

Representing Parents with Disabilities

A Lawyer's Guide to the Rights of Parents with Disabilities in SC

What laws are applicable?

Parents with disabilities are protected by state and federal laws, including:

- **Section 504 of the Rehabilitation Act** (29 U.S.C. § 794) forbids organizations that receive federal funding from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services.
- **Americans with Disabilities Act** (42 U.S.C. Ch. 126) is a civil rights law that prohibits discrimination based on disability.
- **SC's Persons with Disabilities Right to Parent Act** (S.C. Code § 63 Ch. 21) establishes requirements and safeguards to protect the rights of parents with disabilities in South Carolina.

When do these laws apply?

Parents with disabilities are protected in all stages and forms of parenting, including:

- Before a child is removed from the parent
- When reuniting a child with a parent
- When evaluating parental capacity
- In custody proceedings
- When determining visitation
- During child-welfare and other court proceedings
- When being appointed as a guardian
- When a disabled person is pursuing fostering or adopting children
- When accessing any services at DSS or the court system

Remember: it is illegal to terminate the rights of a parent or legal guardian, or prevent a disabled person from adopting or fostering a child, solely on the basis of their disability.



Who is a parent with a disability?

Under SC's Persons with Disabilities Right to Parent Act, a person is protected if they are a person with a disability who is a:

- Biological parent
- Current or prospective adoptive parent
- Current or prospective foster parent
- Current or prospective guardian

A person with a disability includes a person with:

- Physical disabilities
- Intellectual disabilities
- Hearing/vision disabilities
- Mental health disabilities
- Sensory disabilities
- Neurological disabilities
- Certain health conditions
- And more!

Current drug and/or alcohol abuse does not count as a disability.

Tips for Representing Parents with Disabilities

- **Ask every parent** about disabilities they may have. Many parents have disabilities, and some parents may not even know it! Ask about health conditions, additional services they may have received in school, and if they have ever received SSI.
- **Presume competence** of parents with disabilities. Remember that IQ level is not indicative of parenting skills!
- **Work with Disability Rights advocates and attorneys.** It's unreasonable to expect family law attorneys to know everything about Disability Rights. Partner with experts!
- **Ensure your client has access to adaptive parenting equipment & techniques,** including adaptive strollers for parents using wheelchairs, talking thermometers for blind parents, smart home devices to remind parents with intellectual disabilities of parenting tasks. Find more equipment and ideas at <http://disabledparenting.com/>

Things to Remember

- Courts **cannot use a parent's disability**, in and of itself, when determining the **best interest of the child**. S.C. Code § 63-15-240(B)12.
- **If any party alleges that a person's disability affects their ability to parent**, the court must include the following in the probable cause order: (1) the nature of the disability & if it affects the ability to parent, (2) reasonable efforts made to address the parenting limitations, and (3) reasonable accommodations made to ensure the person had the opportunity to fully participate in the case. S.C. Code § 63-21-20(C).
- **Ensure your client receives the individualized reasonable accommodations** they need to participate in all stages of the proceedings, and document them!

TIP: *Ask your client if they have ideas on what accommodations or modifications they think would work best for them*



Need Help?

Check out the U.S. HHS & DOJ Technical Assistance on Protecting the Rights of Parents with Disabilities, this Best Practices Guide from the ABA, and the National Council on Disability's Report & Toolkit on the Rights of Parents with Disabilities.

Want to chat? Email us at: advocacy@able-SC.org

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