Questions and Answers (Q&As) about Frequent Issues Litigated Under the ADA Integration Mandate "AKA" The Olmstead Mandate

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This Q&A is meant to accompany the *Docket of Cases Raising an ADA Integration Mandate Claim (*the Docket*)*, prepared by Elizabeth Priaulx at the National Disability Rights Network[1]. This Docket is referenced throughout this Q&A and all cases mentioned in this Q&A are summarized more fully in the Docket.

This Q&A attempts to provide the current state of the law in response to frequent questions that arise in cases raising an ADA Integration Mandate claim. To the extent that it is helpful, program guidance from the United States Department of Justice (DOJ) is also discussed.[2] Case law is always in flux and I am not always aware of case updates. If you identify errors or out of date information in this Q&A, or the accompanying Docket, please help me out by sending updates or corrections to Elizabeth.priaulx@ndrn.org. Thank You.

1. *What is the Integration Mandate?*

Title II of the Americans with Disabilities Act (ADA) makes it illegal for public entities—essentially state and local governments—to deny qualified individuals with disabilities the benefits of their programs, services or activities, or to otherwise discriminate against them.[3] This Docket summarizes cases raising the claim that a state is violating a Department of Justice (DOJ) regulation implementing Title II, which mandates that state governments must administer services "in the most integrated settings appropriate to the needs of qualified individuals with disabilities.[4] This regulation is commonly referred to as the "integration mandate" and is often referred to as an "Olmstead" claim. This refers to *Olmstead v. L.C* (Olmstead), a U.S. Supreme Court decision holding that unjustified institutionalization of individuals with disabilities constitutes illegal discrimination on the basis of disability.[5]

To understand the Olmstead decision and most of the cases in this docket, it is important to know that the right to receive services in the most integrated setting appropriate is not unqualified. Although the ADA requires states to make "reasonable accommodations" to comply with the statute, states are not required to make

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1 Both this Q&A and the accompanying "Docket," referenced, are sponsored by the Substance Abuse and Mental Health Services Administration, under contract number HHSS283201200002I.

2 Most of the DOJ guidance referenced in this Q&A comes from the 2011 DOJ Technical Guide on the Supreme Court Decision on Olmstead v L.C. and E.W. that can be downloaded at http://www.ada.gov/olmstead/q&a_olmstead.htm.

3 ADA § 202, 104 Stat. at 337 codified at 42 U.S.C. §§ 12131-34)

4 (28 C.F.R. § 35.130(d) (2010).

5 U.S. 581, 597 (1999).

accommodations that would be a "fundamental alteration of its system for providing care for individuals with disabilities." To assert a "fundamental alteration" defense to an integration mandate claim, a state must demonstrate that, "in the allocation of available resources, immediate relief for the Plaintiffs would be inequitable, given the responsibility the state has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities.[6] Just what constitutes the most integrated setting appropriate and what would be a "reasonable accommodation" as opposed to a "fundamental alteration" have been the subjects of much litigation.

2. Who may enforce the rights provided by the ADA Integration Mandate?

The United States DOJ has authority to enforce the ADA Title II integration mandate (although a Florida Federal District Court Judge presiding in the case of *U.S. v Florida* – summarized in Section III of the Olmstead Docket - has called this authority into question)**. In addition to filing its own Olmstead cases and class actions** DOJ enforcement often involves intervening in or filing "Statements of Interest" related to cases brought by other parties. In this Docket cases that have any involvement by the DOJ include this symbol – "J" - to the right of the case name. The ADA Integration Mandate can also be enforced by individuals. A significant number of cases in this docket are brought be individuals who are represented by either attorneys from legal aid agencies, public interest law firms, and/or the nationwide network of Protection and Advocacy Systems (P&As)[7].

3. *What constitutes the "most integrated setting appropriate to the individual"?*

The ADA regulations define most integrated setting as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."[8] The definition of the "most integrated setting" has been central to several Olmstead cases, Below are summaries of three of these decisions, each raising different angles on the question.

Disability Advocates, Inc. v. Paterson, 2009 decision of the Federal District Court for the Eastern District of New York. One of the questions addressed in this case was whether adult care homes in New York City, which the state considered to be community-based residences for individuals with mental illness, should legitimately be considered "community-based". The state argued they were because the doors were unlocked and residents could come and go freely at any time. The Judge disagreed, finding that these settings were institutions, because life for residents

6 527 U.S. at 604

7 The author works at the National Disability Rights Network, the membership association for the P&As. For this reason, she is more likely to be aware of P&A involvement in some of the cases and may reference this involvement. No insult is intended by the author's failure to mention the names of the many non-P&A attorneys who have also brought cases referenced in this Q&A and accompanying Docket.

8 28 C.F.R. Pt. 35, App. A (2010) (addressing § 35.130).

was highly regimented and the rules had the effect of restricting residents' freedom and access to the community. The Judge ruled that, since Olmstead requires placement in the most integrated setting appropriate to ones needs, it is a violation of the ADA to place someone in these adult care home, if they could live successfully in integrated supported housing.

Marlo M v. Cansler, 2011 decision, by the Federal District Court for the Eastern District of North Carolina. Plaintiffs were two individuals with mental illness living in their own apartments in the community with state funded supports. When they found out that that the state planned to cut the program that provided them with services and move them to group homes in the community. They sued to stop the cuts, arguing that without this program they would be as risk of institutionalization. The state argued that the cuts would not violate Olmstead because plaintiffs would remain in the community and not be moved to an institution. The Judge disagreed, and ordered a Preliminary Injunction to stop the cuts, holding that Olmstead requires not just integration but the *most* integrated setting appropriate.[9] The Judge was also influenced by the fact that past attempts at living in group homes had been difficult for the Plaintiffs because of the nature of their mental illness.

Steimel v Wernart, 2016, 7th Circuit Court of Appeals. The plaintiffs in *Steimel* all have developmental disabilities and, prior to 2011, all lived in the community with the help of supports and services funded under Indiana's "A&D" Medicaid waver. In 2011, the state narrowed its eligibility for this waiver. The plaintiffs no longer qualified and were moved to the Indiana Family Services Medicaid waiver. Unfortunately, unlike the A&D waiver which has no cap on service hours, the Family Services waiver has an annual cost cap; as a result, Plaintiffs lost approximately 30 hours per week of waiver supports and services.

Plaintiffs filed suit in Indiana Federal District Court arguing that the policy change violates the ADA integration mandate because they now have less opportunity to participate in the community and less access to medical services, leading to an increased risk of medical complications and institutionalization. The state countered that they have not violated the integration mandate because plaintiffs are in community not institutional settings and that the definition of "setting" is too vague. The District Court ruled for the state and Plaintiffs appealed to the 7th Circuit.

Ruling in favor of the Plaintiffs, the 7th Circuit held that:
"Based on the purpose and text of the ADA, the text of the integration mandate, the Supreme Court's rationale in Olmstead, and the DOJ Guidance, we hold that the integration mandate is implicated where the state's policies have either (1) segregated persons with disabilities within their homes, or (2) put them at serious risk of institutionalization."[10]

9. 679 F.Supp. 2d 635, 638.
10 ., *Steimel v. Wernert,* Nos. 15-2377, 15-2389 (7th Cir. May 10, 2016)

4. *Does Olmstead apply to private facilities?*

Very often, the entities serving individuals with mental illness are private for-profit or not-for-profit agencies, such as nursing facilities, "board and care homes," and psychiatric residential treatment centers. States have argued that they cannot be held accountable for the failure of these non-governmental entities to ensure services in the most integrated settings appropriate. Whether the states' arguments are correct will likely depend on the private facilities' relationships with the state. For example, some states contract with private psychiatric hospitals to treat individual state clients on a one-at-a-time basis; in other cases, states have ongoing contractual relationships with private facilities to set aside entire wards, units, or facilities for state clients. In these situations, the DOJ regulations are clear that when the individual is a client of the state mental health system and is unnecessarily institutionalized in a private psychiatric facility, that person can bring an Olmstead claim against the state. The Title II regulations state that "[a] public entity may not, directly *or through contractual or other arrangements*, utilize criteria or methods of administration...that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to persons with disabilities."[11]

This regulation was upheld in the 2009 *Disability Advocates Inc. v. Patterson*[12] decision. As noted above, Plaintiffs were individuals with mental illness living in an adult "board and care" home instead of more appropriate community settings. The state argued that it could not be held responsible for segregation of private for-profit adult homes. Rejecting this argument the Judge noted that New York, through its various agencies, was involved in licensing and inspecting the adult homes, as well as that, when the state chose to allocate some of its mental health dollars to support adult homes, it was "administering services" in a manner that violates the ADA as interpreted in Olmstead. This interpretation of the regulation was again upheld in the 2012 Federal District Court decision in *U.S. v. North Carolina*[13].

5. *Does Olmstead apply to individuals "at risk" of institutionalization? If yes, what level of risk is required?*

In 2003, the 10th Circuit Court of Appeals, in *Fisher v. Oklahoma Health Care Authority*, made it clear that Olmstead applies not only to people living in institutions, it also applies to individuals with disabilities at risk of unnecessary institutionalization. The 10th Circuit, stated that Olmstead protections would be meaningless if individuals "were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into

11 28 C.F.R. 35.130(b)(3)(ii)(emphasis added).
12 653 F.Supp.2d 184 (2009)
13 5:12-cv-557 (E.D.N.C. 2012)

segregated isolation."14

The issue that is the subject of much litigation on this question is what level of risk must the plaintiff be in to have a valid integration mandate? Case law varies on this question, but it is instructive to look at what the 7th and the 9th Circuit Courts have held.

In the 2012, 9th Circuit Court of Appeals decision in *MR v. Dreyfus,* Plaintiffs sought to stop Washington State from attempting to save money in its budget by making across-the-board cuts to its Medicaid personal assistance services program. Plaintiffs were able to show that as a result of the service cuts their level of care was deteriorating leading to more health problems, such as infections and dehydration. The 9th Circuit found that these harms were enough and held that "an ADA plaintiff need not show that institutionalization is 'inevitable' or that she has 'no choice' but to submit to institutional care in order to state a violation of the integration mandate. Rather, a plaintiff need only show that the challenged state action creates a serious risk of institutionalization.15"

The 2016, 7th Circuit decision in *Steimel v. Wernart*, added an interesting angle on when an individual is at risk. Plaintiffs in this case were individuals with developmental disabilities who had been receiving community based services under the Indiana A&D Medicaid waiver, which does not have a cost cap on services. They brought this action in 2011 after the state changed its A&D waiver eligibility criteria so that plaintiffs were no longer eligible and had to be moved to the FS waiver, which has an annual monetary cap on level of services. Plaintiffs argued that the policy change violated the ADA because when they moved to the waiver with a cost cap they lost 30 hours per week of assistance. The loss of services severely curtailed their ability to participate in community activities and has led to lapses in supervision which has resulted in injury or serious risk of injury.

The state argued that the integration mandate does not apply to plaintiffs because they are not in institutional settings – adding, that if the definition of setting is "too vague" that the ADA integration mandate can apply to a "multiplicity of "settings" that the state must shift resources to in order to increase community participation, "where will it end?" The Circuit Court responds:

> *"Based on the purpose and text of the ADA, the text of the integration mandate, the Supreme Court's rationale in Olmstead, and the DOJ Guidance, we hold that the integration mandate is implicated where the state's policies have either (1) segregated persons with disabilities within their homes, or (2) put them at serious risk of institutionalization*."16

14. 335 F.3d at 1185.
15. 663 F.3d 1100 (9th Cir. 2011), *amended by* 697 F.3d 706 (2012).
16 **823 F.3d 914.**

The 7th Circuit was careful to distinguish this ruling from its ruling three years earlier in *Admunson v Wisconsin*. In *Admunson*, plaintiffs were living in group homes and sought to stop cuts in the Medicaid program that supported their group home placement. The 7th Circuit ruled that their ADA integration mandate claim was not yet "ripe" because, so far, no one subjected to the Medicaid cuts had been forced to move to an institution, instead, they have found placements in other, less expensive, group homes. Justice Easterbrook, writing for the 7th Circuit, held that: *Plaintiffs fear the worst, but their fears may be unwarranted."*[17]

In *Steimel*, the 7th Circuit explained the difference between the two cases, is that, in *Admunson*, the State had safeguards in place to prevent plaintiffs from being forced into an institution once they lost their current group home placement. Thus, the plaintiffs could not demonstrate that, as a result of the program cuts, their safety was at risk. Whereas, in *Steimel*, plaintiffs were able to demonstrate that the loss in services was causing a lack of supervision and threating their safety.[18]

6. What budget is appropriate for determining whether the requested accommodation would be a fundamental alteration?

The DOJ *Olmstead Technical Assistance Guide* explains the agency position on this question, stating:

> *The relevant resources for purposes of evaluating a fundamental alteration defense consist of all money the public entity allots, spends, receives, or could receive if it applied for available federal funding to provide services to persons with disabilities. Similarly, all relevant costs, not simply those funded by the single agency that operates or funds the segregated or integrated setting, must be considered in a fundamental alteration analysis.*

In *Frederick L v. Pennsylvania Department of Public Welfare*[19], a class of 300 residents of Norristown State Hospital urged the state to provide appropriate assessments of HCBS needs and appropriate discharge planning to comply with Olmstead. The state raised a fundamental alteration defense. The case eventually went to the Third Circuit to determine whether, in deciding whether the requested relief constitutes a "fundamental alteration," a court should consider only the immediate extra costs to the state and not any later cost savings as a result of community integration; and whether the Court may consider only the available funding for the particular group to receive the services or the funding available in the entire disability services budget.[20]

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17 Id. at 912-913.

18. Id.

19 364 F.3d 487, 500 (3d.Cir. 2004).

20 , 422 F.3d at 157

The Third Circuit Court held that the budget can be broader than just the particular narrow budget item; it could include the entire agency budget as long as there is a nexus between the agency responsibilities and the provision of community services to people with disabilities. Thus, Plaintiffs could argue that agency or state resources allocated for housing, general health services, and meal programs may all have a nexus to the provision of community-based services for individuals with disabilities.[21]

7. *Must the state expand "optional" Medicaid services in order to prevent unnecessary institutionalization?*

To understand this "defense" it is important to know that the Medicaid Act makes coverage of most HCBS, including HCBS waivers, optional. States that choose to provide "optional" services are given the flexibility to cap optional services and to stop providing them altogether. However, the actions the state takes to eliminate or reduce services must be legal and comply with certain protections under the Medicaid Act, as well as the ADA. Thus, it may not be legal to cut optional services if the cut will result in unnecessary institutionalization.

On this issue the DOJ *Olmstead Technical Assistance Guide* states:

> *A state's obligations under the ADA are independent from the requirements of the Medicaid program. Providing services beyond what a state currently provides under Medicaid may not cause a fundamental alteration, and the ADA may require states to provide those services, under certain circumstances.*

The DOJ affirmed this again in its December 22, 2014 letter sent to state officials, concerning state Olmstead obligations and a Department of Labor regulation affecting Medicaid home health workers that became effective on January 1, 2015. The rule requires that Medicaid home health providers who provide "live-in" or "companionship services" must, for the first time, be paid minimum wage and overtime. The DOJ Letter reminds states that, if they choose to reduce Medicaid home health services, to adjust for the fact that these homecare services for people with disabilities may cost more, they should ensure the cuts in homecare hours do not lead to unnecessary institutionalization.

Federal Court rulings on this issue have varied depending on a host of factors. *Radaszewski v. Maram*[22] is emblematic of one line of cases that have held that states must "alter" their optional services to comply with Olmstead. Eric Radaszewski was receiving 16 hours of private-duty nursing daily through a Medicaid waiver for medically fragile children younger than 21. When Eric turned 21, the state Medicaid agency reduced his coverage to only five hours of private-duty nursing each day. Eric could not remain safely at home with the reduced coverage; yet, he would be at great risk for infections and other life-threatening problems in an institutional setting. The

21 Id.

22. 383 F.3d 599, 607 (7th Cir. 2004).

Seventh Circuit Court of Appeals ruled that because no institution would be equipped to handle Eric's care needs without extra staff, it is actually less expensive to provide the requested home-based care. Thus, it is a reasonable accommodation to waive the "cap" on service hours. Key to the Judge's ruling was that not very many individuals are as medically fragile as Eric; thus, even if a handful of individuals with the same high level of care asked to waive the "cap" it would not likely cause a fundamental alteration of the state's program[23].

Another example is the Tennessee U.S. District Court case *Crabtree v. Goetz*, in which individual Plaintiffs were able to obtain a preliminary injunction barring cutbacks of their Medicaid home health services.[24] The Judge found that Plaintiffs would be forced into a nursing facility if the hours were reduced, and stated that the state should have individually assessed the potential impact of the service reductions before ordering the service reductions.[25]

However, cases seeking to increase the number of slots a state offers in its Medicaid HCBS waiver as a reasonable accommodation under Olmstead have been less successful. In *ARC of Wash. State v. Braddock,* the Ninth Circuit refused to require Washington State to add additional HCBS waiver slots, stating that ADA requirements are not boundless and finding that the waiver was already substantial in size and slots were filled[26], In *Sanchez v. Johnson,* the Ninth Circuit refused to order an increase in funding for community-based services for people with developmental disabilities (DD), finding the state was working "with an even hand" to provide HCBS because evidence showed waiver size and expenditures had increased over time and institutionalization had decreased[27].

8. Does Olmstead apply to the provision of employment or education related services*?*

The ADA integration mandate does not just apply to residential settings, it also requires public employment and educational services to be provided in the most integrated settings appropriate. One of the first cases to apply the integration mandate to employment settings is *Lane v. Brown* (summarized in this docket, below*).*

In October 2016, the DOJ issued sub-regulatory guidance on the application of the Integration Mandate and *Olmstead* to state and local governments' employment service systems for individuals with disabilities, the guidance helped states understand its obligations to ensure employment settings are compliant with the ADA Integration mandate.

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23. Id at 612.
24. No. 3:08-0939, 2008 WL 5330506 (M.D. Tenn. Dec. 19, 2008)
25 Id at WL *31.
26 *427 F.3d 615 (9th Cir. 2005)*
27. *Sanchez v. Johnson*, 416 F.3d 1051, 1067-68 (9th Cir. 2005).

However, in December 2017 the DOJ issued a statement rescinding this 2016 guidance **(***at* https://www.ada.gov/withdrawn_olmstead.html). Even though the statement withdraws DOJ's earlier employment related guidance, it also makes clear that "withdrawal of previous guidance documents "does not change the legal responsibilities of State and local governments under title II of the ADA, as reflected in the ADA, its implementing regulations, and other binding legal requirements and judicial precedent, including the U.S. Supreme Court's *Olmstead* decision."

Developments are also happening on the education side, One example is *SS. V. Springfield, Massachusetts Public School District,* In 2015, this case became the first ADA integration mandate case filed in Federal District Court on behalf of students with disabilities in segregated schools. Plaintiffs' argue that the school district is failing to provide reasonable accommodations for students with mental health needs and is unnecessarily placing these students in a segregated, inferior public day school. Traditionally, students and parents have used the Individuals with Disabilities Education Act (IDEA) to argue for the services and supports they need to be receive a free appropriate education in the least restrictive environment. Having an ADA Title II claim, in addition to an IDEA claim, is important because the ADA's non-discrimination mandates require school districts to provide different and additional measures to avoid discrimination against children with disabilities than they are required to under the IDEA. Attorneys for the Springfield Public Schools filed a motion to dismiss the suit claiming that for various procedural reasons an ADA claim could not be filed against them, but on November 19, 2015, the Motion was denied and the case was allowed to proceed. Since than other education related education related ADA claims have been filed in California and Georgia.

9. *What types of remedies have Courts ordered to resolve Olmstead claims affecting individuals with mental illness?*

The DOJ stated in its July 2012 Olmstead guidance that:

> *A wide range of remedies may be appropriate to address violations of the ADA and Olmstead, depending on the nature of the violations. Olmstead remedies should include, depending on the population at issue: supported housing, HCBS waivers, crisis services, Assertive Community Treatment [ACT] teams, case management, respite, personal care services, peer support services, and supported employment.*
>
> In *T.R. et al v Quigley*[28], the settlement agreement included a remedy that Washington State improves its compliance with the Individuals with Disabilities Act (IDEA). On the premise that better compliance with this Act may help children receive the services they need to avoid unnecessary institutionalization.

28. T.R. v. DREYFUS, No. C09-1677 – TSZ SETTLEMENT AGREEMENT AND PROPOSED ORDER ... Litigation"), now known as T.R. et al. v. Kevin Quigley and Dorothy Teeter

The ongoing *U.S. v Florida* case also asserts that the Florida's failure to provide appropriate IDEA services to children could contribute to their risk of institutionalization[29].

10. *What is the role of guardians who may object to community placements?*

It is not unusual for some parents and guardians of facility residents to object to the residents' discharges from a facility to community programs. Individuals or groups occasionally file objections to settlements and sometimes seek formal intervention. When this happens, there is likely to be a protracted debate to the Court about the benefits of community living and the meaning of the Olmstead opinion.

Most courts have at least allowed the objecting families to be heard; some have allowed formal intervention, and a few have granted relief. For example, in *Brown v. Bush*, the Court denied intervention but allowed the objectors to participate at a fairness hearing to consider whether the Court should approve a settlement that included closing two facilities. The Eleventh Circuit affirmed. In *U.S. v. Virginia*, the District Court granted intervention and allowed the objectors to fully participate at the fairness hearing on approval of the proposed consent decree. In *Ricci v. Patrick*, several of the original associational Plaintiffs (parents' groups) in a case settled years earlier objected to the state's plan to close a facility. Another original Plaintiff, the state Arc, and an intervener supported the closure. The trial Court reopened the case and, in essence, ordered the facility to remain open. The First Circuit reversed, holding that the state had the authority to close the facility under the terms of the consent decree.

This question was revisited on April, 1 2013, in *M.D. v. Dept. of Developmental Services* DDS. The case is only at the intermediate state level appeals court, but it is still worthy of note because the decision is consistent with the decision by the 5th Circuit on the issue. The State Appellate Court Judge ruled that the Magistrate (who oversaw decisions on Fernald transfers) was not required to consider an ADA integration mandate claim when deciding whether to transfer one of the last remaining residents of the Fernald Developmental Center to another state developmental center.

In this case, M.D.'s guardians (the plaintiffs) wanted M.D. to remain at Fernald and argued that Olmstead required them to keep Fernald open since it was the "most appropriate integrated setting" for M.D. The Judge rejected this, stating that, nothing in the *Ricci v. Patrick consent decree* guarantees "any Ricci class member [Fernald Resident] a particular residential placement or that [Fernald] must be maintained by DDS as long as any particular resident preferred to remain there." Second, that Judge upheld the Magistrate finding that, "A point-by-point comparison of the two facilities may reveal some features favoring one facility, while the remaining features favor the

29. 1:13-cv-61576 – (S.D. Fla. 2013) consolidated with A.R. v. Dudek, No. 12-cv-60460 (S.D. Fla. 2012),

other facility. But the statute does not require that every feature of a proposed facility be superior in order to approve a transfer. Rather, by focusing on the best interest of the ward, it commands that the whole picture be examined."

The question of whether the ADA gives individuals a right to remain in a particular institution if they oppose transfer also arose in *Sciarrillo v. Christie*, before the Federal District Court in New Jersey. Parents of residents in two state developmental disability centers argued that the State is discriminating against individuals with disabilities, in violation of the ADA, if it moves an individual to a community setting without first, obtaining an independent assessment by a state treating professional that the community is the most appropriate integrated setting, and provides the individual a chance to oppose the move. The U.S Department of Justice submitted an amicus brief (statement of interest) in *Sciarrillo* arguing that the Plaintiff/parents do not have a right to bring this claim under the ADA. The District Court agreed, and the Parents appealed the case to the 3rd Circuit. Before ruling on the question, however, the 3rd Circuit dismissed the case as moot because all of the individuals with developmental disabilities residing at the two developmental centers, at issue in the appeal, had been transferred to other locations..

The examples above concern parent or guardian opposition to residents' discharge as a result of a court settlement or consent decree. In the case of *Illinois League of Advocates for Developmentally Disabled (ILADD) v Quinn,* parents and Guardians of residents at the Murray and Jacksonville Developmental Centers filed in Federal District Court seeking an injunction to stop the closure of the Murray Center. This case is different from the others in that the closure of the Murray and Jacksonville Center was not prompted by litigation, rather it was a pro-active policy decision by the Governor as part of a state initiative to "re-balance" Medicaid spending so more is spent on community-based long term supports.

The parents/guardians don't argue that the Olmstead decision gives them a right to remain in the Murray Center. Instead, they claim that Illinois uses a service needs assessment process that violates the ADA because the process presumes, but fails to demonstrate, that community-based settings would be appropriate for class members. They further claim the state is violating residents 14th Amendment rights by targeting developmental disability services for more cuts than services used by individuals with other disabilities. On July 21, 2014, the Illinois Federal District Court ruled in the case that the assessment process does not violate the ADA, stating: "Defendants predisposition in favor of the integration of the developmentally disabled population cannot alone constitute unlawful discrimination" and finding it sufficient that the assessment process does not preclude an individual from transferring to a different ICF if they desire. The Court also dismisses plaintiffs 14th Amendment Equal Protection claim, holding that there is no evidence that Illinois expressly tried to deprive Murray Development Center residents of either placement choice or necessary services. The Murray parents appealed the decision to the 7th Circuit. On October 16, 2015, the Seventh Circuit affirmed the Illinois District Court and denied a preliminary injunction that would have forced the state to keep the Murray Developmental Center open.

This question was considered, and rejected, again, in the case of *DT v. Armstrong*, before the U.S. District Court in Idaho. Parents sought to enjoin the state from closing their son's ICF and moving him to a community setting. They argued the move would violate the ADA because the community placement was destined to fail within a few months, by which time the state will have closed the ICF, and their son will end up in a more segregated ICF farther from family.