

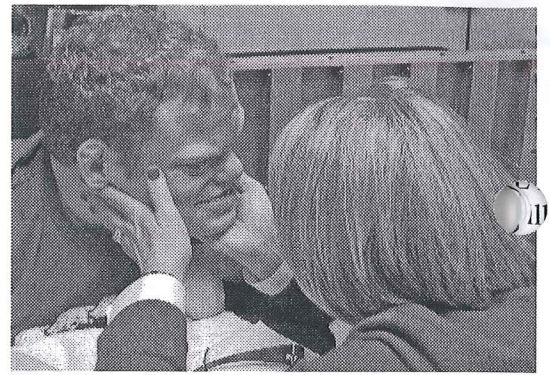
ARKANSAS: DOJ suit filed over five centers is dismissed

On Jan. 25, a federal judge dismissed a U.S. Department of Justice (DOJ) lawsuit against five of Arkansas' human development centers (ICFs/MR) that alleged Americans With Disabilities Act (ADA) violations because DOJ failed to inform the state of its allegations and determine that "compliance cannot be secured by voluntary means," before filing a lawsuit.

State officials and families of people who live at the centers lauded Chief U.S. District Judge J. Leon Holmes' decision as a victory in their efforts to fend off what they see as an overly aggressive DOJ. "We believe in choices and options for our Human

Development Center clients and their families, and that Arkansans are best suited to provide those options," Gov. Mike Beebe said in an e-mail. "DOJ has tried to step in and make those decisions from Washington, and I am glad to see the Court turn back that attempt," Beebe added.

The May 2010 lawsuit was the second DOJ lawsuit in Arkansas. The first was filed in January 2009 against the Conway ICF/MR. The Conway trial was last fall; a ruling is not expected until at least March. Very few residents request transfer from Conway. A 2008 survey of families of residents found



Rita Hoover, president of the Conway Parents' Association, with her son, Timothy. Photo credit: VOR.

97% of respondents were "satisfied" or "very satisfied" with care at the facility. (Source: *Arkansas Democrat Gazette*, Jan. 26, 2011).

TEXAS: P&A class action lawsuit filed

In January, three people with disabilities represented by Advocacy, Inc. (Texas P&A) filed a lawsuit on behalf of the 4,200 residents of State Supported Living Centers (ICFs/MR). The lawsuit seeks community placement for the three named plaintiffs and periodic judicial reviews for every resident to determine continued need for ICF/MR placement. Supported living center residents already have their cases reviewed annually by the professionals who work with them, such as doctors and social workers. Advocacy, Inc. contends that this process is not objective enough. (Source: *American-Statesman*, Jan. 26, 2011).

VIRGINIA: DOJ says state fails to provide community options

DOJ has alleged that Virginia is violating federal law by not providing ICF/MR residents - individuals with profound intellectual disabilities - with more integrated living opportunities. In a February

10, 2011 "findings letter," DOJ gave Virginia 49 days to reach an agreement to address the alleged problems, or face a lawsuit. DOJ's 2008 investigation focused on the Central Virginia Training Center (CVTC). CVTC families were quick to criticize DOJ findings as biased and uninformed.

"DOJ's optimistic outlook on CVTC residents' independence on matters such as . . . compensated employment. . . [and] what foods they will eat (they don't mention those on feeding tubes)" suggests a lack of experience in "dealing personally with severely and profoundly intellectually disabled persons," wrote Charles Fallis, president of Families and Friends United for CVTC.

Virginia's ICFs/MR have doctors and skilled nursing staff 24/7, life-protecting benefits that are not often found in community group homes. A recent nationwide survey by Medicare that awarded CVTC a five-star rating for outstanding skilled nursing services provided to residents in its care was not mentioned in the DOJ report.

PENNSYLVANIA: Families intervention appeal heard by 3rd Circuit

On February 4, Owen Smith of Sidley Austin, attorney for interveners (residents of Pennsylvania's ICFs/MR), presented oral argument before a panel of federal appellate judges. Families appealed a decision by the District court denying their request for intervention. Interveners argued that intervention was necessary to protect their interest in continued ICF/MR supports. Plaintiffs, represented by P&A, have characterized ICF/MR care as "illegal" for all residents, and the state has said they would support community-based placement for everyone if they had the funding.

Amici Curiae VOR (represented by Lesli Esposito of DLA Piper) and Carl Solano, on behalf of his sister, also delivered oral arguments in support of interveners.

"The mass relocation of individuals from ICFs/MR to community settings has a devastating effect on health, well-being and mortality of those individuals," argued VOR in support of interveners' legal interest in the outcome of this litigation. A decision is pending.

Legal News continued on page 8

ILLINOIS: A blueprint for how to “win”

A five-year legal battle is finally wrapping up in Illinois where families with loved ones in larger facilities fought the state, the “advocates,” and even the Court – and won. The Ligas case is a good lesson on how to win these battles.

The Ligas federal class action lawsuit was brought in 2005 by Equip for Equality (P&A), Access Living, and the ACLU against Illinois on behalf of about 6,000 severely disabled residents who live in the 240 privately-operated ICFs/MR with nine

or more residents, as well as those living at home with elderly parents awaiting placements. Included in the lawsuit was Misericordia in Chicago

where President Obama’s chief advisor – David Axelrod – has a daughter.

The plaintiffs alleged that ICF/MR residents were “warehoused, segregated, and deprived of their civil liberties.” Instead, plaintiffs wanted the state to fund more placements in homes with fewer than eight residents (called “CILAs” in Illinois).

In the first four years of the case, families, on behalf of their loved ones, unsuccessfully tried to intervene. As feared, in 2009, after four years of litigation, the parties reached a proposed settlement and submitted it to the court for approval. The settlement was troubling in that it would have required the state to reduce private “institutional” beds for each community bed it added.

In response, more than 2,000 families throughout the state whom the settlement was supposed to help objected to the settlement. Teams of lawyers organized them and helped them file objections. At least 200 “objectors” attended the Fairness Hearing. In response, on July 1, 2009, Chief Judge Holderman rejected the parties’ proposed settlement and decertified the class, effectively sending the case back to the beginning. Parties, however, persisted and in April 2010 tried

What makes these cases so dangerous is that they are brought by supposed ‘advocates’ who claim to speak for all disabled people. Viewed in this light, they are a Trojan horse of sorts.

William Choslovsky

to get a similar settlement approved and recertification of the class. Judge Holderman rejected their efforts and this time ordered the parties to instead negotiate directly with the family objectors, approving intervention.

Parties and objectors recently agreed to a settlement that require Illinois to fund at least 3,000 new community placements over five years, but also preserve the right of individuals to live in large facilities and the state’s obligation to fund that choice.

“Though we always thought our legal arguments were correct, what turned the case was grassroots organizing, which in this case meant organizing thousands of families who knew their loved ones were not living dehumanizing, segregated lives as the com-

plaint alleged,” said , William Choslovsky, counsel for Misericordia families and whose sister is a resident. “What makes these cases so dangerous is that they are brought by supposed ‘advocates’ who claim to speak for all disabled people. Viewed in this light, they are a Trojan horse of sorts.”

He adds, “Let me be clear. We are not against CILAs. CILAs are wonderful . . . for some people. But just the same, so are large ‘institutions.’ True choice is a two way street, and when it comes for caring for the disabled, one size does not fit all. Why the ‘advocates’ use size as a proxy for quality is the real, underlying problem here.”

Sister Rosemary Connelly who has run Misericordia for over 40 years sums it up this way: “Big can be bad. Small can be bad. Both can be good.”

Meet the Ligas Attorneys
William Choslovsky and Scott Mendel, represented Misericordia families (they have family members at Misericordia).

Jim Ducayet, represented nine residents of facilities across the state (the “Golden Interveners,” named after Anne and Sam Golden.)

Judith Sherwin, represented VOR objectors at the fairness hearing that defeated the first settlement.

All these attorneys worked pro bono, fighting for families; fighting for choice.
THANK YOU!

Legal News continued from page 9

CONNECTICUT: Training School lawsuit settles

Filed in 1994, Messier v. Southbury Training School (STS) has been settled. The settlement between the Arc of CT and the Department of Developmental Services (DDS) is limited to a process for community placement for STS residents. All other issues pertaining were either ruled moot or decided in favor of DDS in 2008. The settlement agreement states that DDS will ensure that all interdisciplinary teams will assess a resident’s needs and recommend the most integrated setting for that person. Each STS resident and their guardian will be given information to make an informed decision. Neither the Settlement nor the judge’s original ruling in 2008 directs the closure of STS (Source: *Community Services Reporter*; NASDDDS, Jan. 2011).

VOR

VOR's "Every Member Campaign"! Together We are VOR.

What is the Every Member Campaign?

To meet current and expansion needs, we have established the "Every Member Campaign" with a goal of \$48,000. This will provide the needed funding to meet our goals while continuing our current advocacy programs for every member.

VOR is over 3,200 members/households strong. It will only take \$20 per month or a \$240 donation for the year to meet this goal.

As one member stated:

"I think I can give up one gourmet coffee a week to make sure VOR is there to help my daughter when we need it."

Please participate!

**As VOR member and contributors,
each of you are part of a unique organization!**

VOR is the only national advocacy agency that is unique in its fundamental mission to advocate in support of a full continuum of care options for people with mental retardation/developmental disabilities, and their families.

Our success and effectiveness is undeniable.

The need for VOR is critical.

VOR is a good and necessary investment.

If not VOR, who?

VOR is only as strong as our members' support. VOR is supported 100% by membership dues and private donations. We receive absolutely no public funding.

We value and need your continued financial support.

For VOR to continue our success and expand our advocacy, we have identified the following immediate advocacy needs:

- **An online "e-advocacy" program for immediate and easy responses to VOR's Action Alerts.**
- **A legislative advocacy workshop at VOR's Annual Conference and a related webinar for all.**
- **Expansion of VOR's State Coordinator Program so families can be prepared when they need to be.**
- **Contributions to the Burke Legal Advocacy Fund to expand our popular legal advocacy program.**

Thank You!

Please take a moment to fill out the contribution form on page 11, which includes an opportunity to participate in the Every Member Campaign. Your support will help us meet our goal for 2011 so we can continue to advance our efforts to be here when you need us to protect your loved ones!

President:
Robin Sims
Editor:
Rochelle Hagel

**The Value
of a VOR Membership
is now on VOR's website
www.vor.net, click "Join"**

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Tributes

IN MEMORY

Evelyn Whetham
Rusty Davis
Florence Gross
Jackie MacRae
Michael O'Riordan
Marian Snow

IN HONOR

Mary Elizabeth Breiner
Jeffry Gans
Mr. & Mrs. Bill Sherman

WILL BEQUESTS AND TRUSTS

Leslie Abbott, Jr.

Making a Will Bequest to VOR!!

Will bequests are the most popular and personal way to make a difference beyond your lifetime. A bequest is a charitable gift of property to be delivered at the donor's death. You can create a will bequest simply by directing in your will that your interest in certain money or property be transferred from your estate to VOR.

Why?

- Charitable bequests present an excellent way to pass on assets that may otherwise be substantially taxed.
- The donor's estate may be entitled to an estate tax charitable deduction for the full, fair market value of the bequest.
- You would be supporting a charitable organization that you believe in and passing on a legacy.

If you would like additional information on how to leave a bequest to VOR please contact Julie Huso, executive director, 605-370-4652 or jhuso@vor.net.

Annual Conference continued from page 2

Also plan to stay from Friday through at least late Monday to give you some time for Hill visits on Monday to test out your new skills. There is no greater feeling of empowerment than to walk the halls of both the Congressional and Senate offices and visit your representative. They love it and you will get a sense of some control of things as you look at them and say to yourself "I am here, I vote and I do have a VOICE!"

To conclude, please remember to donate during the year to VOR. Every bit helps and last year's financial goals

were met due to many more individual contributions than one time big donors. Our Every Member Campaign is an easy way to make monthly contributions with no pain and we are on our way to achieving our goal. Some members also give to VOR to celebrate a happy occasion or even commemorate a sad event. Get the Facebook crowd to do the same!

Finally, I wish you all HAPPY AND HEALTHY 2011. May we be strong and successful in our efforts. Our path is right and goals are clear and we will continue to work as we have for these

Membership/Contribution Form:

Please send dues to—
VOR
 836 S. Arlington Heights Rd., #351
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 or donate online @ www.vor.net.

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- I would like to support the efforts of VOR with a:
- Pledge of \$20/month for 12 months for a total of \$240, and **pay by check to VOR** -
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My contact information has changed

Membership Categories:

- Individual --- \$40
- Parents Association --- \$200
- Professional Assoc./Corp. --- \$250

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The minimum dues requirement poses a financial difficulty, please contact our office in confidence (877-399-4867). It is in our best interest that you receive VOR's information, so please call if \$40 per year poses a financial hardship. Mar11NL



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Annual Conference and Initiative Registration Form

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To register online, visit www.vor.net/events.

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VOR Members:

- _____ \$40 per member if paid by April 1, 2011.
- _____ \$50 per member if paid by May 1, 2011.
- _____ \$75 per member if paid after May 1, 2011.

Non-VOR Members:

- _____ \$75 per person for non-member if paid by May 1, 2011. Fee includes 1 year membership.
- _____ \$100 per person for non-member if paid after May 1, 2011. Fee includes 1 year membership.

INITIATIVE REGISTRATION:(No add'l fee):

_____ I/We will attend the Washington Initiative ONLY and will be able to make Congressional visits through _____ [specify date(s)].

_____ **Yes!** I will gladly donate an additional \$10 to cover the cost of the 112th Congressional Directory (VOR is seeking the help of participants to cover this ever increasing cost. Thank you in advance for your support!)

Additional Donations Appreciated

_____ A donation of \$_____ is enclosed

Charge card: MC Visa Discover

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