

Ohio State Report, 2023

By Tom Gilbert and Harris Capps

Outcome of Ohio's Protection and Advocacy (P&A) Lawsuit

By Tom Gilbert

This last year in Ohio was one heck of a year, that actually began years ago when the P&A (Disability Rights Ohio, DRO) filed a federal class action lawsuit against then Governor Kasich and John Martin (head of DODD) and the DODD for failing to provide easy access to community living arrangements and community jobs and employment for over 40,000 individuals residing in institutional like settings (or for that matter, inappropriate settings) in the state of Ohio. The lawsuit contended that the six individuals chosen in the lawsuit represented the 40,000 in the class due to their overriding similarities with the individuals in the 40,000 makeup that they represented.

The lawsuit was a very large 187-page document, and the litigation and discussion went on for years. Carolyn Lahrmann and Harris Capps with their organization, Ohio's Disability Advocacy Alliance (DAA), (with many almost pro bono lawyers) rallied to fight this lawsuit on behalf of the thousands of Ohioans with disabilities who would have been unmercifully affected by the tragic outcomes of this lawsuit had it been recognized by the courts as virtuous and productive of good.

I personally downloaded the entire lawsuit (shortly after it was developed) and read it word for word twice, determining it to be "full of holes" and deceptions, and I proceeded to outline and analyze the lawsuit, deconstructing it, word by word, sentence by sentence. I eventually tried to share my work with John Martin and the DODD but they were not interested in even looking at what I had discovered. So I let it rest.

Then in 2018 in November I received notification from Caroline that a federal judge, Anthony Sargus, in Columbus would be holding open hearings in his court room in December for anyone wishing to provide testimony regarding the lawsuit; and a provision was being allowed whereby those wishing to testify could mail in to judge Sargus detailed analyses of their (what would of necessity be) limited verbal testimony. So I mailed to Judge Anthony Sargus the entire unadulterated lawsuit plus my line by line analysis of it demonstrating that the lawsuit was fraught with misinformation, deception, and the DRO's hidden agenda (which they accidentally [for six figure lawyers, a grave mistake] placed right in the middle of the lawsuit).

I was one of several dozen testifiers in the judge's court room in December and gave a very brief argument against DRO. The judge in his opening statements at the beginning of the day mentioned that he had read every mailed in document word by word (I was amazed at this due to the voluminous materials I had sent him). I was the third to last person to testify near the end of the proceedings at the end of the day. After all testimony was provided the judge retired to his chambers for an extended period of time before returning to give his lengthy summation. In his summation he mentioned (much to Emma's and my surprise) a reference to the third to last testifier (me) who had provided him with much of the necessary materials for his determination.

It was his decision thereby to place DRO under a state regulatory body and have DRO report to them every two years regarding all of their work for an extensive review to determine if they were in fact following their own mission statements or not. So last October Caroline let us all know that hearings

would take place (the first two year review) in November for all who wished to provide testimony regarding their experiences with DRO and the work that DRO had done.

I presented a short explanation of my working at an ICF, and what DRO was doing, basing their nefarious work on limited snippets from the 1999 Supreme Court Olmsted decision, deliberately doing everything in their powers to close all ICFs and congregate care facilities in the state of Ohio and also all day programs and sheltered workshops. After all had presented testimony I then proceeded to the chairman of the committee and handed him copies of everything I had previously forwarded to Judge Sargus years before. The committee chair stated that they would have their full report done by the end of December. Their report came out in early April this year. The committee determined that DRO had failed utterly in its mission and would be disbanded and a brand new P&A would be established to replace them.

Now, the reason I am sharing all of this history is that I am convinced that all of the national P&As in all of the states have had this very “rubber stamped” agenda, and if this is so, I will gladly share all of my work (emailed with attached files) with anyone from VOR if it means being able to take down the rest of the failed P&As in each state that continue to do damage to the working residential programs our charges currently enjoy.

My email is tgilbert@necare.org and my cell phone is 216-644-6495. I am more than happy to help out in this regard. Tom Gilbert

The recommendations of the Joint Committee are attached at the end of this report. They may be downloaded at <https://www.house.ohio.gov/assets/press-releases/114214/files/13433.pdf>

Work Centers (aka “Sheltered Workshops”) Meeting with Ohio Assembly’s Representative Dontavius Jarrells

By Harris Capps

This last February, Rep. Dontavius Jarrells met with interested parties regarding a possible bill to eliminate Work Centers. A state bill, sponsored by another state legislator, did not go anywhere during last year’s assembly. Rep. Jarrells decided he wanted a broader dialogue before he pursued a bill.

The proponents were Ohio’s ARC and Ohio’s chapter of the Association of People Supporting Employment First (ASPE). The room held about thirty organization representatives and myself, as parent and guardian for my son Matt. The proponents of eliminating the workshops simply said, “it’s time to get rid of them”; nothing of substance. I supported the Work Centers and took considerable time refuting the elimination scenario. At the end of the meeting, Rep. Jarrells indicated that I had been the first to provide the other side of the story. I have sent additional materials to Rep. Jarrells and have determined that state budget matters have put the workshop issue on hold.

Recommendations of the Joint Committee to Examine the Activities of the State's Protection and Advocacy System and Client Assistance Program

1. Redesignate the current P&A agency for intentionally not protecting and advocating for all individuals with disabilities. In particular, the current P&A is not protecting or advocating for individuals residing in ICFs and/or accessing sheltered workshops, and facility-based work and day programs. When the joint committee questioned DRO about this concern, DRO indicated it does not have the resources to help everyone. The joint committee understands that DRO cannot provide individual legal representation to every individual served by the system, but it can protect all interests by promoting all service options through its advocacy with policymakers and by respecting the diverse choices made by individuals and families in the system.
2. Explore changes to Ohio law, to the extent permissible under federal regulations that apply to the P&A system. For example:
 - Aligning Ohio law with federal regulations regarding the P&A system's access to records.
 - Requiring the P&A system to obtain authorization from the individuals or the individual's legal guardian, conservator, or other legal representative for ICF visitation for reasons other than abuse and neglect
 - Requiring the presence of, or a waiver from, the individual's legal guardian or parent when discussing an individual's setting or services for reasons other than abuse and neglect.
 - Requiring the P&A system to show cause to the legal guardian to discuss an individual's setting or services for reasons other than abuse and neglect.
3. Explore having multiple P&A systems. For example, establishing one P&A system for individuals residing in an ICF, or accessing sheltered workshops and facility-based day program.
4. Explore having a separate P&A system from the CAP.
5. Explore establishing clear guidelines, parameters, and notifications when the P&A system investigates or goes in to interview an individual with a disability. Legal guardians should be afforded reasonable notification, unless abuse or neglect is alleged.
6. Explore establishing criteria when the P&A system enters individuals into a class action lawsuit. Ensure there is verification and understanding by the individual or the individual's parent(s) or guardian(s).
7. Explore creating a better system of accountability to allow ICFs, and vocational centers to report issues, abuses, and inaccuracies by the state P&A system.
8. Explore requiring the P&A system to adopt a posture of individuals and families having the right to an ICF setting. That right should not be infringed upon. Under Medicaid law and Ohio's state plan, individuals have a right to an ICF placement. If individuals want a community placement, Medicaid law requires that they "waive" that right, thus the term "waivers". Medicaid law requires that service information is provided to individuals and families so that they can make an informed choice between these two options. DRO in its capacity as the legal advocate for people with developmental disabilities should respect and support the laws and benefits that protect the DD population and aid in the implementation of them – such as those options that make up Ohio's Medicaid State Plan.
9. Explore using an advisory council or board of willing family members to advise the P&A system about the needs of individuals living in an ICF setting, sheltered workshop, and facility-based program.
10. Explore using a state entity, as in the case of the OLRs.
11. Develop a plan to engage with stakeholders to make recommendations for amending federal law.