

OLRS Files Federal Class Action Lawsuit on Behalf of Residents of Fairfield Center

OLRS filed a class action lawsuit in federal court seeking the community placement of residents living at Fairfield Center, an Intermediate Care Facility for the Mentally Retarded located in Butler County. The OLRs Commission approved the initiation of the lawsuit as a class action by a vote of 5-0 at its February meeting.

According to Michael Kirkman, OLRs Executive Director, "There is little question that many of the current residents in Fairfield Center could be and should be and want to be placed in community settings that are appropriate to their needs."

Lawsuit Alleges Failure to Place Residents in Community

The lawsuit stems from OLRs' Ombudsman section that last year investigated the death of a Fairfield Center resident. The lawsuit was filed on behalf of the Plaintiff class, four named residents of Fairfield Center and all other residents similarly situated at the Center, against Defendants Butler County Board of Mental Retardation and Developmental Disabilities (BCBMRDD), which owns the Center, and Empowering People, Inc., the company managing it.

OLRS alleges that the Defendants have discriminated against the Plaintiffs by failing to place them in integrated community settings that reflect their choices, and are appropriate to their needs, in violation of Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

The legal claims of the named Plaintiffs are typical of the claims of the class of

individuals identified in the case. Each of these individuals would be placed appropriately in an integrated community setting. Like other members of the class, each seeks but has been denied the opportunity to live outside of Fairfield Center, and in a community setting appropriate to their needs.

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Who are the named Plaintiffs?

The four people named as Plaintiffs are individuals who share a common desire to live in the community. One individual, who has lived in Fairfield Center for 18 years, since her early 30s, has repeatedly stated that she wants to leave Fairfield Center and live in the community.

A second individual, a 56-year-old man, also wants to leave to move to a smaller community setting. He has been a resident of Fairfield Center for 15 years.

The youngest of the named Plaintiffs, a 22-year-old man, has lived at Fairfield Center for three years. He does not want to live there - he wants to live in the community.

Finally, the fourth individual named in the lawsuit, a woman in her 50s, has lived at Fairfield for a year. She too has expressed her desire to live in the community.

OLRS Protects and Advocates for the Rights of People with Disabilities

Have your legal rights been violated because of a disability? Have you been abused or neglected, discriminated against, denied services, or unable to access public facilities? OLRs may be able to help. OLRs is Ohio's Protection and Advocacy (P&A) system with the mission to protect and advocate, in partnership with people with disabilities, for their human, civil, and legal rights.

Ohio's Protection & Advocacy System

OLRS is a part of our nation's P&A system; a system first created by Congress in 1975 after national news stories revealed widespread abuse and neglect of people with disabilities who were living in large institutions. The National Disability Rights Network (www.ndrn.org) is the non-profit membership organization for the state P&A systems. Since 1975, Congress has expanded the P&A system, and its authority to serve individuals with disabilities, regardless of the setting where they live.

Ohio Legal Rights Service

OLRS provides client-directed advocacy to people with disabilities who are subjected to rights violations because of their disabilities. OLRs advocates for the client by advising and presenting options to help the client make his or her own, informed decision. OLRs believes that all people are entitled to make decisions about where, how, and with whom they live and work as full and equal members of their communities.

Case Examples

The following are some recent cases that reflect the work of OLRs in providing client-directed advocacy to individuals with disabilities.

Ramps Installed to Gain Access to Homes

OLRS helped a family have a ramp installed for their rental home, to accommodate the needs of their five-year-old child with significant physical disabilities who uses a wheelchair. OLRs explained that the landlord was not required to put in a ramp due to the

age of the rental building, but must allow the family to do so at their own expense under the Fair Housing Act. With the parent's permission, OLRs contacted the county board of mental retardation and developmental disabilities (CBMRDD), and learned that the child is on a waiver, which would pay for a ramp. OLRs coordinated efforts between the family, landlord, and county board to get the ramp installed. In a little over a month, the ramp was installed, allowing the client to access his home.

OLRS also assisted a client to obtain a ramp for her apartment, assuring health and safety, and the ability to live independently. The client was unable to leave her apartment, without assistance, in case of an emergency or to go to medical appointments. OLRs intervened after the home health service provider failed to install a ramp. OLRs negotiated with the provider, who agreed to prioritize the installation of the client's ramp. OLRs continued to monitor until the ramp was installed.

Negotiations Allow Client to Attend School

OLRS negotiated on behalf of a client with a seizure disorder whose school district required him to wear a helmet in all school environments as a condition for attending school. The client's parents and physician did not support the use of the helmet in all school environments, arguing that it was too restrictive and stigmatizing. After negotiation, the district agreed to allow the client to attend school without wearing the helmet in the classroom setting and also agreed to modifications to the classroom environment to address safety concerns.

Accommodation Improves Safety for Client

OLRS successfully assisted a client with a fair housing accommodation request. The client, who is blind and has orthopedic disabilities, asked her landlord to clear snow from her

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OLRS Protects and Advocates *(continued)*

driveway. The landlord refused and also refused to allow a transportation service to pick her up on the driveway next to her front door. With direction from OLRs, the client submitted an accommodation request to the landlord. The landlord now clears her driveway when needed and permits the transportation service to use the driveway to her door.



Clients Have MRDD Services Reinstated

OLRS negotiated on behalf of a 16-year-old client who was receiving services from a CBMRDD. The client, upon turning 16, had been determined ineligible through the adult eligibility criteria as measured by the Ohio Eligibility Determination Instrument (OEDI). OLRs challenged the board decision through the administrative appeal process. The county board reviewed the initial OEDI supporting documentation and found the client eligible for services.

In another situation, OLRs successfully represented a client at an administrative hearing to appeal the denial of eligibility for CBMRDD services. The client had relocated from another county in Ohio where he was eligible for services. However, the county where he moved determined that he was ineligible for services. OLRs advised the client to appeal the decision and represented him at the administrative hearing. At the conclusion of the hearing, it was agreed that the client's eligibility should be re-determined. The re-assessment found the client eligible for services.



SSI Benefit Corrected; Client Continues Working

OLRS investigated and found that the Social Security Administration (SSA) was not giving credit to a client for allowable expenses, causing a reduction in the client's Social Security Income (SSI) benefit. The client, who is self employed, wanted to

quit her job because her SSI benefits were reduced to an amount where she could not afford to continue working. OLRs met with SSA to correct the problem. The client's SSI benefit increased to the proper amount, she received a check for back payment, and is able to continue working.



Successful Appeal Allows Client to Have Medical Device

OLRS assisted a client in obtaining a medical device to monitor the level of oxygen in his blood. Without the device, the client risked having serious respiratory problems that, when unchecked, caused him to be admitted to the hospital. Medicaid determined he no longer needed the device, and denied reimbursement. OLRs represented the family during the appeal process and the Medicaid program reimbursed the client for the purchase of the device.



Client Exercises Her Right to Choose Provider

OLRS assisted a client to assert her right to choose a provider who better meets her needs. The client contacted OLRs because she was concerned about the quality of care she was receiving from her Individual Options waiver provider. OLRs informed the client of her right to obtain a new provider. A meeting was held between the client, OLRs, and the client's service coordinator. The service coordinator agreed to complete a Request For Proposal and arrange for the client to interview new providers. The client interviewed and selected a new provider. In follow-up with the client, she is pleased with her new provider and the services she receives. ■

Spotlight on: *Community Integration*

Terri Brunner-Jones: Successfully Living in the Community

Terri Brunner-Jones has lived in institutions most of her life. But several months ago, she moved into her own apartment. Her life in the community today is what she has wanted for a very long time. OLRs interviewed Brunner-Jones, who agreed to tell her story for this article.

“I have what I want here,” says Brunner-Jones. Her home today is very different from the institution she lived in a short time ago. Now, home is a two-bedroom apartment, shaded by several old trees, that sits back from a winding country road. The serene country setting is punctuated occasionally by the playful noises of the children who live upstairs. Brunner-Jones says she would not change anything about her new home.

The home complements Brunner-Jones. The living room is homey and comfortable, centering around an arm chair where Brunner-Jones loves to relax and watch television. She has her favorites: Judge Judy, reruns of the Beverly Hillbillies, and just about any cooking show.

“I enjoy cooking my own food,” she says, launching into a detailed account of her special recipe for chicken and dumplings. “I used to cook years ago. I make homemade pizzas and my own bean soup. I like my place smelling good. And I like a clean

place,” says Brunner-Jones, who keeps her home orderly and spotless.

One of the best things about being at home is “feeling safer.” Brunner-Jones describes the anxiety of living in an institution with so many other people, and contrasts that with her quiet life at home today. She makes a point of saying that she has her own security and fire alarm systems.

While Brunner-Jones enjoys just being at home, she also goes into her community and is already developing routines typical of community living. Once a week she does her grocery shopping, and goes to the laundromat. Twice a week, she visits a community center to socialize and make new friends.

Brunner-Jones also goes to a community art center where she prepares wood she later decorates to make name plates. Brunner-Jones then sells the name plates, or gives them to friends. She would like to find a job - perhaps “to help older people.”

Brunner-Jones is also proud to be involved in handling her own finances. She has checking and savings accounts. “I sign my own checks,”

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Terri Brunner-Jones

The Long Path Home

Brunner-Jones waited a long time for her new home. Many barriers and set-backs kept her from leaving the institution. Until recently, there was an inability of local agencies from two systems to work together to provide her the array of services she needed. As a result, the institutions Brunner-Jones had lived in for so long struggled to develop a discharge plan that would accommodate her individual needs.

OLRS advocated for Brunner-Jones over several years to convince the various systems to work together to support her in the quality of life she wanted so badly. OLRs negotiated the components that make it possible for Brunner-Jones to live in the community successfully: a Medicaid waiver, housing assistance, and a partnership between Brunner-Jones and the systems that support her in the community. ■

OLRS Defends Right to Remain in the Community

OLRS successfully halted the placement of several individuals that the county board of mental retardation and developmental disabilities (CBMRDD) planned to move into Broadview, a building located on the campus of a state-run developmental center. The placement at the proposed site would have required many of the individuals to leave their homes and neighborhoods in the community, and move into an institution-like building in the middle of a 76-acre campus.

OLRS filed appeals with the CBMRDD on behalf of the individuals who expressed their desire not to move into the Broadview building. The appeal process temporarily guaranteed the individuals the right to “stay-put” in their homes, as the county board heard their appeals.

OLRS also successfully negotiated with the Ohio Department of MRDD and the Ohio Department of Job and Family Services to stop them from using Individual Options (IO) waivers to fund the placements. Both agencies agreed with OLRs that IO waivers could not be used because Broadview was not “a home and community based setting.” The majority of the individuals were able to continue to live in their communities. The state has now retaken possession of the building and it is being certified as an ICF/MR. ■

Terri Brunner-Jones (*continued*)

Brunner-Jones adds, “And I am going to fill out my tax papers next week. I am going to get a refund.”

Commenting on what it means to her to live in her own apartment, in the community, Brunner-Jones says, “It feels like I am on my own. I don’t have people telling me what to do all the time. I get to do what I want. I get to eat what I want to eat. I have my own place.” ■

Martin Waiver to Support Individual in the Community

OLRS successfully advocated for an individual with a traumatic brain injury (TBI) who wished to live in the community to receive a *Martin v. Strickland* Individual Options (IO) waiver.

The individual is currently living in a nursing home. The IO waiver will enable him to move, sometime in early 2009, into a home in the community. The plan is for him to return to the county where he lived prior to his injury.

OLRS continues to monitor the enrollment of individuals on *Martin* waivers and policy issues that impact the implementation of the *Martin* Consent Order. ■

Protecting Community Integration with Due Process Rights

After reviewing an Ohio Department of Health survey, the OLRs Ombudsman section initiated an investigation into the care and treatment of an individual who had been living in an intermediate care facility for the mentally retarded (ICF/MR). OLRs found that the individual had been moved to a nursing home, but that neither he nor his guardian was provided with a discharge notice or appeal rights.

Arguing that the individual was denied due process rights to notice and appeal, OLRs successfully negotiated for the individual’s return to the ICF/MR, where he resumed his community life, including his day habilitation programming. ■

OLRS Bids Farewell to Retiring Staff Members

OLRS will see the departure of three staff members: Julianne Johnson, Classie “Faye” Robertson, and Paula Smith. They are retiring after many years of state service.

“This is a time of transition for the agency. We have to say goodbye to staff members who have served the agency and Ohioans with disabilities with great dedication. We thank them and wish them well,” said Michael Kirkman, OLRs Executive Director.

Julianne Johnson

Julianne Johnson, a Disability Rights Advocate, will retire in the Spring. Johnson has been with OLRs for over 20 years.

Johnson’s advocacy work at OLRs has taken many forms, from individual client advocacy to work on several class action lawsuits. “Julianne has made many contributions to Ohioans with disabilities,” said Cathy Royster, supervisor at OLRs. “She has always been a great advocate on behalf of people with disabilities. Her work has made it possible for many, many individuals to shape the lives they want for themselves,” said Royster.

Classie “Faye” Robertson

Classie “Faye” Robertson, Executive Secretary, also plans to retire in early Spring. Robertson joined the OLRs staff 30 years ago as a typist and was one of the agency’s first employees. For many years, Robertson managed OLRs’ publications and library.

“Classie has been an asset to the agency for these many years,” said Jeffrey Folkerth, Administrative Services Director.

Paula Smith

Paula Smith, administrative assistant, recently retired from OLRs, after 25 years of service. She served as Administrative Assistant, Personnel Officer, typist, secretary, and word processing supervisor. In each of these capacities, she provided administrative support functions critical to the every day operation of the agency.

“OLRS has benefited greatly from Paula’s dedicated and conscientious support,” said Jeffrey Folkerth, Administrative Services Director. ■

Assistance with Utilities Problems

The Office of the Ohio Consumers’ Counsel (OCC) helps consumers who have concerns or complaints about their utility service (natural gas, electric, water, and phone). OCC works with consumers to resolve issues involving keeping or reconnecting utility services, understanding charges on a bill, the choices of utility or telephone companies, cost saving tips through energy conservation and efficiency, and learning how to apply for low-income assistance programs. To contact OCC, call (877) 742-5622, email occ@occ.state.oh.us, visit the OCC website at www.pickocc.org, or write Office of the Ohio Consumers’ Counsel, 10 W. Broad Street, 18th Floor, Columbus, Ohio 43215. ■

OLRS Welcomes New Attorneys

OLRS welcomes three new staff attorneys to the agency: Michelle Atkinson, Michael Jarosi, and Kevin Truitt. “The addition of these talented attorneys enhances OLRS’ capacity to provide client centered and directed advocacy,” said Michael Kirkman, Executive Director.

Michelle Atkinson

Michelle Atkinson joined the OLRS legal staff in January 2008.

Prior to joining the agency, Atkinson was an attorney for Advocates for Basic Legal Equality where she focused primarily on housing issues. She also worked for the National Center for Adoption Law & Policy, and the Consumer Protection Section of the Office of the Attorney General of Ohio.

Atkinson received her law degree from Capital University Law School, and is admitted to practice in Ohio and the U.S. District Court, Southern District of Ohio.

Michael Jarosi

Michael Jarosi joined the OLRS legal staff in August 2007.

Jarosi was in private practice prior to joining the agency and has experience in general civil litigation and trial practice.

He received his law degree from Capital University Law School, and is admitted to practice in Ohio and the U.S. District Court, Southern and Northern Districts of Ohio.

Jarosi, a scholarship athlete, soccer player and marathoner, has also worked in the international sports publishing industry and as a business market analyst.

Kevin Truitt

Kevin Truitt joined the OLRS legal staff in August 2007.

Before joining the agency, Truitt was in private practice and has experience in general civil litigation and public benefits law. Truitt also worked for the Civil Rights Section of the Office of the Attorney General of Ohio, and for the Ohio Civil Rights Commission.

Truitt received his law degree from Capital University Law School and is admitted to practice in Ohio.

Truitt has been published in the Capital University Law Review. He has volunteered for the Homeless Shelter Project, the Volunteer Income Tax Association, and the Capital Public Interest Law Foundation. ■

OLRS Attorneys Take Active Role in State Bar Association Committees

OLRS attorneys are increasing their involvement with the Ohio State Bar Association (OSBA). Attorneys are actively serving on several OSBA committees, including Disability Law, Education, Elder Law, Juvenile Justice, and Access to Justice.

The Education Committee Chair noted the significance of OLRS’ involvement and welcomed the public interest perspective that OLRS brings.

“Involvement with the state bar association is a great opportunity for OLRS attorneys to get information about how developments in other areas of the law affect people with disabilities. It also provides a forum for advocating the disability perspective to our peers,” said Michael Kirkman, OLRS Executive Director. ■

WHICH SHOULD BE DEFENDED: **INCLUSION** OR Segregation?

Revolutionary Common Sense by Kathie Snow, www.disabilityisnatural.com

For years, activists have worked diligently to ensure children and adults with disabilities are included in all areas of society: home, school, work, community, etc., instead of being physically and socially isolated in “special” segregated settings. In these efforts, we have attempted to influence, cajole, or persuade others; used legal remedies; and/or participated in campaigns, demonstrations, or other activities. In short, we have spent enormous amounts of time and energy *defending* the inclusion of children and adults with disabilities. But as I described in another article (“Inclusion: The Natural State”), inclusion *is* the natural state—every person is born included! The segregation/exclusion of children and adults with disabilities is not the result of their medical diagnoses, but is caused by *our* actions.

Before going further, perhaps a definition of “inclusion” is in order. My computer dictionary defines “include” as: “incorporate, comprise, encompass, embrace, involve, be composed of.” But perhaps the easiest way to define it is to examine its opposite: to exclude. If a person with a disability is excluded from an ordinary environment, he is, by definition, not included.

Special, separate programs—which segregate and isolate people with disabilities from the mainstream—continue to be the dominant, normal state of affairs in the minds of many parents, educators, service providers, and others who exert control over people with disabilities. On the flip side, those who favor inclusion are in the minority, and their position is considered radical, and is, therefore, questioned and devalued.

Our American Civil War comes to mind . . . Those who supported the slavery, segregation, and exclusion of people of color were in the majority for decades.

Those who opposed slavery (the abolitionists) recognized slavery as morally and ethically abhorrent. They were in the minority, and like today’s inclusionists, they were seen as radicals, troublemakers, and worse. But the tide began to turn, and ultimately, the slave owners (the segregationists of their day) were forced to defend their position—and *they* lost.

In today’s disability arena, skirmishes between segregationists and inclusionists are daily occurrences from coast-to-coast. And *unlike* the situation prior to the Civil War, today’s federal and state laws—as well as public opinion—are on the side of inclusion! For example, the Americans with Disabilities Act and Section 504 of the Rehab Act prohibit discrimination (and therefore, exclusion) on the basis of disability. Special ed law, the Individuals with Disabilities Education Act (IDEA), mandates “least restrictive environment” in education, and the Supreme Court decision in the Olmstead case does the same regarding living arrangements.

Finally, a variety of surveys (2007 MN Survey of Attitudes prepared for MN Governor’s Council on Developmental Disabilities, National Organization on Disability surveys, and others) demonstrate that the general public believes people with disabilities should be included in ordinary activities. Nevertheless, segregation drags on, maintained by segregationists’ antiquated attitudes and prejudicial actions.

So in this 21st Century struggle, activists feel compelled to defend the birthright—inclusion—of children and adult with disabilities. On the surface, this seems the appropriate action to take. But why do we need to defend what’s morally, ethically, and legally right? *Why shouldn’t others have to defend the immoral, unethical, and illegal position of segregation?*

Segregation is the adultery of an illicit intercourse between injustice and immorality.

Martin Luther King, Jr.

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Let's think about the ramifications of this situation. First, when we defend inclusion, we're also arguing against segregation. But doesn't an argument against segregation unintentionally substantiate it as a valid position? Consider this: would we entertain an argument from a child about his desire to play in the street? No! Playing in the street is wrong because it's dangerous—end of discussion. To allow a child to argue the merits of his case would be to validate his position! Isn't the same true about segregation?

Second, the segregation of people with disabilities is justified by negatives: stereotypical perceptions, erroneous beliefs, and prejudice (all of which were used to justify slavery). And as logic teaches us, one cannot prove a negative. Thus, segregationists cannot *prove* why people with disabilities should be segregated—they can only spew justifications and rationalizations. But these are not truth with a capital T, so why do we bother arguing against an indefensible position?

Third, any hint of the validity of segregation was exploded in the *Brown v. Board of Education* Supreme Court decision (see box). While that decision was specific to the public school segregation of children on the basis of ethnicity, its valuable tenets apply to those who have been segregated in other environments based on a different characteristic (disability).

In addition to this Supreme Court decision, we only have to look at the outcomes of generations of segregation. During the institutional era, hopelessness, loneliness, isolation, abuse, and even death at the hands of “helpers” were the norm for thousands of people with disabilities. In today's world, children with disabilities are

undereducated in segregated special ed classrooms where low expectations are the norm. They *do*, however, learn dependence, isolation, hopelessness, and “inappropriate behaviors” from the aberrant segregated environment.

It should come as no surprise then that, as adults, many are prepared only for continued segregation in Disability World's congregate living settings, sheltered work, on-going dependence, and continued hopelessness. The estimated 75 percent unemployment rate (which is higher for those with significant developmental disabilities) says it all. The ever-present impact of segregation is nothing but shameful.

Those who support the belief that every person is born included and should remain included—at home, in school, at work, and in the community—should not feel obligated to defend this inherent birthright. Instead, the tables need to be turned, and segregationists need to defend their (indefensible) position.

Adults with disabilities should not have to defend their desire to live, work, and play in ordinary and inclusive settings in their communities. The promoters of sheltered, segregated environments—including service providers, parents, and/or others—should have to defend *their* positions. And while, as mentioned previously, laws are “on the side” of inclusion, we know that, in practice, many rules, regulations, and/or policies impede inclusion and practically mandate segregation.

Thus, in the larger arena of systems change, activists need to trade places, by stepping down from the Inclusion Soapbox and insisting others prove their position from the Segregation Soapbox. We need to better educate policymakers (at local, state, and federal levels) who are

**1954 Supreme Court Decision
*Brown v. Board of Education***

(Some language has been modified to avoid using old ethnic descriptors.)

To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone...Segregation...has a detrimental effect upon the [segregated] children... [as it's] usually interpreted as denoting the inferiority of the [segregated] group.

A sense of inferiority affects the motivation of a child to learn.

Segregation...has a tendency to retard the educational and mental development of [the segregated] children and to deprive them of...benefits they would receive in an...integrated school system...

We conclude that...the doctrine of “separate but equal” has no place.

Separate educational facilities are inherently unequal.

often clueless about the realities of their policies and procedures which, however well-intentioned, often result in the physical segregation and social isolation of children and adults with disabilities.

In the public school arena, parents of children with disabilities can take a page from IDEA (special ed law) and put it to use. Section 300.320 states that a student's IEP shall include: "A statement of the special education and related services and supplementary aids and services...and...program modifications or supports for school personnel that will...enable the child to be involved in and make progress in the general education curriculum...and participate in extracurricular and other nonacademic activities; and be educated and participate with other children with disabilities and nondisabled children...[and] *an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and [other] activities...*" (italics added). Thus, according to the law, parents should not have to defend the inclusion of their children in general education classrooms; educators must explain/defend special ed classrooms, pull-out, and other practices that result in segregation.

Parents of young children with disabilities should not feel compelled to defend their decision to keep their preschoolers at home with mom or dad or to enroll them in an inclusive, neighborhood child care setting, instead of sending them to a segregated special ed preschool. Let educators try to prove why a young child should be segregated! For too many children with disabilities, this is where the physical and social isolation of segregation begins.

Parents often believe a special ed preschool is the "ticket" to inclusion in kindergarten. No one actually tells a parent this; we're just led to believe that a special ed preschool is effective preparation for our children's success in the public school system. But the reality is usually the opposite. In too many cases, educators presume that a child who has "needed" a special ed preschool will also "need" to be in a segregated, special ed elementary classroom when it's time for kindergarten or first grade. Oh, the heartbreak, disappointment, anger, and mistrust of educators this

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can engender in parents. And as many parents have learned, once a child is segregated in public school, that's it, game over—the student will most likely be segregated until the end of his school career, unless his activist parents are successful in their efforts to ensure his inclusion.

Some parents *do* recognize the dangers of segregation in special ed preschool settings, but are unwilling to do anything about it. They may complain that if they send their child to an inclusive neighborhood preschool, they'd have to "pay for it," while the special ed preschool is "free." Well, the price might be "free," but the *costs* of segregation to the child and her future are greater than we can imagine. And if we paid for preschool/child care for our children without disabilities, are we saying the lives of our children with disabilities aren't worth that same expense?

Looking at the youngest children, early intervention services are supposed to be (and usually are) provided in natural and inclusive environments. But it's during the early intervention phase that parents are informed of their child's rights and entitlements, and many begin the path of dependence on the system at this point—a path that frequently leads to the later segregation of their children (like in special ed preschools). Parents can avoid this trap if they choose to value life-long inclusion over services which result in segregation. Early intervention personnel can assist in this effort by being brutally honest with parents about today's segregated status quo which will swallow up children if parents aren't ever-vigilant.

In the community, we should also recognize inclusion as the natural state. This means never asking permission to be included! Community inclusion will become a reality when we adopt more successful strategies. For example, we often call a community activity and ask, "Do you take people with disabilities," and/or we sign a person up for an activity and then say, "She has [medical diagnosis]." At that point, the door is often slammed shut! Instead, we can sign the person up for the activity without mentioning anything about the person's disability.

Individual rights are not subject to a public vote; a majority has no right to vote away the rights of a minority.

Ayn Rand

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Then, at some point before the first day, we can, in an upbeat, positive tone, simply share the person's needs with the appropriate person, as in: "My child will need [large print, wheelchair access, assistance from peers, etc]."

In these situations, we do not need to share the diagnosis! My son, Benjamin, has participated in a variety of ordinary community activities in his 21 years, and we've never told others, "Benjamin has cerebral palsy." We've only shared what his needs are; the diagnosis is no one's business, and revealing it can result in fear, misunderstanding, and exclusion. Once the activity was underway, Benjamin sometimes *did* share his diagnosis with others when and if it was appropriate. And this was an amazing and pleasurable discovery: in the system, his diagnosis is the first thing people want to know, while in the community, it's irrelevant! Furthermore, we found that leaders of community activities think they "don't take people with disabilities," simply because *they've never done it before*. Benjamin was often the first person with a disability who was included in various activities, and once people learned how easy it was (and how right it was) this opened the door to others.

The advent of the deinstitutionalization movement in the mid-1960s, coupled with passage of disability-related legislation throughout the past thirty years, would seem to *guarantee* the decline of segregation. But in many places, we seem to be in a "holding pattern," with little progress being made. And, shockingly, segregation is now being imported into a previously untouched arena: colleges and universities. Springing up like bad weeds, "special programs" for young adults with disabilities offer more of the same from the dismal practices in many high schools: special, segregated lifeskills classes on college campuses! Proponents of these programs loudly proclaim that they're "not segregated, they're integrated" since they're on a college campus. Sadly, and unfortunately for the students, these proponents

***Good intentions will
always be pleaded
for every assumption
of authority.***

Daniel Webster

don't understand (or they *do* understand and choose to ignore) that one can be physically integrated and still be socially isolated and segregated. Just being "on campus" does not guarantee inclusion. No doubt those who support segregated college programs have good intentions, but their endorsement of segregation cannot be condoned. Young adults with disabilities can attend college via many avenues; a special program is neither needed nor desirable.

Ultimately, segregation will die a natural death when parents refuse to allow their children to be segregated in any setting. And when these children grow up, they will speak for themselves and not allow anyone to segregate them. Until that time comes, let's take a firm stand: the next time you feel the need to defend inclusion, turn the tables and ask the other person to defend segregation. Say something like, "What you're describing represents the segregation of [my child, people with disabilities, etc.]. Please explain how such segregation can be defended." Try it, you'll like it! You can watch as the other person's mouth soundlessly gapes open and closed like a fish, or you might be treated to a slew of hackneyed platitudes which you can easily dismantle.

In other articles, I've detailed the importance of presuming competence when thinking of people with disabilities. Similarly, we can *presume inclusion!* Too often, we've presumed *exclusion*—it's as if *we* don't think we or our children belong—which then causes us to whine, beg, fight for, and/or defend inclusion. In the immortal words of author Dorothea Brande, "Act as though it were impossible to fail."

I will no longer defend inclusion; I will insist that others defend segregation. My son, as well as millions of others with disabilities, was *born* included, and the presence of a characteristic we call a disability is no justification for exclusion.

Segregation is an aberration of the human condition that cannot be righteously defended. Inclusion is a person's birthright and needs no defense.

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OLRS Files Federal Lawsuit (continued)

Furthermore, the individuals have not been assessed to determine what is the most appropriate community placement for them, and to determine what services and supports they would need to live in a non-institutional environment.

Moreover, the individuals have not been given the opportunity to make an informed choice of where to live: they have not had the opportunity to choose between living in an institution, or living in another appropriate community setting that could be available to them.

The suit asks the U.S. District Court for the Southern District of Ohio to:

- Assume jurisdiction and issue a judgment that rights have been violated under federal law;
- Order the BCBMRDD to assess residents and determine if they want to move to community-based settings;
- Direct the BCBMRDD to develop a measurable plan to place residents elsewhere; and
- Order Empowering People, Inc. to assess residents who will be moving from the Center (1) to determine what is the most appropriate community setting for them, and (2) to ensure that they are placed in that setting. ■

**Look for
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- ▶ Protection & Advocacy for Beneficiaries of Social Security (PABSS) - Ticket to Work and Work Incentives Improvement Act of 1999 (PL 106-170).
- ▶ Work Incentives Planning and Assistance (WIPA) program - Office of Employment Support Programs Social Security Administration.
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