



United States Department of
Health & Human Services

Office for Civil Rights



National Equal Opportunity Professional Development Forum

***Ignorance of Disability is No Excuse:
Screening TANF Customers for Hidden Disabilities to
Ensure Equal Opportunity***

September 12, 2007



Overview of presentation

- TANF and its relationship with the One-Stop system
- What you need to know about civil rights laws
- What you can do to ensure civil rights compliance (especially **screening and assessment**)
- Summary of civil rights case handled by HHS/OCR that resulted in comprehensive **screening and assessment**



What is TANF?

- Temporary Assistance for Needy Families
- A federal welfare program created by 1996 “welfare reform” law --- the Personal Responsibility and Work Opportunity Reconciliation Act --- **with an emphasis on moving people from government dependency to self-sufficiency** (last year, the Deficit Reduction Act was enacted, which made changes to TANF)
- A replacement for AFDC, General Assistance, and other federal welfare programs



How are TANF Funds distributed to States?

- Awarded to States by HHS Administration for Children and Families (ACF) via block grants





Relationship of TANF with the One-Stop System

- Currently, the Workforce Investment Act (WIA) makes TANF an “additional” (non-mandatory) partner.
- States or local areas may opt to make their TANF programs part of the One-Stop system (whether or not physically located in One-Stop Centers).



TANF and Civil Rights

- As recipients of federal financial assistance, TANF agencies must comply with **Section 504 of the Rehabilitation Act of 1973**, **Title VI of the Civil Rights Act of 1964**, and the **Age Discrimination Act of 1975**.
- Since TANF agencies are typically part of State or local governments, they must comply with **Title II of the Americans with Disabilities Act of 1990**.
- TANF agencies that are part of the One-Stop System must also comply with **WIA Section 188**.





Who enforces civil rights laws with respect to TANF agencies?

- **Section 504, Title VI, and the Age Discrimination Act**
– HHS/Office for Civil Rights (OCR), DOL/Civil Rights Center (CRC), and DOJ/Civil Rights Division (CRD)
- **ADA Title II** – HHS/OCR, DOJ/CRD
- **WIA Section 188** – DOL/CRC, DOJ/CRD



What do we know about TANF clients?

- The U.S. General Accounting Office found that about **44%** of TANF clients reported having physical or mental impairments.
- Many TANF clients are also caretakers of family members with disabilities.



Disabilities that particularly affect TANF clients

- Many TANF clients have less visible disabilities, such as:
 - learning disabilities
 - cognitive disabilities
 - psychiatric disabilities
 - substance abuse disorders



How disability issues may arise in the TANF context

- A disability can affect and interfere with an individual's successful completion of TANF program requirements
 - Difficulty completing **GED, or job training** programs
 - Difficulty completing **work requirements**
 - Difficulty maintaining **employment**
 - Difficulty achieving **self-sufficiency** within TANF time limits



Section 504 of the Rehabilitation Act of 1973

- Prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance.





Americans with Disabilities Act of 1990

- Comprehensive law applying Section 504 protections and prohibitions to both the private and public sectors
 - Coverage does not depend on receipt of federal financial assistance
 - Enforced by a variety of federal agencies
- HHS/OCR enforces Title II, which prohibits disability-based discrimination by state/local government health and human services agencies



Section 504 and ADA – Key Definitions

“Disability”

- A physical or mental impairment that substantially limits one or more major life activities
- Major life activities include but are not limited to walking, talking, hearing, seeing, eating, working, caring for oneself





Section 504 and ADA – Key Definitions (Continued)

Three ways that the definition could apply:

- The person **has** a substantially limiting impairment
- The person has a **history** of having a substantially limiting impairment
- The person is **viewed** as having a substantially limiting impairment



Three Relevant Legal Principles

TANF agencies must:

- Provide **equal access** for people with disabilities
- Make **reasonable modifications/provide reasonable accommodations** to avoid discrimination against and ensure equal opportunity for people with disabilities
- Ensure that the **way a program is operated** does not result in discrimination on the basis of disability

*Failure to follow these principles may constitute
illegal discrimination.*



I. Equal Access

- People with disabilities have a *legal right* to equal access in all TANF programs for which they are qualified
- TANF programs must give people with disabilities an opportunity to *participate in or benefit from* TANF programs that is equal to the opportunity the agency offers to individuals without disabilities, and ...



Equal Access (Continued)

- Provide TANF clients with disabilities services that are appropriate, and that give clients an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities.





II. Reasonable Modifications and Accommodations

- One Size Does Not Fit All
- Requires TANF agencies to make reasonable program adjustments and provide alternatives based on an individual's needs so the client may access the program
- TANF agency is not required to make accommodations/modifications that would cause an undue burden or a fundamental alteration to the program



Reasonable Modifications and Accommodations (Continued)

- May be needed in:
 - Application process
 - Procedures relating to notifying beneficiaries of their rights
 - Nature and requirements of programs
 - Policies and procedures to help clients sustain TANF program participation.



Reasonable Modifications and Accommodations (Continued)

- Should address:
 - The needs of individuals who are unable to meet work or program requirements
 - Sanctions for such failure
 - Extensions or temporary exemptions of TANF requirements



Reasonable Modifications and Accommodations (Continued)

- May still be obligated to provide a reasonable modification even if it means that State will not be able to count the person in its federal work participation rate
- Focus on individual needs, not on what “counts”
- Consult with HHS/ACF on how modifications/accommodations may fit within the requirements of the new TANF regulations



III. Methods of Administration

- The way in which your TANF program is operated may not subject qualified individuals with disabilities to disability-based discrimination
- Not just the agency's "official written policies" but also its actual practices.



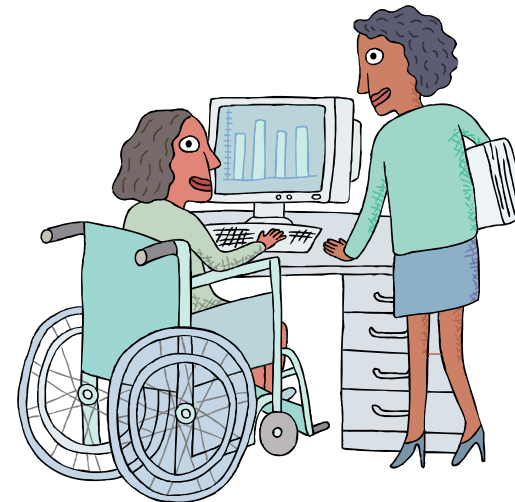
Other Civil Rights Issues in TANF

- Issues that may be connected to race, color, or national origin discrimination in TANF include:
 - Meaningful access to limited English proficient (LEP) persons
 - Differences in opportunities based on race (e.g., differences in types of job training activities provided; differences in rates of sanctions for non-compliance; differences in whether exemptions or extensions of TANF time limits are granted)



What can you do to ensure civil rights compliance?

- **Develop comprehensive written policies and procedures to protect the civil rights of TANF clients, including people with disabilities**
- **Implement effective civil rights training for staff, contractors, and vendors**
- **Monitor your TANF program for civil rights compliance both in terms of general operation and individual cases**





What can you do to ensure civil rights compliance? (Continued)

- **Check out OCR's Resources**

- TANF Civil Rights Guidance: www.hhs.gov/ocr/tanf/ocrguidance.html

- ~1999 *Guidance on Civil Rights and Welfare Reform*

- ~2001 *Guidance on TANF & Disability (including video training)*

- Summaries of OCR Complaint Investigations and Compliance Reviews:

- www.hhs.gov/ocr/tanf/summary.html



What can you do to ensure civil rights compliance? (Continued)

- Comprehensive and effective *screening and assessment*
 - can help you** determine existence of disabilities and other barriers to employment in TANF clients;
 - can help you** place TANF clients in appropriate activities so they achieve self-sufficiency; and
 - can help you** comply with both civil rights laws and TANF requirements.



Screening and assessment can help determine the best way a person with a disability can be served

In Other Words ...

- the TANF client is able to engage in countable work activities full time with accommodations, **OR**
- The TANF client cannot engage in countable work activities now but may be able to in the future, **OR**
- because of the severity of disability, the TANF client may never be able to participate in a countable activity; therefore, the client should be advised to apply for SSI.



Screening and assessment should include:

- Screening conducted by **trained** intake workers
- Use of **validated** screening tools or tools successfully used in other entities
- Notice that disclosure of disability is **voluntary** and that individuals can **alert** agency to a disability
- Opportunity for more **comprehensive assessment** if screening results indicate need for a comprehensive assessment



OVERVIEW OF MASSACHUSETTS LEARNING DISABILITIES COMPLAINT

- Filed by a legal advocacy organization in Massachusetts (MA) against the Department of Transitional Assistance (DTA) alleging discrimination under Title II and Section 504
- Alleged persons with learning disabilities denied equal opportunity in programs within DTA's Employment Services Program (ESP)
- Filed on behalf of two specific women, and other similarly situated persons
- OCR found violation, which led to a comprehensive Resolution Agreement



COMPLAINANT #1

A single mother of two who:

- was receiving TANF benefits
- had no work requirement, because her youngest child was not yet in school
- was a 10th grade drop-out, who had been socially promoted and felt "stupid"
- was unable to find GED or ESP program



COMPLAINANT #2

A seventeen year old who was:

- in 9th grade and wanted to earn a GED
- in special education throughout school
- unable to secure help from DTA in finding a GED or ESP program
- requesting referral to appropriate training programs but none were provided



OCR FOUND THAT TANF AGENCY:

1. Denied equal opportunity to learning disabled individuals to participate or benefit from TAFDC (TANF) programs

- **No questions regarding a history of a learning disability were asked of TANF applicants during intake process**
- **No effort to determine numbers of TANF applicants and beneficiaries with learning disabilities**
- **No screening or assessment process to ascertain a possible learning disability**



2. Used criteria or methods of administration that had the effect of subjecting qualified individuals with learning disabilities to discrimination on the basis of disability

- Little, if any, training was provided to employees
- No training or communication with vendors or contractors re: obligations under ADA and 504 to meet the needs of individuals with disabilities
- Failure to monitor DTA's own programs and the programs of contractors to see if being operated in a discriminatory manner



3. Failed to make reasonable modifications necessary to avoid discrimination on the basis of disability in the TANF program

- Failed to make efforts to determine existence of learning disabilities in the assessment process
- Failed to ensure equal opportunity for people with disabilities to participate
- Failed to ensure contractors and vendors had made modifications and accommodations for persons with disabilities
- Failed to accommodate people with disabilities and thereby denied the same benefits from the TANF programs



BASED ON THESE FINDINGS, OCR CONCLUDED THAT DTA VIOLATED THE ADA AND SECTION 504 BY:

- Failing to afford the complainants an equal opportunity to participate in or benefit from the TANF program
- Providing the complainants with services not as effective in the level of achievement
- Limiting the complainant's enjoyment of rights, privileges and opportunities
- Failing to make reasonable accommodations



RESOLUTION AGREEMENT:

- Signed on December 28, 2006
- On OCR Website:
www.hhs.gov/ocr/tanf/summary/html
- Links there to both OCR Letter of Finding and the Resolution Agreement with Massachusetts DTA





PROVISIONS AGREED TO BY DTA IN THE AGREEMENT:

- **Public notification of DTA's obligations under the ADA and 504, including posters and notification to TANF applicants**
- **Staff training on DTA obligations and TANF applicants rights under the ADA and 504**
- **Staff and contractor training on learning disabilities**
- **Ensure equal opportunity to all participants in ESP components**



- **Central office staff to coordinate resources and disseminate to local offices**
- **Learning disabilities screening procedure to be established**
- **Participant consent procedure to be established**
- **Assessment protocol to be established**
- **Future evaluation of screening to all DTA participants to be established**



- **Former participants to be offered screening and assessment**
- **Extension procedures for people with learning disabilities to be established**
- **Sanctions to be stopped until completion of assessment based on positive screening for learning disabilities**
- **DTA's Regulations and Procedures to be modified in accordance with provisions of Agreement**
- **Tracking system for collecting data to be developed**



- **Contracts with vendors and contractors to include ADA and 504 obligations**
- **Technical Assistance to be established for ESP contractors**
- **Grievance procedures to be established for denials of accommodations and modifications**
- **Monitoring of contractor compliance to be established**
- **Accommodation Teams to be established in each local site**
- **DTA to perform bi-annual self-evaluation**



AFFIRMATIVE STEPS ALREADY TAKEN BY DTA

- Screenings and assessments implemented
- Trainings conducted for DTA staff and contractors
- Contracts revised to include ADA/504 obligations
- Public notices made regarding screenings and Resolution Agreement
- DTA Regulations revised to incorporate screening and assessment procedures
- DTA policies revised to comply with Agreement provisions
- Grievance procedure developed
- Survey of ESP participants *about* to be taken



DTA's Screening and Assessment

- When developing or revising a client's employment development plan, DTA offers a free screening for learning disabilities orally and in writing
- The screening is strictly voluntary
- If the results of screening indicate potential learning disability, DTA offers an opportunity for a more in-depth assessment
- Assessment is conducted by qualified, clinical diagnosticians





DTA's Screening and Assessment (Continued)

- **Pending completion of assessment, DTA assists clients in participating in their current work activity or in starting a new activity**
- **A detailed written report is produced for each individual assessment**
- **Sanctions are held in abeyance pending outcome of assessment**
- **Sanctions are expunged if client is determined to have a learning disability that requires reasonable accommodation**



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