

# Futurity

June 1995

Minnesota Governor's Council on Developmental Disabilities

## Federal Court Upholds ADA Prohibition Against Unnecessary Segregation

The Third United States Circuit Court of Appeals recently held [in *Helen L. v. DiDario*, Appendix V:67] that the Pennsylvania Department of Public Welfare (DPW) violated Title II of the Americans with Disabilities Act when it failed to provide Idell S. attendant care services in the most integrated setting appropriate to her. Idell, age 43, argued that DPW violated Title II by requiring that she receive care services in a nursing home rather than through DPW's attendant care program, which would allow her to receive those services at home with her two children, ages 22 and 14.

The American with Disabilities Act (ADA) rules state that public entities shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

In 1973, Idell contracted meningitis which left her paralyzed from the waist down and greatly reduced her ability to care for herself. As a result, she had been a patient at the Philadelphia Nursing Home since December 26, 1989. The parties agreed that although Idell was not fully capable of independent living, she was not so incapacitated that she needed the custodial care of a nursing home. She was declared eligible for attendant care services. She needed assistance with bathing, doing her laundry, shopping, getting in and out of bed, and cleaning; she was able to cook, dress herself, and attend to her personal hygiene and grooming alone. Because of a lack of funding, however, Idell was placed on a waiting list for attendant care services. When the decision was issued by the court, she still lived in a nursing home apart from her children.

DPW's average cost of caring for a person in a nursing home is \$45,000 per year. The commonwealth usually pays 44 percent of this amount and the remainder is paid by the federal government. However, because DPW had not applied for federal reimbursement for Idell, it spent approximately \$5,000 per year to keep her in a nursing home. DPW's average cost of caring for a person in the attendant care program is \$10,500 per year, which the commonwealth is responsible for paying.

Although DPW was not required by law to provide Idell with any care since it chose to provide her with services, it had to do so in a manner that complied with the ADA, the Court stated. The court observed that the parties had agreed that Idell's placement in a nursing home would be inappropriate if there were an opening in the attendant care program. Concluding that her segregation in a nursing home was unnecessary since she was qualified for the attendant care program, the circuit court directed the district court to enter summary judgment for Idell.

The Court rejected the contention that providing attendant care for Idell would constitute a fundamental alteration to DPW's program. [The ADA does not require public entities to make fundamental alterations in programs.] DPW argued that once funding for nursing home and attendant

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## The Keys Are Mine

by Kevin Otley

*When I lived at the Lake Owasso state institution in Minnesota, I had to ask for everything. "Can you let me out?" "Can I have a can of pop?" "Can I stay up a little bit longer?"*

*When I moved into a group home, I had to follow all of the rules. I had to go to bed at a certain time, and when I was in bed, I had to be asleep. That was that. I lived with two other guys. We were being watched all the time, 24 hours a day, seven days a week.*

*Two years ago I got married. My wife and I moved into our own apartment.*

*Now I can come and go when I want. I can make my own food, and I decide whether I want to have breakfast or lunch, or when I'm ready for a snack. We can invite friends to stay over. My wife and I decide when the staff comes over. They help us with some things, but we make our own decisions.*

*[Reprinted by permission from Voiceprint, Fall 1994. Kevin is president of People First Ramsey County, St. Paul, Minnesota.]*

## Inside This Issue...

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## Help Celebrate ADA's 5th Anniversary

On July 22, 1995, the Metropolitan Center for Independent Living will sponsor the 5th Anniversary of the Americans with Disabilities Act Celebration at Como Park Pavilion in St. Paul, 12:00 noon to 5:00 p.m. Live entertainment, works of art, and exhibits will be provided. Volunteers needed. Contact: Eric Peterson, MCIL, 1600 University Avenue, West, Suite #16, St. Paul, MN 55104-3825. 612/646-8342 (voice); 612/603-2001 (TTY); 612/603-2006 (fax).

## Court Ruling

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care for fiscal year 1994 was appropriated by the General Assembly of Pennsylvania, it could not shift funds from nursing to attendant care. The Court noted that this argument did not explain why Idell was not provided attendant services after the 1994 fiscal year. Providing attendant care services would not be a fundamental alteration of the attendant care or nursing home programs even if DPW could not shift funds, the Court held. Noting that the ADA applies to the General Assembly of Pennsylvania, the court determined DPW could not rely on a legislative funding mechanism to defend its conduct, saying "even if the executive branch defendants were physically or legally incapable of complying with the decree, those commonwealth officials sitting in the General Assembly certainly are not incapable of insuring the commonwealth's compliance."

The court concluded, "Ironically, DPW asserts a justification of administrative convenience to resist an accommodation which would save an average \$34,500 per year, would allow Idell S. to live at home with her children, and which would not require a single substantive change in its attendant care or nursing home programs."

[Source: Consortium of Developmental Disabilities Councils, 621 Constitution Avenue, NE, Washington, DC 20002.]

## Getting Your Message to the Media

by Nancy Flinn, United Cerebral Palsy Associations

Media is our most important resource for educating the American public on the laws, policies, happenings, and issues affecting people with disabilities. More than ever each of us needs to make sure we work with our local media (both print and broadcast) to educate them, their viewers, and readers.

Members of the 104th Congress keep up to date with their grassroots issues through local newspapers and television back home. Everyone needs to be sure they are aware of the news, issues, and concerns of the disability community.

There is currently a backlash in the media against civil rights protection for people with disabilities across public policy areas. This backlash needs our response as well as our proactive efforts to educate reporters, writers, editors, publishers, and news directors and producers. We cannot allow an uninformed media to misrepresent the facts by presenting historical stereotypical images of people with disabilities as users and abusers of the system rather than contributors to American society. This threatens the future of inclusion, independence, and civil and constitutional rights for future generations of people with disabilities.

Do not be afraid of approaching the media. Every newspaper, magazine, and television news or feature production has space to fill and needs each of us to bring them the news, views, issues, ideas, statistics, facts, local case studies, vantage points, and impact.

### TEN STEPS TO GETTING YOUR MESSAGE TO THE MEDIA

1. Don't wait until you have an issue.
2. Right now CALL your local paper, radio, and television stations and find out who is the right person to cover issues around disability rights, access, education, etc. Is it the news assignment person at the TV station or a specific reporter or editor working a specific beat--i.e., lifestyle, business, education, etc.?
3. Then start to educate your contacts in the media. Send them brochures on your organization, fact sheets and action alerts on issues that impact your lives and your community.
4. Share numbers and statistics--how many people affected/participating, dollars (costs, investments, returns, losses). Data creates news, and your message has more credibility when supported with quantitative news value.
5. Have good spokespeople available to speak out on the issues--people who know the issues and data. Make sure you have recommended resources and spokespeople available for media to gather data from or interview.
6. Be persistent and consistent in getting information via news releases to the media contacts you develop. Even if it seems that they don't initially use your information, they start to build a file and get to know who they can count on as a regular resource on these issues.
7. Hold media accountable for stories that don't have your side reported objectively or when facts, language, representation are incorrect, biased, and perpetuate myths and stereotypes.
8. Write your paper and TV station editors, reporters, news directors, and advertisers to complain when things are wrong or biased, but remember, it is just as important to give kudos when they are well done. Usually, they want to do it right and will read your letters and listen to your calls.
9. Be proactive in writing letters to the media. Space is available, and they will get printed.
10. Follow up. You can make a difference with media on all of these steps by phone, letter, or in person.

[Reproduced by permission from *Washington Watch*. (May 2, 1995), UCPA, p. 2.]

## Inclusive School Communities in Minnesota

Most of the articles on this page are contributed by the "Together We're Better Program," a collaborative program of the Institute on Community Integration (University of Minnesota) and the Minnesota Department of Education. The Institute on Community Integration serves as Minnesota's approved University Affiliated Program, funded in part by the Administration on Developmental Disabilities, Washington, DC.

### Together We're More Effective:

#### "Seven Habits" Assist Schools Deal with Change

Staff and school personnel involved in the Together We're Better Program joined Minnesota Department of Education personnel and people from related projects in a training session on the "Seven Habits of Highly Effective People." The training, sponsored by the Minnesota Department of Education, provided an in-depth study of the "Seven Habits" as described by Stephen R. Covey in his book, *The Seven Habits of Highly Effective People*. The Seven Habits reveal empowering principles that enable people to take control of their own lives and describe critical tools that can be used to develop effective relationships with others. The facilitators training will provide a network of Seven Habits trainers around the state. There are now 25 people licensed by the Covey Leadership Center, and these facilitators will provide training to schools throughout Minnesota.

It is anticipated by Department of Education officials that Seven Habits training will have a tremendous impact on schools. The Seven Habits can assist individuals and school communities to recognize their united mission and unlock their potential to grow as an effective organization. Seven Habits is a principle-centered approach to problem solving and can offer schools the security to adapt to change and to recognize the opportunities for growth within the change process. The Habits influence people at the personal level as well, helping people to work with one another.

Dave Orlowsky, a math teacher at Chaska High School, participated in the facilitator's training and is applying the principles within his classes. Students are encouraged to apply principle-centered decision making in team activities. The students have learned about interdependency and the value of trust among team members. Those critical lessons are important at any age. Dave has also trained paraprofessionals in his district.

For more information, contact: Don Krukow, Minnesota Department of Education, 550 Capitol Square Building, St. Paul, MN 55101. 612/296-8587 (voice).

#### Graduate Course Offered--June 26-30, 1995

"Collaboration for Inclusive Schooling" will be offered on the University of Minnesota, Minneapolis campus. Instructors will be Jennifer York, Robi Kronberg, and Tony Paulsen.

The session provides an opportunity to exchange, share, and discuss strategies for creating a sense of community among students in classrooms and among adults who facilitate learning for all students in general education classes. The course will address curricular, instructional, and collaborative team work strategies related to classroom-level planning and support of elementary and secondary students. Participants will also have the opportunity to plan for changing to more inclusive educational practices in their own school communities. Participants are encouraged to attend in teams that include general and special educators, related services personnel, parents, and administrators.

Contact: Ruth Berman, Institute on Community Integration, by calling 612/624-4848.

## Resource Guide on Inclusive Education Available Soon

*The Inclusive Education for Learners with Severe Disabilities: Print and Media Resources* (1995-96 edition) will be available this summer. The *Resource Guide* provides an annual directory of publications audio-visual media, and organizations dealing with inclusive education. For ordering information, please contact the Publications Office, Institute on Community Integration, University of Minnesota, 109 Pattee Hall, 150 Pillsbury Drive, SE, Minneapolis, MN 55455. 612/624-4512 (voice); 612/624-4512 (fax).

### A Summer Study Experience: June 19-30, 1995

The University of Minnesota Summer Session 1995 will feature: *(Dis)Abiling Images in Literature, Film, and the Media*. Instructors Terry Collins, Marg Schneider, and Sue Kroeger will examine how language, arts, and social studies curricula have historically reinforced negative and belittling images of people with disabilities. Against the backdrop of more familiar traditional texts and images, new fiction writers, essayists, and film makers will be analyzed on how they have helped to shape a new disability culture. Classes: June 19-30, 1995; 9:00 a.m. to 12:00 noon. Call: 612/624-9898.

### Call for Presentations: New Hampshire

The Institute on Disability/UAP, University of New Hampshire, invites presentations at a national conference *School Restructuring and Inclusion: Equity and Excellence for ALL*, January 11-13, 1996. The conference will be held at the Sheraton Tara Hotel, Nashua, New Hampshire. Cosponsors: Coalition for Essential Schools, National Center for Educational Restructuring and Inclusion, Association for Supervision and Curriculum Development, NH Improvement Program, and The Association for Persons with Severe Handicaps (TASH).

Topic areas: inclusive curriculum; diversity and assessment; heterogeneous practices; creative scheduling; cooperative learning; college and career planning; graduation outcomes; collaborative teaming; school/business partnerships; and literacy development.

For application, contact Jean Clarke, Institute on Disability/UAP, School Inclusion Project, Concord Center, #318, 10 Ferry Street, Unit #14, Concord, NH 03301-5019, 603/228-2084 (voice); 603/228-3270 (fax).

## Lending Library

The following resources are available on loan; publications for three weeks; videotapes (VHS 1/2" cassette) for two weeks. The only cost to the borrower is the return postage.

### Videotapes:

**Heads . . . You Win! Bicycle Helmet Safety** (10 minutes). Chapel Hill League for Safe Bicycling, North Carolina. Provides convincing information for anyone biking anywhere.

**Our Children, Our Hopes: Empowering African-American Families of Children with Disabilities**, (15 minutes), PACER Center, Minneapolis, MN (1993). Parents share how their individual and collective strengths can help in creatively pursuing ways to meet their needs and to help systems to change. [Note: Also available for purchase, \$35.00, from PACER Center, 4826 Chicago Avenue, S, Minneapolis, MN 55417-1098. 612/827-2966, or 1-800/53PACER.]

### Publication:

**Transition and Individual Futures Planning: For People with Deaf-Blindness and Developmental Disabilities and Their Families**, The Arc-King County, and Common Ground, Washington State (1992). A thorough map for conducting personal futures planning, with curriculum and specifics for planning housing and other available resources for individuals starting out in life after high school.

## Bicycle Helmets Prevent Head Injuries

Three years after a law requiring all bicycle riders to wear helmets went into effect in the state of Victoria, Australia (population 4.3 million, which is equal to that of Minnesota), health and safety officials reported the results: a 51 percent decline in the number of fatal and serious head injuries by bicyclists. The number of severe injuries of other parts of the body fell by 24 percent.

Most bicyclists who acquire head injuries in traffic accidents are children. After seeing these achievements, U.S. officials at the Atlanta, Georgia, headquarters of the Centers for Disease Control and Prevention calculated that if all bicyclists in the United States had worn helmets on every ride from 1984 through 1988, as many as 25,000 deaths and 757,000 head injuries might have been prevented.

[Source: *Morbidity and Mortality Weekly Report* 1993, 42:359-363.]

## Closing the Gap Scholarships Available

The annual conference on technology for persons with disabilities will be sponsored by Closing the Gap on October 19-21, 1995, in Bloomington. Minnesota residents may apply for scholarships to cover registration fees and related expenses through the STAR Program. Criteria used to select applicants include: 1) the person is a current or potential user of assistive technology; 2) the person resides outside the seven county metropolitan area; 3) the person has not attended the conference in previous years; and 4) the person can apply the content in their own lives, the lives of family members, or the people they serve. Applications must be received by July 1, 1995. Contact: The STAR Program, 300 Centennial Building, 658 Cedar Street, St. Paul, MN 55155.

Metro Area: 612/296-2771 (voice); 612/296-9478 (TTY); 612/282-6671 (fax). Greater Minnesota: 1-800/657-3862 (voice); 800/657-3895 (TTY).

Additional information about the conference is available from Closing the Gap at 612/248-3294.

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