

NASDDDS
Litigation Updates
July 2010 – December 2010

The following articles published in *State News Briefs (SNB)* and *Community Services Reporter (CSR)* summarize litigation cases concerning individuals with developmental disabilities throughout the country. Source citations for *SNB* or *CSR* are included at the end of each entry.

Updates are organized by the following categories and then by state:

1. Access to Services

Lawsuits challenging state policies that prevent people with disabilities from promptly obtaining Medicaid home and community services. Some of these lawsuits may concern people with developmental disabilities who are on waiting lists for services.

2. Community Placement of Institutionalized Persons,

Lawsuits principally (but not exclusively) being brought by persons served in publicly operated institutions who want supports so they can live in community-based settings.

3. Limitations on Home and Community-based Services

Lawsuits challenging state policies that affect the scope and quality of Medicaid services in the community. Some lawsuits concern the adequacy of state payments for community services. Others challenge state restrictions on access to Medicaid benefits.

4. Institutional Reform / CRIPA

Lawsuits stemming from inadequate or unsafe conditions and services in institutions and/or lawsuits stemming from the U.S. Department of Justice implementation of the Civil Rights for Institutionalized Persons Act (CRIPA);

5. Records Access Usually lawsuits filed by protection and advocacy agencies to access individuals' records.

6. Miscellaneous

Lawsuits that do not fit into any of the above categories.

LITIGATION UPDATES

1. ACCESS TO SERVICES

2. COMMUNITY PLACEMENT OF INSTITUTIONALIZED PERSONS

Judge Denies Stay in New York Mental Health Case

The U.S. Court of Appeals for the Second Circuit on June 23, 2010, denied the stay which the state of New York had requested concerning a court order to move about 4,500 individuals with mental health disabilities out of large, congregate facilities and into their own community-based homes.

In *DAI v. Paterson*, the Eastern District Court of New York ordered the state last March to transition individuals into their own homes, viewing the conditions of the facilities as a violation of the Americans with Disabilities Act (see [New York Times](#)). The state appealed the decision, seeking a stay to not follow the judge's order until a formal hearing of the appeal could take place.

With the denial of the stay, New York state's Office of Mental Health must formulate a plan to move individuals into supportive living arrangements in the community.

See the attached order. For other *DAI v. Paterson* documents, see the [Bazelon Center for Mental Health Law](#).

SNB 14Jul2010 / CSR Aug 2010

Pennsylvania Lawsuit Settlement Announced

The Pennsylvania Department of Public Welfare has agreed to settle a lawsuit filed by [Disability Rights Network of Pennsylvania](#) on behalf of over 60 individuals with intellectual disabilities who were being inappropriately housed in state psychiatric hospitals, an August 3, 2010, [DRNP announcement](#) said.

The original complaint, filed in the U.S. District Court for the Middle District of Pennsylvania, alleged that the Department of Public Welfare violated the Americans with Disabilities Act and the Rehabilitation Act by unnecessarily segregating plaintiffs in state psychiatric hospitals. The complaint also alleged violations of the Fourteenth Amendment of the Constitution by failing to provide constitutionally adequate treatment for these residents.

The announced settlement, subject to the approval of the court, provides for the following:

- Defendants will request funding to provide community mental retardation services to all class members over the next three years;
- Staff at the state psychiatric hospitals will receive comprehensive training in the appropriate treatment of individuals with dual diagnoses of mental illness and intellectual disabilities; and
- Staff at the state psychiatric hospitals will be required to adhere to a comprehensive protocol with respect to the treatment of individuals with dual diagnoses (from assessments to treatment plan development and evaluation, to behavioral approaches) and with respect to discharge planning.

"The Department of Public Welfare has agreed to request the necessary funding from the Governor to address the needs of these residents over the next three years," said Robert Meek, attorney at Disability Rights Network of Pennsylvania. "With the implementation of the discharge process, staff training and treatment protocol, we are confident that individuals with intellectual disabilities who are confined in state psychiatric hospitals, now and in the future, will receive appropriate mental health treatment and will be promptly discharged."

SNB 11Aug2010 / CSR Sept 2010

Pennsylvania. The Pennsylvania Department of Public Welfare and [Disability Rights Network of Pennsylvania](#) (DRNP) settlement agreement and intellectual disability and mental health treatment protocol are now available — click [here](#). DRNP filed the lawsuit against the state on behalf of over 60 individuals with intellectual disabilities who were being inappropriately housed in state psychiatric hospitals (see *SNB August 11/CSR Sept*).

SNB 22Sept2010 / CSR Oct 2010

Illinois. A [settlement agreement](#) between the state of Illinois and thousands of individuals with mental health disabilities was signed July 27. The settlement of [Williams v. Quinn](#) "will begin a systemic process of giving approximately 4,500 persons with mental illnesses the choice to move out of large nursing homes known as 'Institutions for Mentally Diseases' (IMDs) and into community-based settings with the supports they need to be successful," Illinois' protection and advocacy organization, [Equip for Equality](#), said. To learn more about the case, click [here](#) and [here](#).

SNB 22Sept2010 / CSR Oct 2010

Texans with DD in Nursing Homes Sue State for Community Placements

A class action lawsuit against the state of Texas was filed in U.S. District Court in San Antonio December 20, 2010, on behalf of more than 4,500 individuals with intellectual and developmental disabilities confined to nursing facilities, an Advocacy Inc. [announcement](#) said.

"The Individual Plaintiffs and plaintiff class members qualify for and would benefit from community support services available from the Texas Medicaid program. Although community programs are the most integrated setting appropriate to meet their needs, the plaintiffs remain institutionalized in nursing or rehabilitation facilities, or at imminent risk of such institutionalization," the complaint said. To read the complaint, click [here](#).

SNB 29Dec2010 / CSR Jan 2011

3. LIMITATIONS ON HOME AND COMMUNITY-BASED SERVICES

California Judge Denies Request to Stop Additional Cut

A Sacramento Superior Court judge refused to issue an order November 23, 2010, that would stop the state from implementing retroactively to July 1, 2010, an additional 1.25 percent reduction in payments to most regional center providers (on top of an existing 3 percent cut), [CDCAN](#) reported. "Superior Court Judge Lloyd Connelly denied the request for a temporary restraining order and a request to issue a more permanent order to stop the additional 1.25% reduction from being applied retroactively saying that there was no legal argument presented to the Court that those filing '...had a likelihood of prevailing.'"

Twelve organizations providing community-based services to Californians with intellectual and developmental disabilities filed the lawsuit, [California Disability Services Association, et al. v. Delgado, et al.](#), November 5, 2010.

The judge did schedule a hearing for February 4, 2011 to consider the merit of the lawsuit. To read the order, click [here](#) and scroll to the bottom of the page. To see other documents related to the case, click [here](#).

SNB 29Dec2010 / CSR Jan 2011

4. INSTITUTIONAL REFORM / CRIPA

Judge Approves Revised Plan for District of Columbia Evans Case

U.S. District Court Judge Ellen Segal Huvelle approved the 2010 Revision of the 2001 Plan for Compliance and Conclusion August 10, 2010, in the 30-year-old class action lawsuit, **Evans v. Fenty**, effectively putting an end to the litigation (see **BYB** June 21, 2006).

The 2010 revision substantially streamlines the goals and targets set forth in the 2001 plan. The court recognized that the parties had worked collaboratively during the past 30 days to revise the original exit plan in an effort to address areas most critical to

ensuring that the district's Department on Disability Services Developmental Disabilities Administration (DDS/DDA) provides to Evans class members the services and supports that were the subject of the lawsuit. The court was complimentary of the efforts of the plaintiffs, the Office of the Attorney General (OAG), and the special masters in reaching this important milestone, a department announcement said.

Judge Huvelle also entered a separate order appointing Kathy E. Sawyer to serve as the Independent Compliance Administrator (ICA) for a two-year term. Sawyer is the former commissioner of the Alabama Department of Mental Health and returns to the district fully familiar with the issues and challenges of achieving compliance with the court's orders in Evans. Beginning in 2006, she served in various capacities, including interim administrator of DDS/DDA. Sawyer's prior position with the district played a major role in the parties consenting to her appointment. Judge Huvelle noted specifically that Ms. Sawyer's role was not to supplant the leadership of the agency, Director Laura Nuss and new DDA Deputy Director Cathy Anderson.

"I applaud the work of all parties involved for their efforts to resolve this litigation," said Mayor Adrian M. Fenty. "Furthermore, I am confident in Kathy Sawyer's familiarity with the Evans case and welcome her back to the district."

The parties, the special masters, the court monitor, Sawyer, and the Quality Trust for Individuals with Disabilities will meet periodically to discuss issues and strategies aimed at implementing the outstanding court orders and the revised plan for compliance.

"Today's orders by Judge Huvelle mark a significant milestone in the history of this case," said Director Laura Nuss. "This begins a new, and we believe, final chapter in which the district, working in partnership with plaintiffs, the court monitor, and the court, will complete transformation of its developmental disability service system into one of the best in the country."

SNB 8Sept2010 / CSR Nov 2010

California Prisons Not Complying with Order to Protect Inmates with DD

California. Prisons in California still have not complied with a December 2001 order to protect inmates with developmental disabilities. U.S. District Judge Charles R. Breyer issued an [Order](#) September 16 in the case, [Clark v. California](#):

"In total the evidence demonstrates that mentally retarded prisoners and those with autism spectrum disorders are verbally, physically, and sexually assaulted, exploited, and discriminated against in California prisons. Illiterate prisoners are not given the help they need to understand or fill out important prison documents, leaving them with no way to use sick call slips or grievance forms, unless they can pay other prisoners or beg them for help. Developmentally disabled prisoners are punished for violating prison

rules that they do not understand, and are punished at hearings which they do not comprehend. These conditions violate those prisoners' rights to be free of unlawful discrimination based on their disabilities."

The judge ordered the state of California to prepare a plan to address deficiencies in staff training, identification and classification of prisoners with developmental disabilities and their needs, and self-monitoring, and submit the plan to court experts and to the [Prison Law Office](#) by December 15, 2010.

The Prison Law Office, [a team of Bay Area lawyers](#), who work to protect the civil rights of inmates in California, originally filed the lawsuit in 1996.

SNB 22Sept2010 / CSR Oct 2010

Minnesota Restraints Lawsuit Reaches Settlement

A restraints lawsuit against the Minnesota Department of Human Services reached settlement, pending court approval, with the state agreeing to pay \$3 million to the families of individuals with developmental disabilities and phase out the use of restraints, the *Star Tribune* reported September 14, 2010. The suit was filed by families of three youths with developmental disabilities who resided in the Minnesota Extended Treatment Options in Cambridge, Minnesota and suffered inappropriate use of handcuffs and other restraints. A 200-page [Office of the Ombudsman for Mental Health and Developmental Disabilities](#) report, *Just Plain Wrong*, found that the Cambridge, Minnesota center had restrained 63 percent of its patients "most of them multiple times." One resident had been restrained 299 times in 2006 and 230 times in 2007. Residents would be restrained, the report said, for such violations as "touching the pizza box." (See previous reference in *SNB 15July 2009 / CSR Aug 2009*)

SNB 22Sept2010 / CSR Oct 2010

Nebraska Beatrice DC Lawsuit Settles

A lawsuit filed by a resident of Beatrice State Developmental Center who suffered two broken legs because she was dropped came to settlement with the state agreeing to pay her \$190,000 and an additional \$10,000 to her guardian, [The Beatrice Daily Sun](#) reported September 4, 2010.

SNB 22Sept2010 / CSR Oct 2010

U.S. Department of Justice Settles with the State of Georgia

The U.S. Department of Justice announced October 19, 2010, that it has entered into a comprehensive settlement agreement that will transform the state of Georgia's mental health and developmental disability system and resolve a lawsuit the United States brought against the state. The lawsuit alleged unlawful segregation of individuals with mental illness and developmental disabilities in the state's psychiatric hospitals in violation of the Americans with Disabilities Act (ADA) and the Supreme Court's landmark decision in [Olmstead v. L.C.](#)

As part of the terms of the agreement, Georgia will cease all admissions of individuals with developmental disabilities to state-operated hospitals by July 1, 2011 and transition all individuals with developmental disabilities in state-operated hospitals to community settings by July 1, 2015.

Georgia will create 1,150 home and community-based waivers for individuals with developmental disabilities by July 1, 2015, 750 waivers to help transition individuals from the state hospitals to community settings, and 400 waivers to help prevent the institutionalization of those individuals currently living in the community.

Georgia will also increase its assertive community treatment, intensive case management, case management, supported housing, and supported employment programs to serve 9,000 individuals with mental illness in community settings over the next five years. At least 1,000 Medicaid waiver slots to transition all individuals with developmental disabilities from the state hospitals to community settings

The agreement will also increase community crisis services to respond to and serve individuals in a mental health crisis without admission to a state hospital, including crisis services centers, crisis stabilization programs, mobile crisis, and crisis apartments; create; and increase crisis, respite, family, and housing support services to serve individuals with developmental disabilities in community settings.

The U.S. District Court for the Northern District of Georgia will retain jurisdiction to enforce the October 19, 2010, settlement agreement, which supersedes a 2008 agreement between the state and the Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) concerning Georgia's provision of community services for individuals with mental illness and developmental disabilities (see **SNB** 9July2008). In light of the agreement and the progress the state has made in complying with an earlier agreement regarding the conditions in the psychiatric hospitals, the United States has agreed to withdraw its motions to enforce that earlier agreement.

More than a decade ago, in [Olmstead v. L.C.](#), the U.S. Supreme Court found that one of Georgia's state hospitals was impermissibly segregating two individuals with disabilities in that hospital when they could have been served in more integrated settings. The U.S. Supreme Court ordered states to serve individuals with disabilities in the most integrated settings appropriate to their needs.

"The Olmstead decision strongly affirmed that people with disabilities have a right to live and receive services in the most integrated setting appropriate for them as individuals," said Thomas E. Perez, Assistant Attorney General for Civil Rights at the U.S. Department of Justice (DOJ). "Under this agreement, the state of Georgia will provide services in the community to hundreds of people with developmental disabilities and thousands of people with mental illness. The promises of the ADA and Olmstead will finally become a reality for individuals in Georgia with mental illness and developmental disabilities."

Background. The Justice Department began its investigation in 2007 and found that preventable deaths, suicides, and assaults occurred with alarming frequency in Georgia's state hospitals.

In January 2009, DOJ entered into a settlement agreement with the state of Georgia regarding conditions in the hospitals. Further investigation found that the state also failed to serve individuals with mental illness and developmental disabilities in the most integrated setting appropriate to their needs, in violation of the ADA and the Olmstead decision.

In January 2010, DOJ filed a freestanding complaint under the ADA and a motion for immediate relief seeking to protect individuals confined in the hospitals from continued segregation and from threats of harm to their lives, health, and safety. The Department subsequently entered into extensive settlement negotiations with Georgia, the Office for Civil Rights, and local mental health advocates.

The agreement, signed October 19, 2010, resolves the ADA lawsuit. Read a [fact sheet](#) about the settlement agreement and the [agreement itself](#).

SNB 20Oct2010 / CSR Nov 2010

Connecticut Training School Lawsuit Settles

Connecticut Governor M. Jodi Rell announced November 19, 2010, that U.S. District Court Judge Ellen Bree Burns signed an order approving the settlement agreement in the 1994 class action lawsuit, ***Messier v. Southbury Training School***.

The agreement, which includes the Arc of Connecticut as a plaintiff and the Department of Developmental Services (DDS) as a defendant, was filed with the U.S. District Court on July 12, 2010, and addressed the one issue not resolved by a Ruling of the District Court on June 4, 2008. All issues pertaining to conditions, care, treatment, medical care, and protection from harm were either ruled moot or decided in favor of DDS.

"I am pleased that this long-running case has been settled," Governor Rell said. "I continue to support community placement for those residents who wish it...."

The remaining issue addresses compliance with the Americans with Disabilities Act (ADA) concerning the process for considering community placement for Southbury Training School (STS) residents.

The settlement agreement states that DDS will ensure that all interdisciplinary teams will assess a resident's needs and make a professional judgment and recommendation for that person regarding the most integrated setting appropriate to the individual's needs. Each STS resident and their guardian will be given sufficient information to then make an informed decision about these recommendations.

Neither the settlement nor the Judge's original ruling in 2008 directs the closure of STS.

STS will remain open for those individuals who wish to continue to live there and will receive comprehensive supports to meet their needs. The department will also continue to make resources available to all STS residents who choose to move.

Click [here](#) to read the settlement agreement.

SNB 1Dec2010 / CSR Jan 2011

5. RECORDS ACCESS

Kentucky DD Council Files Suit for Records Access

Kentucky's [Council on Developmental Disabilities filed a lawsuit](#) against the Cabinet for Health and Family Services August 19, 2010, for denying access to records for an individual with developmental disabilities who died after being transitioned to a community placement. **SNB** 22Sept2010 / **CSR** Oct 2010

Records Access Case Heard in U.S. Supreme Court

The U.S. Supreme Court heard arguments in a case December 1, 2010, filed by the [Virginia Office for Protection and Advocacy](#) (VOPA) against the commonwealth of Virginia to access records of residents in state-operated facilities. VOPA's opening brief can be accessed [here](#).

The case arose, VOPA said, from their attempt to investigate the deaths of two individuals, and injuries to a third, that occurred while the individuals were residents of institutions operated by the commonwealth.

Five amicus briefs have been filed on behalf of the plaintiffs, including one from the [U.S. Department of Justice](#). To learn more about the case, click [here](#). The court is expected to make a decision in June 2011.

SNB 1Dec2010 / CSR Jan 2011

6. MISCELLANEOUS

Military Families Sue DoD to Pay for ABA Treatments

"Military families having children with autism have filed a class action lawsuit against the Department of Defense, alleging that the DoD and its health benefits division, TRICARE, have wrongfully refused to provide insurance coverage for applied behavior analysis (ABA) therapy," [reported July 23, 2010](#). "In a dramatic new development, the Department of Defense has vacated its prior policy of denying payment for ABA therapy for autistic children of military families, but it is still refusing to pay for such claims."

The case is *Berge v. United States of America, et al*, No. 10-cv-00373-RBW (DC), and it was assigned to Judge Reggie B. Walton of the federal district court.

SNB 14Jul2010 / CSR Aug 2010

Alabama Housing Discrimination Lawsuit Settles

The [U.S. Justice Department announced September 17, 2010](#), that it settled a lawsuit against the city of Satsuma, Alabama and the city's board of adjustment concerning alleged housing discrimination against individuals with disabilities. Under the consent decree, the city agreed to pay \$59,000 in damages to the operator of a group home for three women with intellectual disabilities and the trustees of the three residents, as well as a \$5,500 civil penalty to the government. As part of the settlement, the city also adopted amendments to its zoning laws. [United States v. City of Satsuma, Alabama Summary Consent Decree](#)

SNB 22Sept2010 / CSR Oct 2010

Hawai'i Court Reinstates Autism Lawsuit

A federal appeals court reinstated a lawsuit August 26, 2010, by parents of two daughters with autism seeking compensation for alleged failure by the Department of Education to provide special education services, the [Honolulu Star Advertiser](#) reported.

SNB 22Sept2010 / CSR Oct 2010

Massachusetts Judge Rotenberg Center Lawsuit Settled

The family of a teenager who resided at the Judge Rotenberg Center in Canton settled a lawsuit concerning "electric skin shock" therapy used against the boy. They complained the shock therapy was inhumane and violated the student's civil rights, the [Boston Herald](#) reported.

SNB 22Sept2010 / CSR Oct 2010

Care Providers Sue State of Michigan over Mandatory Union Dues

[The Grand Rapids Press](#) Editorial Board urged federal judges to rule in favor of child care providers who filed a lawsuit against the state of Michigan for forcing them to pay dues to such unions as United Auto Workers. In February 2010, a group of Michigan home-care providers [filed a class-action federal lawsuit](#) against government union officials and Governor Jennifer Granholm's administration allegedly for illegally forcing them to pay union dues. This issue also pertains to parents who provide services to their children with disabilities at home. **SNB 22Sept2010 / CSR Oct 2010**

Employees with Disabilities Sue U.S. Social Security Administration over Discrimination

U.S. A class-action lawsuit filed against the Social Security Administration (SSA) by employees with disabilities is moving forward, [The Baltimore Sun](#) reported August 30, 2010. The suit alleges that the SSA discriminates against employees with disabilities by denying or limiting promotions.

SNB 22Sept2010 / CSR Oct 2010

California Supreme Court Upholds Governor's State Employee Furloughs

The California Supreme Court ruled unanimously October 4, 2010, to uphold Governor Arnold Schwarzenegger's program to furlough state employees — which affects about 144,000 of them, and make line-item vetoes in the state budget.

The court said that the furlough program — two days a month initially, then extended to three — was legal because the Legislature had the authority to approve it

"[W]e conclude that the phrase 'existing administration authority'... was intended to encompass the then-existing furlough program," the court said. "By enacting this provision, the Legislature, through the exercise of its own legislative prerogative, authorized the substantial reduction in the appropriations for employee compensation,

mandated in the revised budget legislation, to be achieved through the two-day-a-month furlough plan."

Associate Justice Carol A. Corrigan concurred with the decision saying, "... it is clear from the context of the budget negotiations at the end of 2008 and the beginning of 2009 that the Legislature adopted the savings realized by the Governor's furlough plan. But it is important to note that when it took this action, the Legislature did not create new administrative authority out of whole cloth, or rely entirely on an executive order that was without legal support....For reasons stated in the majority opinion, the executive branch lacks *unilateral* authority to implement furloughs. However, when the Legislature authorized the furlough program, it did not enlarge [the Department of Personnel Administration's] administrative functions. This is significant, because the single-subject rule requires that a budget bill deal only with the one subject of appropriations to support the annual budget. It may not constitutionally grant authority to a state agency that the agency does not otherwise possess, or amend existing statutory law."

In responding to the decision, Governor Schwarzenegger said: "I have had to make very difficult decisions in response to the world-wide economic collapse, including furloughs for state workers and line-item vetoes to balance our budget. These decisions were absolutely necessary to keep our state functioning. Today's ruling upholds the state's actions to protect taxpayers and ensure we live within our means, just like every California family and business must do."

To read the court decision, click [here](#).

SNB 6Oct2010 / CSR Nov 2010