



Federal, State and Case Law Regarding Institutionalization of People with Disabilities

What Does the National Conference of State Legislators (NCSL) State About Olmstead and its impact on Deinstitutionalization and Waiting Lists?

NCSL NEWS (March 29, 2001):

"In June 1999, The Supreme Court ruled in *L.C. & E.W. vs. Olmstead* that it is a violation of the Americans with Disabilities Act for states to discriminate against people with disabilities by providing services in institutions when the individual could be served more appropriately in a community-based setting."

NCLS State Legislative Report (March 2002), Volume 27, Number 7:

The Court suggests ways by which a state can show compliance with Olmstead.

1. A state may develop a comprehensive, effective working plan, including timetables and progress reports, for placing qualified people in community-based settings.
2. A state may maintain a waiting list for community-based services, but the list must move at a reasonable pace and may not be motivated by a desire to fill institutions.

What Does *Olmstead v. L.C.*,¹ Find?

- "Unjustified isolation...is properly regarded as discrimination based on disability."²
- Affirms the Department of Justice's stance that "undue institutionalization qualifies as discrimination 'by reason of ... disability.'"³

¹ 527 U.S. 581 (1999). *Olmstead* is a landmark Supreme Court Case that serves to advance the rights of people with disabilities. In *Olmstead*, the Supreme Court held that the Americans with Disabilities Act required that individuals with disabilities be placed in the community rather than in institutions. *Id.* Lower courts (federal and state) have interpreted *Olmstead* as a prohibition, mandated by federal law, against "avoidable" and "unnecessary" institutionalization of individuals with developmental disabilities, and as a requirement that states make "reasonable efforts to place institutionalized individuals with developmental disabilities in the community." *Id.*

² See *Olmstead*, 527 U.S. at 597 (discussing unjustified isolation in terms of institutionalization).

³ See *id.*, at 597-598.

- "...Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."⁴
- "...Under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."⁵

What Does The Developmental Disabilities Assistance and Bill of Rights Act⁶ Say About Institutionalization of People with Developmental Disabilities?

- "Treatment, services, and habilitation for a person with developmental disabilities ... should be provided in the setting that is **least restrictive** of the person's personal liberty."⁷

What Do Federal Regulations Say About Institutionalization of People with Disabilities?

- "A public entity shall administer services, programs, and activities in the **most integrated setting** appropriate to the needs of qualified individuals with disabilities."⁸

What Does The Americans with Disabilities Act⁹ Says About Institutionalization of People with Disabilities?

- "Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- Discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization. . .;

⁴ See *id.*, at 601.

⁵ See *Olmstead*, 527 U.S. at 607.

⁶ 42 U.S.C §6001 (2000).

⁷ 42 U.S.C. § 6010(2) (1976 ed.) [Emphasis added].

⁸ See 28 C.F.R. 35.130(d) (1998) [Emphasis added].

⁹ 42 U.S.C. §12101 (1990).

- Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, . . .failure to make modifications to existing facilities and practices, . . .[and] segregation" ¹⁰

What Does Evolving Case Law State About Institutionalization?

- If an individual opposes community placement, does the individual have a right to remain in an institution?

NO. This issue came before the Pennsylvania District Court which ruled that Olmstead does not give a person the right to remain in an institutional. Advocates for institutionalization sought to intervene in *Richard C. v. Houstoun*, (W.D.Pa. September 29, 1999). The proposed interveners argued that the facility's residents have a right to remain in the facility if they oppose community placement. The District Court rejected the proposed interveners' argument and made it clear that nothing in the Olmstead decision precludes a state from closing or downsizing institutions or placing individual residents into the community and that the ADA does not confer on individuals the right to veto such actions. ¹¹

What Does Maryland Law Say About Institutionalization of People with Developmental Disabilities?

Maryland Health-General Article 7-102. Legislative Policy states: "To advance the public interest, it is the policy of this State:

- "(4) To foster the integration of individuals with developmental disability into the ordinary life of the communities where these individuals live.
- (5) To support and provide resources to operate community services to sustain individuals with developmental disability in the community, rather than in institutions.
- (6) To require the Administration to designate sufficient resources to foster and strengthen a permanent comprehensive system of community programming for individuals with developmental disability as an alternative to institutional care."¹²

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¹⁰ See 42 U.S.C. §§12101(a)(2), (3), (5).

¹¹ NAPAS, Washington, D.C.

¹² See §7-102(4-6) (2000).

