



Fernald Forever Families
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We thank you for allowing us to provide a status report on the Fernald Development Center. We regret that we could not attend this conference to personally provide this information.

In November 2008, we received the news that the U.S. Supreme Court declined to hear an appeal brought forward by the Fernald League. During the following month, Massachusetts Governor Deval Patrick's Administration announced it would proceed with Fernald's closure and the closure of three additional ICF/MRs.

The Fernald Development Center was scheduled to close on June 30, 2010. One year later Fernald is still open and it's not closing anytime soon. Our family members are safe, healthy and happy.

In August 2009, the guardians that chose to seek protection under the law came together to support each other as we moved forward. We call our unofficial group the Fernald Forever Families.

We put out a distress call to VOR. They responded immediately to our call for help, assessed the situation and provided us with advice. They threw us a life-line. They let us know that they too believed our family member's rights and lives were worth fighting for. They gave us support, they allowed us to let others know that VOR was behind us which gave our efforts credibility, and provided us with a vehicle to raise funds from groups such as COFAR and the Fernald Corporation to finance our legal battle through the Burke Legal Trust. Suffice it to say, we would be NO WHERE without VOR. You have our never ending gratitude for standing with us.

Since the announcement of the planned closure of Fernald, the Massachusetts Department of Developmental Services (DDS) has employed a very successful, high-pressure campaign and diverse tactics to empty the facility. Some of those tactics included the dissemination of misinformation and in some cases outright lies; intimidation of guardians, some elderly guardians in their 80s and 90s, with threats that their child, brother or sister could possibly end up with no place to live. They targeted and won support from key guardians who used their long-term relationships with other guardians to convince them that legal opposition to involuntary transfers was futile.

Since 2008, not only have Fernald guardians been subjected to harassment and strong arm tactics by the DDS and the Patrick Administration but have also had to endure a barrage of negative press coverage backed by the ARC and other provider groups. Incredibly, the opposition has extended even into the probate arena. Several of our residents have Client Trust Funds established decades ago. Even though the trust allows the use of those funds for legal expenses, attempts by guardians to access those funds have been blocked by the financial trustee and even DDS legal counsel. Guardians had to take action in Probate Court to enforce the provisions of the trust.

In 2003 when Fernald's closure was originally announced, Fernald's census was approximately 253. Today is it 14. Of the 253, approximately 90 people passed away in their life-long Fernald home surrounded by their long-term extended family of caregivers during this battle. Approximately 48 residents who had corporate guardians were the first targeted to be move because the department anticipated little in the way of resistance. The department was right in that assumption. The circumstances surrounding the transfer of a 90 year old resident against her wishes prompted our return to federal court.

The majority of the residents moved to other ICF/MR facilities and to the best of our knowledge, just a small amount (approximately 25 or so) have moved into residential placements in the community. It has been difficult for us to obtain detailed data on residents who have been transferred because the DDS has refused to provide the information using HIPAA laws as an effective shield.

We, the remaining 14 families, are requiring the DDS to comply with a Massachusetts state law that requires that the transfer "must result in **improved** services, supports and quality of life" of our family member. We are the first to test this law. The results of our challenge will set legal precedent and will affect all the residents of Massachusetts ICF/MRs. We contend that the department failed to meet the requirements specified in the statute for the following reasons: (1) The notice of involuntary transfer is deficient; (2) individualized transfer planning was inadequate; (3) the ISP process has been compromised; (4) the federally mandated rights of "equal or better" have been violated.

Massachusetts regulations require that objections are first heard by a magistrate at the Division of Administrative Law Appeals (DALA), an internal state agency. Once a decision is made by DALA, the law requires that no transfers take place for at least 20 days so that the aggrieved party can appeal the decision to the Massachusetts Superior Court.

All 14 cases have been presented at DALA. The hearings began in September 2010. The last case presented at DALA took place in early April 2011. The cases were heard by six different magistrates. Seven DDS attorneys were representing the Department: three DDS attorneys per case. The remaining 14 residents are represented by one attorney.

To date four unfavorable rulings have been issued by DALA. There has been no ruling on the remaining 10 cases even though state law requires a decision to be rendered within 30 days after the conclusion of the hearing. One guardian has been awaiting a ruling for 6 months. It is significant to note that a ruling made by the magistrate in the very first case that held that Fernald's closure was irrelevant and could not be used in argument or as justification for the transfer, was disregarded in all cases and in all four rulings to date, including the magistrate that issued the ruling.

Guardians have appealed the decisions to the State Superior Court. Even though appeals have been filed, the DDS continued to pursue the involuntary transfer of the residents involved in the first two decisions. The residents' attorney filed motions to stay the transfers and the motions were **granted** in both cases. In the rulings the judges stated that the plaintiffs had raised substantial legal questions and that the potential irreparable harm to the residents outweighed the DDS argument that the cost of maintaining the residents at Fernald was prohibitive.

We consider the granting of these stays as preliminary, yet significant wins. These residents cannot be transferred until the completion of the entire appeal process. We believe they establish a precedent that stops the transfer of the 12 other residents pending their appeal of DALA rulings. No one knows how long the appeal process should or could take. Both residents are prepared to appeal an unfavorable ruling at the Superior Court to the next legal level. Our need to continue to raise funds remains as the 14 families require the resources to support legal challenges in the state superior court and possibly beyond.

We are also attempting to stop the closure of two critical facilities that serve thousands in the community as well as Fernald residents: Tufts Dental Clinic and our therapeutic pool. A bill to stop the closure of the pool is working its way through the budget process. We have nothing to report regarding our efforts to halt the scheduled closure of Tufts Dental Clinic this month.

As the department has continued to downsize Fernald and lay-off key direct-care staff, we are faced with daily challenges of ensuring adequate staffing levels, that ISP objectives are being carried out and met, and leisure activities are being maintained. We are fortunate that we have guardians who are up to these challenges, have flexible schedules and are able to be the eyes and ears for all of us. Our family members continue to be safe, healthy and happy. We are also watching for any violations of the residents Ricci Class rights as stipulated in Judge Joseph Tauro's 1993 Disengagement Order. We will pursue those violations if and when they occur.

The Department has not focused its attention exclusively on Fernald. It has already begun its campaign to empty the other ICF/MRs slated for closure. Our sources of information tell us that residents from all three facilities are already moving to the two remaining "open" ICF/MRs and that closure of at least two of those facilities is ahead of schedule. With the facility closures proceeding so smoothly for the DDS, the future of all ICF/MRs in the Commonwealth of Massachusetts is clearly in jeopardy.

It is our hope that we can join forces with guardians of the remaining Massachusetts facilities slated for closure in a common belief that our family members are best serviced in an ICF/MR. We would welcome the opportunity to share what we have learned in the process to help them prepare for what lies ahead. We would advise them of the importance of standing together and the absolute criticality of identifying and retaining affordable legal representation. If the fourteen remaining families did not have access to an attorney who was willing to work for a drastically reduced rate, we would have been unable to raise these important legal issues and Fernald, like the other facilities, would have closed on or ahead of schedule.

As we look to the future however, we remain hopeful and committed. We look forward to providing our friends at VOR with an update same time next year.

We thank you for the opportunity of presenting the facts concerning Fernald.

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