

A Model to End Unnecessary Institutionalization

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It's been 11 years since the Supreme Court ruled in the Olmstead case that unnecessary institutionalization of people with disabilities violated the ADA. On May 6, 2010, the United States Department of Justice filed a lawsuit against the State of Arkansas and its Governor, Mike Beebe. I believe this is the first legal complaint that really begins to spell out what an Olmstead violation looks like. While some of you may have become cynical or discouraged, take heart with this lawsuit. The principles are applicable to all institutions that segregate people with disabilities.

When reading over what the DOJ lawsuit alleges as a violation of the ADA, think about your State. Are the conditions in your State similar to Arkansas? Could a similar lawsuit be brought in your State? If the situation in your State is similar to Arkansas, we are confident that there are disability rights, public interest, legal aid, law school, and/or private attorneys in your state who will know how to apply the Arkansas DOJ model. Talk to them.

Because of this lawsuit's importance, we are providing many of its highlights, albeit with some edits.

BACKGROUND:

"The State segregates hundreds of individuals with ... disabilities in institutions that are not the most integrated setting appropriate to their needs, and fails to provide adequate community supports and services to individuals who are discharged from the institutions or who are at risk of institutionalization." [Note: This applies to people who are either in institutions, or discharged from institutions, or at risk of going into an institution.]

"The State gives individuals with ... disabilities the draconian choice of receiving services in segregated institutions or receiving no services at all."

"Congregate institutions ... segregate individuals with ... disabilities from the community." These institutional "settings discourage its residents from engaging independently in activities of daily living, fosters dependence on institutional supports, and erodes the skills necessary for community living."

PERSONS CONFINED TO INSTITUTIONS:

"Most, if not all, of the residents confined to the institution can handle or benefit from community settings, and therefore can be served successfully in a more integrated setting

in the community."

"State's treatment professionals agree that many of the residents currently confined could be served in the community with appropriate supports and services."

"The State has not given many residents, and/or their family/guardian, the opportunity to make an informed objection to receiving services in a setting less-restrictive than the institution."

STATE FAILS TO TRANSITION PERSONS TO THE MOST INTEGRATED SETTING APPROPRIATE TO THEIR NEEDS:

"Typically, the State does not meaningfully consider a resident for a more integrated setting unless the resident or their family/guardian proactively requests a more integrated setting."

"Most residents do not proactively request a more integrated setting because the State does not properly educate residents on what community resources are available, or the possible benefits of community placements."

"The States does not adequately assess whether residents could be served in a more integrated setting appropriate to their needs."

"The States does not properly educate staff at the institution on how to appropriately assess a resident for community placement."

"Institution staff typically tailor an assessment of a resident's appropriateness for community placement based upon their limited understanding of what community resources are available (or not available), rather than specifically what supports and services a resident needs in order to be adequately supported in the community."

"While confined in the institution, residents do not receive appropriate treatment to support their eventual discharge to a less restrictive setting in the community."

"Residents who have been confined for many years are not actively reassessed for opportunities to move to a less restrictive setting appropriate to their needs."

"The State fails to properly evaluate individuals with disabilities for a more integrated setting before these individuals become residents of the institution. Institutionalizing these individuals fosters their dependence on institutional supports, and erodes the skills necessary for community living."

THE STATE'S INADEQUATE COMMUNITY SERVICES:

"The State fails to provide services in the community in sufficient quality, quantity, and geographic diversity to enable individuals with disabilities to be served in the most

integrated setting appropriate to their needs."

"The State has not conducted an adequate assessment of the needs of its disability services system, including, particularly, those services necessary in order to provide services to all residents in the most integrated setting appropriate to their needs."

"Numerous residents are confined to institutions because the services necessary to address their needs in the community are not offered by the State in sufficient quality, quantity, and geographic diversity to serve residents' needs."

"Many individuals with disabilities are segregated in institutions for no reason other than they are waiting for funding to become available to support their placement in a Home and Community-based waiver slot under the federal Medicaid Waiver Program."

"The current wait list for a Home and Community-based waiver slot total approximately 1,400 people waiting for community services. This wait list moves at an extremely slow pace, with most people waiting several years for funding for community services. Individuals currently at the bottom of the wait list will likely wait more than a decade to receive community services."

You know your State. Does the Arkansas complaint sound familiar? Please, get to the legal advocates in your State and tell them about what DOJ has written. This Arkansas complaint should be the first step in a cascade of other lawsuits, but only if disability advocates on a local and state level take the lead.

Steve Gold, The Disability Odyssey continues

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