

NASDDDS Litigation Updates

December 2009 – July 2010

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

Litigation summaries are updated twice a year. If you would like to receive litigation summaries and other state DD news on a more frequent basis, we invite you to subscribe to **CSR** by clicking [here](#). Subscription form is at the bottom of the page.

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

1. Access to Services

A. 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.

B. Lawsuits challenging policies that prevent people with disabilities from promptly obtaining services. Some of these lawsuits concern people with autism whose insurance companies have refused to pay for necessary autism 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 Department of Justice implementation of the Civil Rights for Institutionalized Persons Act (CRIPA);

5. Death penalty exemption / determination of Intellectual Disability to be exempt

Lawsuits pertaining to states' definitions and determination of "mental retardation" and related issues to the 2002 U.S. Supreme Court ruling that executions of individuals with mental retardation is "cruel and unusual punishment" and therefore illegal. However, the Supreme Court did not define "mental retardation," leaving individual states to make that determination in order to discern if someone convicted of committing a capital crime is exempt from capital punishment.

6. Miscellaneous

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

LITIGATION UPDATES

1. ACCESS TO SERVICES

HAWAII

Amongst recent lawsuits filed in Hawai'i concerning school furloughs, one focuses on students with autism and the complaint that furloughs break federal laws concerning special education, [The Honolulu Star Bulletin](#) reported November 5. **SNB** 12Dec09 / **CSR** Jan 2010

PENNSLVANIA & VIRGINIA

The U.S. Department of Justice announced June 9, 2010 an agreement with [Lancaster County, Pennsylvania](#), to improve access to civic life for persons with disabilities. The agreement was reached under Project Civic Access (PCA), the department's wide-ranging initiative to ensure that cities, towns, and counties throughout the country comply with the Americans with Disabilities Act (ADA).

On the same day, the DOJ announced a similar agreement with [Smyth County, Virginia](#) to improve access to all aspects of civic life for persons with disabilities. The agreement was reached under the same PCA initiative.

PCA was initiated to ensure that persons with disabilities have an equal opportunity to participate in civic life, a fundamental part of American society. As part of the PCA initiative, Justice Department investigators, attorneys, and architects survey state and local government facilities, services and programs in communities across the country to identify the modifications needed for compliance with ADA requirements. The agreements are tailored to address the steps each community must take to improve access.

"Access to civic life is a fundamental part of American society and is necessary for individuals with disabilities to be full members of their communities," said Thomas E. Perez, Assistant Attorney General of the Civil Rights Division. "Communities and workplaces across the nation have become more accessible for America's nearly 50 million people with disabilities due to cooperative actions....We hope that all local governments are committed to achieving full compliance with the ADA, particularly as we approach the 20th anniversary of this landmark civil rights law in July."

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The settlement agreements were reached under Title II of the ADA, which prohibits discrimination against individuals with disabilities by state and local governments. **SNB** 16June2010 / **CSR** July 2010

2. COMMUNITY PLACEMENT OF INSTITUTIONALIZED PERSONS

The U.S. Department Justice (DOJ) Files Briefs in Three State Cases: CT, NY, & VA The U.S. Department of Justice said in an announcement that the week of December 2, 2009 was a landmark for federal enforcement of the Supreme Court decision in [Olmstead v. L.C.](#), a ruling requiring states to eliminate unnecessary segregation of persons with disabilities and to move persons who can function in the community out of segregated facilities.

U.S. DOJ Files Briefs in Mental Health Cases: FL, IL, & NJ.

The U.S. Department of Justice announced May 25 it filed briefs in three separate cases in Florida, Illinois, and New Jersey as part of its continuing effort to enforce civil rights laws that require states to end discrimination against and unnecessary segregation of persons with disabilities. The department's filings support two private lawsuits seeking relief in Florida and New Jersey, as well as a proposed statewide class action settlement in Illinois.

The briefs allege that the three states are failing to comply with the Americans with Disabilities Act (ADA) and the Supreme Court's decision in ***Olmstead v. L.C.*** Last year, President Obama issued a proclamation launching the "Year of Community Living," and directed the Administration to redouble enforcement efforts.

"As the Supreme Court determined in the landmark Olmstead decision, unjustified institutionalization violates the rights of individuals with disabilities and stigmatizes them as unworthy of participation in community life," said Assistant Attorney General for the Civil Rights Division Thomas E. Perez. "Florida, Illinois, and New Jersey can provide community-based services to people with disabilities, and the law requires them to do so to prevent unnecessary institutionalization."

New Jersey. DOJ filed a "friend of the court" (amicus curiae) brief to support a motion by New Jersey residents with mental health disabilities for summary judgment against the state on their claims brought under the ADA. According to the brief, New Jersey is failing to serve individuals with disabilities in the most integrated setting appropriate to their needs. New Jersey's placement from institutions to community-based settings has slowed to a trickle, with new admissions largely being placed in institutions. Thousands of individuals continue to be institutionalized despite meeting ADA and Olmstead criteria for community placement, the brief states.

Florida - *Haddad v. Arnold.* In Florida, the department filed [a statement of interest](#) May 24 to support Michele Haddad's lawsuit against the state for violations of the ADA's integration mandate as set forth in Olmstead. Haddad's lawsuit alleges that Florida fails to provide community-based services to Medicaid-eligible individuals with spinal cord injuries who are at risk of institutionalization. Instead, the state will fund those services only after an individual relinquishes his or her ties to the community and enters a nursing home. Haddad has successfully resided in the community since 2007, but is at risk of entry into a nursing home due to changes in her caregiver situation. Haddad, who has been on the waiting list for services for two years, notified the state of her increased

need for services, but was told that community services would only be available if she was willing to enter a nursing home for 60 days. The United States' filing supports Haddad's complaint and declaration for a preliminary injunction against Florida.

Illinois – *Williams v. Quinn*. In the Northern District of Illinois, DOJ filed [a statement of interest](#) in support of a proposed settlement, embodied in a consent decree, between the state of Illinois and a group of individuals with mental illness living in large, privately-run institutions. The lawsuit alleges that the state of Illinois relies on these facilities, called Institutions for Mental Disease (IMDs), to provide long-term care services while failing to offer services in community-based settings, in violation of Olmstead. According to the statement, the United States supports the preliminary approval of the consent decree because it advances the important public interest in community integration. **SNB** 2June2010 / **CSR** July 2010

CONNECTICUT

DOJ [filed a "friend of the court" brief](#) November 25, 2009 in support of plaintiffs with mental illness in [Connecticut Protection and Advocacy v. State of Connecticut](#), and opposing a pending motion to dismiss the lawsuit in federal court in Connecticut. The case, originally filed February 6, 2006, challenges the state's lack of community placements for persons with mental health disabilities who are housed in large, private nursing homes. See http://www.ada.gov/briefs/conn_olmsteadbr.pdf.

NEW YORK

DOJ [filed a brief](#) November 24 in support of plaintiffs' proposed remedy in [Disability Advocates Inc. v. David A. Paterson, et al](#) in federal district court in Brooklyn, where the court already ruled that placing individuals with psychiatric disabilities in "large adult homes" violates Olmstead. See http://www.ada.gov/briefs/newyork_olmsteadbr.pdf. See also a [New York Times article](#) on the lawsuit.

TENNESSEE

With special thanks to Dianne Dycus, Deputy Attorney General, for providing the court documents and the summary text.

While the State of Tennessee works on closing Clover Bottom Developmental Center and returning individuals to their communities, families of some residents want them moved into another congregate setting. The [U.S. Department of Justice](#) and plaintiffs in a long-running lawsuit, ***People First of Tennessee v. Clover Bottom Developmental Center***, oppose this.

Tennessee has developed both waiver and community-based intermediate care facility homes, but these families specifically wanted an institutional setting for their family members. So, they chose placement at MurCi Homes, a private intermediate care facility with 72 beds on a campus setting.

The issue before the Court was whether either the Americans with Disabilities Act or the suit's settlement agreement precluded the conservators from choosing congregate care. The state's Quality Review Panel was seeking to block such transitions on the basis that it is not a community placement. There was no dispute that this was not the

most integrated setting appropriate for most of the individuals. So, the issue was whether the conservators had the right to make this choice. The Court ruled in favor of the state and families May 28--recognizing the freedom to choose an institutional placement even if the individual could be appropriately served in a more integrated setting.

Please see attached court documents. [..\Community Services Reporter \(CSR\)\2010\CSR 07-2010\TN Clover Bottom Memo Opinion re MurCi Homes 5-28-10.pdf](#) and [..\Community Services Reporter \(CSR\)\2010\CSR 07-2010\TN Clover Bottom order re MurCi Homes 5-28-10.pdf](#) **SNB** 16June2010 / **CSR** July 2010

VIRGINIA

Also November 24, DOJ [filed a "friend of the court" brief](#) in ARC of Virginia v. Timothy Kaine in federal district court in Richmond, Virginia. That brief opposes Virginia's motion to dismiss a case that challenges the state's decision to construct a new segregated facility for persons with intellectual disabilities in Chesapeake, Virginia. ARC of Virginia filed the lawsuit October 27 asking the court to stop the Commonwealth from building a new 75-bed facility for Virginians with intellectual disabilities. See http://www.ada.gov/briefs/virginia_olmsteadbr.pdf. **SNB** 12Dec09 / **CSR** Jan 2010

GEORGIA

The [U.S. Department of Justice filed a lawsuit](#) against the State of Georgia January 28, 2010 alleging that the state "discriminates against persons with disabilities in violation of Title II of the Americans with Disabilities Act."

The state "segregates hundreds of individuals with mental illness, developmental disabilities, and addictive diseases in institutions that are not the most integrated setting appropriate to their needs, and fails to provide adequate supports and services to individuals who are discharged from the institutions or who are at risk of institutionalization," the [complaint](#) says.

The DOJ is asking the Court to order the State of Georgia to:

- 1) Cease "administering behavioral health services in a setting that unnecessarily isolates and segregates individuals with disabilities from the community,"
- (2) Administer "behavioral health services in the most integrated setting appropriate to the needs of the individuals with disabilities," and
- (3) Transition "each of the Hospitals to a resource center that supports delivery of community services and serves as a last resort in a continuum of care for those for whom community-based services and supports have been exhausted...."

To view the Amended Complaint, Motion for Immediate Relief, and other supporting documents, click [here](#). **SNB** 24March2010 / **CSR** April 2010

NORTH CAROLINA

A federal District Judge issued a [temporary restraining order](#) December 14, 2009 that prohibits the State of North Carolina and the Beacon Center Local Management Entity from removing adults with dual diagnosis from their homes and terminating their community-based care.

[Disability Rights North Carolina](#) (DRNC) filed the suit against the North Carolina Department of Health and Human Services and the Beacon Center December 11 on behalf of two clients who were notified that a large measure of the state-funded services that permit them to live in the community was being terminated.

“The loss of these services will likely result in their relocation to an institution,” said Vicki Smith, Executive Director of DRNC, “thus violating the...Supreme Court decision *Olmstead v. L.C.*, which held that unnecessary institutionalization of individuals with disabilities is a form of discrimination under the Americans with Disabilities Act.”

For almost a decade, one of the plaintiffs lived in his own apartment as the recipient of federal and state dollars. The other plaintiff also lived in her own apartment for more than five years supported with a blending of federal and state dollars. Although the North Carolina General Assembly exempted individuals like the plaintiffs from the most severe budget cuts, the legislature did not make the preservation of these necessary services mandatory, a DRNC announcement said.

A hearing on plaintiffs’ motion for preliminary injunction will be held December 28, 2009. Here’s [the link to the order](#). **SNB** 12Dec09 / **CSR** Jan 2010

3. LIMITATIONS ON HOME AND COMMUNITY-BASED SERVICES

ARIZONA

The Arizona Association of Providers for Persons with Disabilities filed another lawsuit against the State of Arizona November 16, claiming the state is cutting services to individuals with developmental disabilities at a greater rate than other services, [The Arizona Republic](#) reported.

The Association filed a similar suit last year in [Maricopa County Superior Court](#) (see March 25, 2009 **SNB**) but the temporary injunction against the cuts expired in May. The complaint says that the service cuts may render the state noncompliant with Medicaid rules. The case docket number is CV2009-006509. **SNB** 12Dec09 / **CSR** Jan 2010

IDAHO. Sixteen agencies serving Idahoans with developmental disabilities want to expand their lawsuit against the state over reducing Medicaid reimbursement rates. U.S. District Judge Justin Quackenbush issued a temporary restraining order April 28 against Idaho’s Department of Health and Welfare to block a 55% cut to payments to service agencies, [Idaho Business News](#) reported. **SNB** 12Dec09 / **CSR** Jan 2010

MICHIGAN

When a woman with developmental disabilities died from an untreated tooth infection because her Medicaid dental benefits had been cut off, a lawsuit was filed on behalf of 400,000 other Medicaid recipients, [Injury.com](#) reported October 31, 2009. The dental

program was cut off per a May 5 [gubernatorial executive order](#). **SNB** 12Dec09 / **CSR** Jan 2010

PENNSYLVANIA

Disability Rights Network of Pennsylvania filed a [class action lawsuit](#) April 29 against the state's Department of Public Welfare alleging multiple violations of federal law in how the Department provides services to deaf persons with intellectual disabilities served through the Consolidated Waiver.

"[J]ust a small fraction of the counties in Pennsylvania have any residential mental retardation programs that accommodate the communication needs of deaf residents," the [complaint](#) said. "Nor are there many other mental retardation programs, such as day programs, that accommodate such needs. As a result, deaf individuals with mental retardation must either do without needed community services, or receive such services in an environment in which they can communicate with few, if any, people, a situation that precludes effective treatment and habilitation and amounts to a life of virtual isolation."

The complaint explains that, according to a Department of Public Welfare survey a year ago, a vast majority of deaf Pennsylvanians with individuals with intellectual disability do not have service staff who are fluent in sign language.

"Our clients want to be able to participate in the same kinds of programs afforded to other adults with intellectual disabilities – rehabilitation, vocational training, various therapies and social events," Disability Rights Network Rachel Mann. "DPW's discriminatory treatment clearly violates federal law." **SNB** 5May2010 / **CSR** June 2010

SOUTH CAROLINA

[Medicaid recipients with autism](#) or other disabilities filed a lawsuit against the Governor and State of South Carolina December 23, 2009 alleging services which they need "to remain in the least restrictive setting are being or have been terminated by the South Carolina Department of Disabilities and Special Needs ("SCDDSN") in violation of the American Recovery and Reinvestment Act ("ARRA") and the Constitutional right of the Plaintiffs to be integrated into the community as required by the Americans with Disabilities Act," the complaint said.

The suit, filed in the state's Supreme Court, says the "funds provided to create new residential slots and to serve children who have autism were not expended as allocated by the General Assembly. Instead, SCDDSN paid tens of millions of dollars of these funds to local DSN Boards to purchase real estate.

"Resolution of the issues contained in this Complaint is urgent also because hundreds of millions of federal stimulus dollars are at risk if South Carolina does not meet eligibility requirements set forth in the American Recovery and Reinvestment Act.

"Immediate action is needed because jobs of caregivers across the State are being terminated based on false claims by the South Carolina Department of Disabilities and

Special Needs (“SCDDSN”) of “budget reductions” (click [here](#)). **SNB** 24March2010 / **CSR** April 2010

4. INSTITUTIONAL REFORM / CRIPA

ARKANSAS

The U.S. Department of Justice filed a [Motion for Preliminary Injunction](#) March 9 against the State of Arkansas concerning the Conway Human Development Center. The State of Arkansas “fails to serve residents in the most integrated setting appropriate to their needs in violation of the Americans with Disabilities Act...and exposes residents to death and injury as a result of unconstitutional medication management and restraint practices,” the motion said.

The U.S. DOJ also filed on March 9 a [Memorandum of Points and Authorities](#) in Support of United States' Motion for Preliminary Injunction in **United States v. State of Arkansas**. **SNB** 24March2010 / **CSR** April 2010

New Lawsuit. The U.S. Department of Justice announced May 6, 2010 that it filed a lawsuit against Arkansas alleging that the state is systemically violating the Americans with Disabilities Act of 1990 (ADA).

The complaint, filed in U.S. District Court for the Eastern District of Arkansas, encompasses all six Arkansas Human Development Centers (HDCs) and the state’s restrictions on services in integrated settings. It seeks to enforce the ADA’s requirement that Arkansas provide services to individuals with disabilities in the most integrated settings appropriate to their needs. The lawsuit also addresses the state’s systemic failure to comply with the ADA in how it provides services to individuals with developmental disabilities, a [DOJ announcement](#) said.

The six Arkansas HDCs are congregate institutions housing approximately 1,100 individuals with developmental disabilities. According to the complaint, hundreds of these individuals are segregated illegally in the HDCs in violation of their rights to services in the most integrated setting appropriate to their needs. The lawsuit also alleges that the state restricts development of adequate community supports and services to enable individuals to leave the HDCs and to offer viable alternatives to many individuals who are at risk of inappropriate institutionalization. The number of Arkansans with developmental disabilities needing community-based waiver services on the state’s waiting list totals approximately 1,400.

“Individuals currently at the bottom of the list will likely wait more than a decade to receive community services,” DOJ said. “Yet, the state is actively expanding its HDC institutions at the cost of developing community alternatives.”

The Justice Department [filed a lawsuit](#) against the state of Arkansas January 16, 2009 for “egregiously and flagrantly” depriving children and adults with developmental disabilities housed in Conway Human Development Center of safe conditions, personal security, and appropriate habilitation and training (see **SNB** 4Feb2009 / **CSR** March 2009).

On March 9, DOJ filed a [preliminary injunction](#) and accompanying [memorandum of points and authorities](#) “based on the imminent and serious threat of harm to the life, health, safety, and liberty of the individuals residing at the Conway Human Development Center.”

On April 7, U.S. District Court Judge Leon Holmes rejected the Justice Department's request noting that DOJ asked for the injunction a good eight years after starting its [investigation](#) of the center.

Because the new statewide ADA lawsuit filed May 6 will encompass DOJ's ADA claims regarding Conway HDC, the Justice Department filed a motion May 5 to dismiss those claims from the Conway HDC suit.

"The ADA guarantees individuals with developmental disabilities the right to live in the most integrated setting appropriate to their needs. Arkansas' lack of community services requires individuals with developmental disabilities to choose between receiving services in segregated institutions and receiving no services at all," Assistant Attorney General in charge of DOJ's Civil Rights Division Thomas E. Perez said. "Arkansas illegally segregates hundreds of individuals in institutions across the state and places hundreds more at risk of needless institutionalization. We are acting now to remedy discrimination against these individuals." **SNB** 5May2010 / **CSR** June 2010

CONNECTICUT

U.S. District Judge Ellen Bree Burns signed an “Order Granting Joint Motion to Dismiss” the ***United States of America vs. State of Connecticut*** case on October 30, a [Department of Developmental Services announcement](#) said. The case concerned Southbury Training School (STS), a large state-run residential facility for adults with intellectual disability (Civ. No. N-86-252 (EBB)).

DOJ and the Connecticut Attorney General's Office filed a Joint Motion October 29 to dismiss the case which began in 1984 and focused on improving programs, services, and conditions at STS. Over the years, a Consent Decree (1986), a Special Master appointment, and Remedial Plan were ordered by Judge Burns. In 2006, after substantial progress was verified, the state was released from active judicial oversight. **SNB** 12Dec09 / **CSR** Jan 2010

ILLINOIS

[DOJ Choate DC Letter](#). The U.S. Department of Justice's Civil Rights Division sent a [findings letter to Illinois Governor Pat Quinn](#) November 9, 2009 on its investigation of the Clyde L. Choate Developmental Center. **SNB** 12Dec09 / **CSR** Jan 2010

Certain conditions and practices at Choate were found to violate the constitutional and federal statutory rights of its residents. “In particular,” the letter said, “we find that Choate fails to provide its residents with adequate: (A) transition planning and placement in the most integrated setting; (B) protection from harm; (C) health care, including psychiatric care and physical and nutritional management; (D) behavioral,

habilitation, and communication services; (E) special education services; and (F) integrated treatment planning.

The [49-page letter](#), however, did note the “the forensic unit at Choate is impressive in many respects, particularly in its focus on habilitating its forensic residents so that they can move as expeditiously as possible to less restrictive settings appropriate to their needs.”

[DOJ Howe DC Letter](#). Also on November 9, DOJ sent a 59-page [findings letter concerning the W.A. Howe Developmental Center](#) to Governor Quinn.

“We are aware that, on September 5, 2008, the State announced its intention to close Howe by June 30, 2009,” the letter said. “We are furthermore aware that the State temporarily halted closure planning earlier this year, before announcing on August 28, 2009, its final decision to close Howe, and to complete all resident transitions by April 2010. While the Department of Justice acknowledges the State’s closure deliberations and decision, the purpose of this letter is advise you formally...of the findings of our investigation, the facts supporting them, and the minimum remedial measures necessary to remedy the deficiencies set forth below....Even as the closure of Howe proceeds, the constitutional violations at the facility will have continuing effects, for which the State must provide relief in whatever setting a Howe resident eventually resides. As it closes Howe, the State retains a statutory obligation to move the facility’s residents to the most integrated setting appropriate for them as individuals.”

MAINE. A federal judge terminated a long-standing consent decree March 19 for a class-action lawsuit concerning Pineland Center, a state-run facility for individuals with developmental disabilities. While the facility was closed in 1996, the second consent decree in 1994 focused on community service needs.

"I've always felt confident the state has done the right thing by Pineland class members, and the court agreed," Attorney General Janet Mills said as quoted by [MaineToday](#).

"The state has gone above and beyond what was required by the decree."

Attorney General Janet Mills, the newspaper said, argued in court in February to have the decree dismissed. **SNB** 24March2010 / **CSR** April 2010

MARYLAND

DOJ investigated the [Rosewood Center](#) and sent Maryland Governor Martin O'Malley a [56-page letter October 7 concerning Rosewood's violations](#) of the constitutional and federal statutory rights of its residents. Even though the very last resident of Rosewood Center was moved out of the facility on May 22 (see **SNB** May 20 / **CSR** June 2009), DOJ had a number of concerns about residents' transitions.

“In particular,” the [DOJ letter](#) said, “we find that the State fails to provide Rosewood’s former residents with adequate transition planning and placement in the most integrated setting, and that Rosewood failed to provide its residents with adequate protection from harm; behavioral, habilitation, and communication services; and health care, including infection control and physical and nutritional management.... These failures are likely to

have lingering effects, including placement into inappropriate settings, which must be ameliorated and remedied.” **SNB** 12Dec09 / **CSR** Jan 2010

MASSACHUSETTS

The [U.S. Department of Justice](#) announced February 18 that it will investigate the Judge Rotenberg Educational Center under Title III of the Americans with Disabilities Act, which prohibits discrimination against qualified individuals with disabilities by public accommodations.

The Center is infamous for its use of Graduated Electronic Device (GED) shocks against children and young adult residents. According to its website, the Rotenberg Center is a special needs school in Canton, Massachusetts (near Boston) serving both “emotionally disturbed students with conduct, behavior, emotional, and/or psychiatric problems and developmentally delayed students with autistic-like behaviors.”

The [Massachusetts Department of Early Education and Care](#) investigated the Center in the fall of 2007 and issued [a report](#) after Center staff woke up young residents and inflicted painful excessive punishments in response to instructions from a crank caller posing as a quality control monitor (see **SNB** January 9, 2008 / **CSR** February 2008).

Nancy Weiss Spearheads Efforts. Nancy Weiss, MSW, of the [National Leadership Consortium on Developmental Disabilities](#) at the University of Delaware, spearheaded efforts to seek help against abuses at the Center from human rights organizations such as Human Rights Watch, Physicians for Human Rights, and Amnesty International to no avail.

She worked with 31 disability organizations in [sending letters](#) to government and other agencies “to take action to put an end to the use of electric shock, other painful and aversive procedures, seclusion, unnecessary restraint, and food deprivation – all inhumane and unnecessary methods of behavior modification used in some schools and residential facilities for children and adults with disabilities in the United States.”

The [letter](#) points specifically to the Rotenberg Center: “According to public sources, residents of the Judge Rotenberg Center receive painful electric shocks for behaviors as innocuous as stopping work for more than ten seconds, getting out of their seats, interrupting others, or whispering.”

“Disability advocates have cause for celebration.” Ms. Weiss said when she distributed the DOJ announcement. “[This is] exciting news for the 31 disability organizations that signed the September 30th letter and for all of the disability advocates who have been fighting for over twenty-five years to put an end to the use of electric shock, other painful and aversive procedures, seclusion, unnecessary restraint, and food deprivation as methods of behavior control.” **SNB** 24Feb2010 / **CSR** March 2010

5. DEATH PENALTY EXEMPTION / DETERMINATION OF INTELLECTUAL DISABILITY TO BE EXEMPT

6. MISCELLANEOUS

CALIFORNIA. A Court of Appeals judge reversed a lower court ruling January 27 to allow a lawsuit in [Arce v. Kaiser Foundation](#) to proceed to trial. The suit was filed by parents of a child with autism when Kaiser Foundation refused to pay for ABA and speech therapy.

IOWA

The U.S. Department of Labor filed a lawsuit against Henry's Turkey Service November 18 for paying 21 men with intellectual disabilities less than minimum wage, the [Des Moines Register](#) reported.

The men, allegedly former residents of Texas institutions, local newspapers said, were sent to Iowa years ago to work in a turkey processing plant. Some of them earned as little as 44 cents an hour and paid room and board from their salaries and federal disability checks, [The Des Moines Register](#) and other newspapers said.

A state fire marshal closed the bunkhouse February 7 "due to unsafe conditions, including boarded-up windows, and a non-functioning heating system," Iowa [Governor Culver said February 8](#). "The fact that this was allowed to go on for decades is completely unacceptable. However, I will do all I can to make sure it will never happen in the future as long as I am Governor." (See **SNB** March 4, 2009 / **CSR** April 2009.) **SNB** 12Dec09 / **CSR** Jan 2010

NEW YORK

Judge Dismisses in Part Records Access Suit.

Albany County Supreme Court granted in part a motion t October 22 to dismiss a records access lawsuit Albany Law School/Disability Rights Advocates filed against the Office of Mental Retardation and Developmental Disabilities (OMRDD) December 22, 2008. (See June 17, 2009 **SNB** and attached decision and order.)

The court found that federal law did not entitle plaintiffs to unconditional access to clinical records. It said access was conditioned upon either the consent of the resident if s/he has that capacity, or consent of his/her legal representative which includes actively involved family members (as is the current OMRDD practice). With respect to individuals who do not have the capacity to consent and do not have a legal representative, access is conditioned upon a finding by the plaintiffs of probable cause to suspect abuse or neglect of an individual. In the case of an individual who has a legal representative, access is conditioned upon notice to that representative of the probable cause or complaint, an offer of assistance to resolve the situation, and a failure or refusal by the representative to act, all subject to the relevancy of the investigation.

Accordingly, the court dismissed the application for a declaratory judgment that the plaintiffs are unconditionally authorized access to clinical records. The court also dismissed the application with respect to individuals with the capacity to consent who have not done so and with respect to individuals whose legal representatives have not been notified of the request for access. In addition, the court found that plaintiffs' contracts pertain to specific geographical areas and denied their request for an order with statewide application.

Albany Law School/Disability Rights Advocates filed an appeal December 11, 2009. **SNB** 12Dec09 / **CSR** Jan 2010

Man with autism coerced to murder confession wins suit. The City of New York has agreed to pay \$340,000 to a man with autism who spent a year in jail for a murder he didn't commit, [The Brooklyn Eagle](#) reported December 16. **SNB** 12Dec09 / **CSR** Jan 2010

SOUTH CAROLINA

South Carolina's Protection and Advocacy for People with Disabilities, Inc. [filed a lawsuit](#) against the South Carolina Department of Disabilities and Special Needs February 16 to require the agency to allow the P&A to inspect health records of residents of some community facilities. The complaint alleges that DDSN is preventing P&A from reviewing records of medication administration and other treatment in community training homes. The homes are operated by county disability boards and private providers under DDSN supervision. Click [here](#) to read the complaint. **SNB** 24March2010 / **CSR** April 2010

TEXAS

A former staff person at Corpus Christi State School plead guilty March 10 to forcing residents with developmental disabilities to fight each other in orchestrated, late-night "fight clubs," the [Corpus Christi Caller Times](#) reported. (See **SNB** April 8 / **CSR** May 2009).

The staff person "is one of six former Corpus Christi State School workers charged in connection with what authorities have described as an organized fight club in which staff encouraged residents to attack one another while being video-recorded," the newspaper said. **SNB** 24March2010 / **CSR** April 2010