 day deadline inside MOST disability waivers**

HINT: You can connect the client to a CM agency/CCB like Developmental Pathways, RMHS, or a Community Mental Health Center to aid with paperwork

Children's Waivers

- Providing vehicle adaptations
- Respite Care for Family Members
- Specific types of therapy
- Assisted technology above what traditional medical insurance will cover
- A road for parents to stay at home and care for their disabled child through family caregiving services

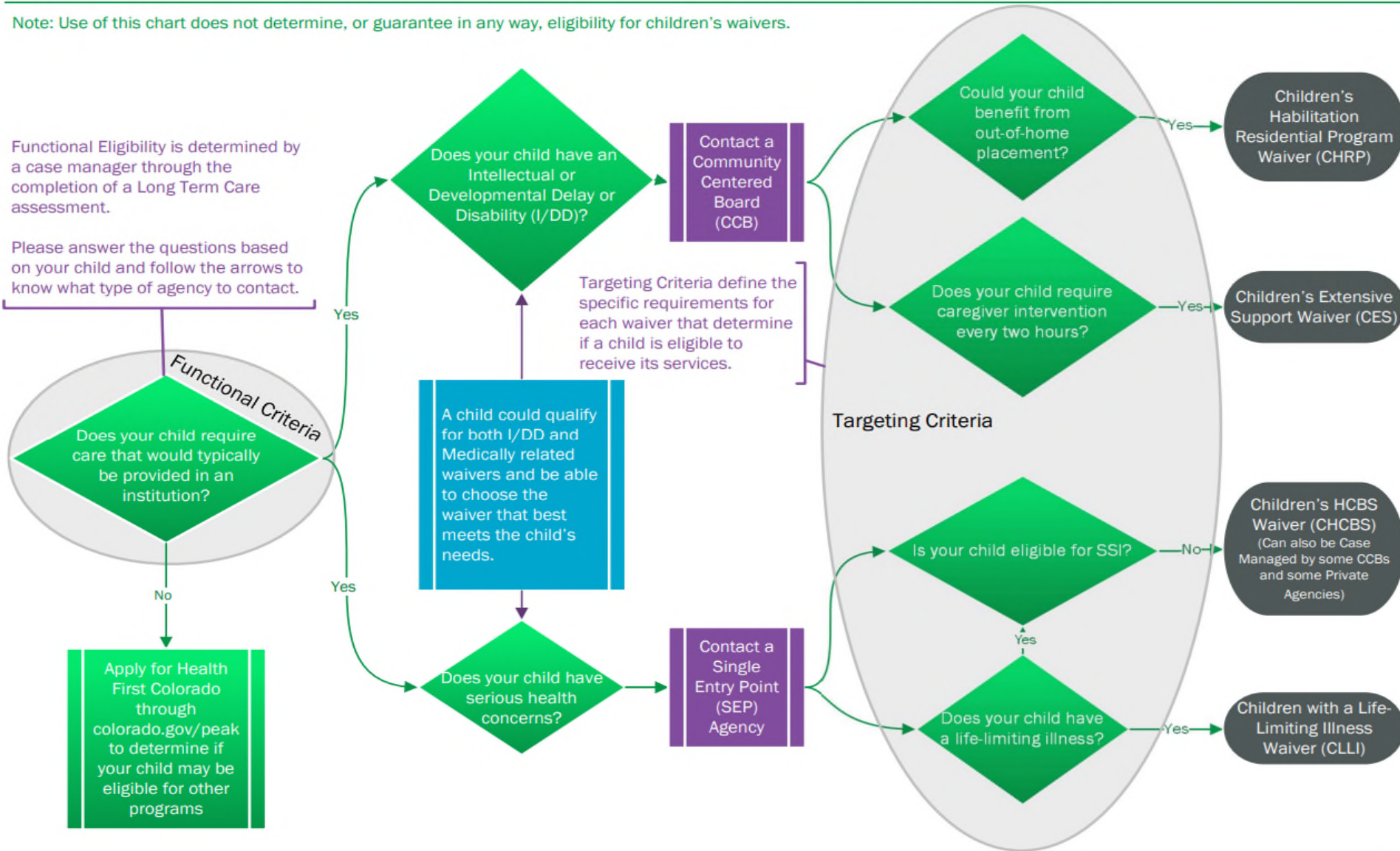
[*CO HCBS Children Waiver Chart-14 pt font-September 2019 \(colorado.gov\)](#)

Choosing an HCBS Waiver for Children

Note: Use of this chart does not determine, or guarantee in any way, eligibility for children's waivers.

Functional Eligibility is determined by a case manager through the completion of a Long Term Care assessment.

Please answer the questions based on your child and follow the arrows to know what type of agency to contact.



Different types of Adult Waivers


- ➔ Brain Injury Waiver
- ➔ Community Mental Health Support Waiver* (Mental Health)
- ➔ Complementary and Integrated Health Waiver * formally SCI waiver (SCI and similar)
- ➔ Developmental Disabilities Waiver* (Housing 12 year wait)
- ➔ Elderly Blind and Disabled Waiver* (Elderly or ANY disability)
- ➔ Supportive Living Services Waiver * (Intellectual disabilities no wait list NO housing resource) hint: “It’s okay”

CIH Waiver

Who can qualify?

- Those with Spinal Cord Injuries (SI), MS, Muscular Dystrophy, Brain Injuries, Spina Bifida or any other condition similar to SI.

When asked by a prominent member of the advocacy community who personally utilizes the waiver, “what is the most important feature of the CIH waiver?”



“The MOST important feature on the waivers is consumer direction but the most important feature on the CHI waiver is non narcotic pain intervention and treatment one day I hope this can be a feature of ALL the waivers because following the opioid crisis it is SO needed”.

Hundreds of participants on the CHI waiver have been able to decrease narcotic consumption by having waivers compensate for treatment that standard Medicaid coverage does not compensate for. For example, acupuncture, massage, and a tens unit.

For those of us working within the Child Welfare field this is HUGE for families affected by pain, and addiction/dependency.

Consumer Direction

- Parents with disabilities can choose who provides caregiving inside the home
- Offered inside the Community Mental Health Waiver
- Family members can claim up to a maximum of 40 hours per week
- Home Health Agencies lack self-direction from client and family members
- Parents with disabilities live on average a total of seven years longer on Consumer Direction than accessing home health

Connecting Children and Adults/Where to Plug In?



Connection to a CCB such as Developmental Pathways

[Home](#) | [Developmental Pathways](#) | [Enriching lives and communities. \(dpcolo.org\)](#)

Connection to a Single Entry Point such as Rocky Mountain Human Services

[RMHS](#) | [Denver](#) | [Human Services \(rmhumanservices.org\)](#)

Talk to an expert non profit organization such as Family Voices and Colorado Cross Disability Coalition


[What We Do](#) | [Family Voices CO](#) | [Colorado Cross-Disability Coalition](#) | [Home Page \(ccdconline.org\)](#)

(HINT: The worker does not have to do this alone!)

Vocational Rehab / Medicaid Buy-In

Voc Rehab or DVR is a government assistance programs who assist parents and individuals with disabilities enter the workforce. Assistance can include training programs such as cosmetology, mechanic license, or computer analyst. These training programs will often have costs covered.

Medicaid Buy-In allows parents with disabilities and FAMILIES to continue to work and also KEEP Medicaid insurance benefits such as waiver programs. This includes children up to 19 years of age.

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- For parents with disabilities the various programs provide extended support in home
 - If both child and parent are connected with waivers this translates to additional support and programs creating more independence for parents (example in-home modifications)
 - Regarding DHS, more programs translates to more providers which means more assistance, and more tailored services creating a foundation for success

Simple tools for parents with physical disabilities



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Thank You!



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