

Monday April 4, 2016

Attorney General Mike DeWine
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Dear Attorney General DeWine,

We are writing for Disability Advocacy Alliance (DAA), a volunteer group made up of parents, family members and guardians of individuals with Intellectual and Developmental Disabilities (I/DD) served by the Ohio Department of Developmental Disabilities (DODD). During the 2015 biennium budget talks, we lodged over 21,000 petition signatures with the General Assembly in support of Intermediate Care Facilities (ICFs), sheltered workshops and facility-based day programs.

Disability Rights Ohio (DRO), a private entity appointed by the Governor pursuant to ORC Section 5123.60 to serve as legal advocate for individuals receiving DODD services has initiated a federal suit against the State attacking these crucial programs which serve tens of thousands of Ohioans with intellectual and developmental disabilities. The suit's rationale is set out in DRO's "Fact Sheet on DD Integration Case,"

"The litigation seeks to create opportunities. We should start with the basic principle that all persons with developmental disabilities are capable of living fully engaged in their communities..."

The suit seeks a judicial order that would substantially redirect DODD budgetary resources and services away from those individuals with I/DD who are reliant on higher levels of care, while mandating that those resources be directed to other individuals with I/DD whose needs can best be met with less intensive services in "community settings." **DRO, therefore, acts in the interests of some while advancing positions that are antagonistic to the interests of others.**

To effect this, DRO proposes that tens of thousands of individuals with intellectual and developmental disabilities eligible for DODD services be treated as members of a single litigating class. DRO demands that the State re-order and create new priorities in its budgeting and modes of service in order to advance the goal of serving this "class" in "community settings" without regard to their individual choices, needs and capabilities.

In doing so, DRO ignores the fundamental precept of the Americans with Disabilities Act (ADA) that:

"...public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do." (U.S. Dept. of Justice analysis of ADA)

and it disregards the Supreme Court's holding in its foundational *Olmstead* decision that:

"...[N]othing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it."

As Ohio's Protection and Advocacy (P&A) system, DRO is charged to represent the interests and wishes of each state-served individual with disabilities regardless of the severity or degree of disability. We believe DRO's representation in this litigation necessarily suffers a disqualifying conflict of interest within the class for which it seeks certification and class-wide relief.

While DRO and its proposed "class representatives" and their guardians may properly understand their individual interests and wishes are best served in "community settings," this understanding is based on facts, abilities, disabilities, and interests applicable to them as individuals, none of which may apply to, and many of which are in fact not shared by other individuals with I/DD.

As parents and guardians dedicated to our children's unique lives, we know that our children are not "*capable of living fully engaged in their communities....*" or choose not to live and work in such settings. We recognize that relegating their unique abilities and deficits to careless generalizations and presumptions about how "class" members can and may be required to live and work will recklessly put their happiness, health, welfare and very lives at risk.

State and Federal law obliges the State of Ohio to provide legal advocacy to individuals with intellectual and developmental disabilities. As our family members have been disassociated from DRO, Ohio's designated P & A system, due to a clear conflict of interest, we urgently request separate and independent legal representation in this litigation. We believe that such representation is the only way to insure that the interests and acute needs of our loved ones can be properly brought before the court.

We respectfully ask for your prompt response given the life-altering and dangerous circumstances DRO's lawsuit could trigger for our loved ones.

Sincerely,



Caroline Lahrman
DAA Founding Member
Parent Advocate



Dan Jones
DAA Founding Member
Parent Advocate



Harris Capps
DAA Founding Member
Parent Advocate

CC: Governor John Kasich
Lt. Governor Mary Taylor
Director Greg Moody
Director John Martin
Director John McCarthy
Director Kevin Miller
Senate President Keith Faber
Speaker Cliff Rosenberger
Ann O'Donnell
Sheryl Maxfield
Damian Sikora
Arthur Marziale