

LEGAL BRIEFS

The Voice, Summer 2011

Arkansas: DOJ case dismissed; victory for choice

On June 8, Chief U.S. District Judge J. Leon Holmes held that the U.S. Department of Justice (DOJ) failed to prove that Conway, a state ICF/MR should be shut down. According to the judge, the DOJ allegations were not "supported by the weight of the evidence presented at trial."

The Justice Department has been targeting state-run centers for the developmentally disabled in an effort to move residents into alternative settings. In Arkansas, Gov. Mike Beebe and Arkansas Attorney General Dustin McDaniel, whose office defended the state, both believe that the center should remain open.

"Judge Holmes' decision is a victory for the residents, families and staff of the Conway Human Development Center," Beebe said. "We have maintained throughout this case that these residents need a variety of options for care. But it is their families and guardians, not the federal government, who are in the best position to make those decisions."

"Other states have settled with the Department of Justice rather than go to trial on similar issues, but we were confident that the state could win at trial on the merits of the case," McDaniel said, noting that the lawsuit was filed over objections of guardians of center residents.

Holmes' decision cites the Olmstead ruling, saying Arkansas also has to offer center residents "the most integrated, least restrictive setting appropriate." But the judge said the federal government didn't meet its burden of showing the level of care at the center was not appropriate. (Source: AP, June 8, 2011).

Illinois: Judge Okays Plan To Support Choice and Expand Community Living

In June, a legal settlement approved in federal court (*Ligas v. Maram*) will allow individuals with DD to move to the community if they want, while also protecting the rights of individuals who prefer to live in larger facilities (*The Voice*, Spring 2011, "Blueprint for how to win"). An earlier settlement did not factor in choice, and as result was rejected by the court. The agreement brings an end to a lawsuit first filed in 2005.

Massachusetts: Judge nixes transfer of Fernald resident

A state administrative judge decided against the proposed transfer of Daniel O., a Fernald Developmental Center resident from the Developmental Center. The magistrate, Kenneth J. Forton, said in his ruling that Daniel's transfer from the Trapelo Road center would not improve his quality of life or the services he receives. The state is trying to transfer the last 14 residents at Fernald in order to close the center for good. Guardians of the final 14 have appealed the transfers. Attorney Stephen Sheehy said he

From the Arkansas decision:

"Most lawsuits are brought by persons who believe their rights have been violated. Not this one . . .

"All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of [DOJ]. Thus, [DOJ] is in the odd position of asserting that certain persons' rights have been and are being violated while those persons – through their parents and guardians disagree."

Read the full decision:

<http://vor.net/get-help/legal-resources>

For your legal advocacy "briefcase":

The Supreme Court agrees that appropriate residential placement options for people with intellectual and developmental disabilities are best achieved when families, who are the most familiar with the needs of the residents, are involved (*Heller v. Doe*, 509 U.S. 312, 328-30 (1993)).

Also on the Web: VOR **Olmstead**

Resources:

<http://www.vor.net/olmstead-resources>.

has appealed five decisions in favor of State's plan to move the residents. The Daniel O decision is the first in the favor of keeping a resident at Fernald. (Source: June 17, 2011, *Waltham News Tribune*)

Supreme Court Upholds Right of VA P&A to Sue for Records

The U.S. Supreme Court affirmed the authority of the Virginia Office for Protection and Advocacy (VOPA) to pursue necessary legal remedies in fulfilling its advocacy for people with disabilities. VOPA had sued in federal court to obtain records of alleged negligent deaths and injury at a state psychiatric facility and at an ICF/MR. An appeals court blocked VOPA's attempt citing "special sovereignty interests" that bar one state agency from suing another because VOPA is one a few P&As that are housed in state government; most are not-for-profit organizations. VOPA appealed and the Supreme Court reversed finding that when the Virginia state legislature established VOPA as an independent agency, it vested it with all authority necessary to carry out federal statutes to investigate abuse and neglect and to be able to use all available legal remedies. As a result the Supreme Court held that the state agency could exercise the legal remedy of suing another state agency in federal court.

"The Legal News section in your VOR Update was just what I needed to continue reminding people it is about choice and need for the individual and that the family's voice must always be heard, respected and acted upon. It renewed my spirit of hope and made my heart sing. Thank you for all VOR does for people that do not have the ability to speak for themselves!" ~ Sarah Ross, Illinois