



togetherforchoice.org

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Pamela Bondi
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Harmeet Dhillon
Assistant Attorney General
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Individuals with Disabilities and the Americans with Disabilities Act

Dear Attorney General Bondi and Assistant Attorney General Dhillon:

I am the Chair Person of Together for Choice (TFC). TFC is a nationwide disabilities advocacy organization representing individuals with significant intellectual disabilities, their families, and providers who serve them. TFC's mission is to ensure that individuals with disabilities and their families can choose from a wide variety of high quality residential and vocational service settings. TFC believes that the individual, not the government, should choose the setting that best meets their needs and preferences. We hope that under your joint leadership, the Civil Rights Division will chart a new course that supports the individual's right to choose where to receive services. Unfortunately, too often the prior administration took actions that limited, rather than expanded service options, especially for individuals with significant intellectual disabilities.

Vocational Programs for Individuals with Significant Intellectual Disabilities

The prior administration's Civil Rights Division attacked facility-based day programs and other congregate vocational services, claiming that such programs violate the Americans with Disabilities Act and the Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Civil Rights Division issued guidance in October 2023 which took the position that facility-based day programs violate the ADA's so-called "integration mandate." See [Questions and Answers on the Application of the ADA's Integration Mandate and *Olmstead v. L.C.* to Employment and Day Services for People with](#)

Different voices, different choices.



Disabilities.¹ This is a misreading of the ADA and *Olmstead*. Both recognize that individual choice is paramount. The ADA provides that no individual is required to accept an offered accommodation. In *Olmstead* the Supreme Court, interpreting the ADA, stated that community-based services must only be provided to individuals who “do not oppose community-based treatment.” 527 U.S. at 607.

Many individuals with significant intellectual disabilities prefer facility-based day programs and sheltered workshops where they can work at their own pace, interact with their peers, and receive the support they need from well-trained staff. My daughter Sarah is among those individuals. Sarah is 43 years old, but intellectually is three to four years old. She cannot read, write or do simple math. She has cerebral palsy and uses a wheelchair. She needs help with all of her activities of daily living, clothing, bathing, feeding, toileting and medicating. Sarah is in a facility-based day program at Misericordia in Chicago. She loves her day program, her instructors and her fellow classmates. Every year, Sarah, my wife, and I are provided with all available vocational program options. Sarah chooses her facility-based day program because that is where she is happy, comfortable, and knows that she will be well cared for. Her day program has taught her new skills, ones we did not think she could master, albeit at her own pace. Sarah is not segregated from the community; she is out in the community every week doing volunteer work at our temple and participating in a choir.

There are thousands of individuals like Sarah across the country. They and their families are alarmed by the Civil Rights Division’s guidance opposing facility-based day programs and sheltered workshops. That guidance is pressuring states to close down such programs and depriving individuals with significant intellectual disabilities of their ability to choose the vocational program that best meets their needs and preferences. That concern is heightened by the Civil Rights Division’s enforcement action against the State of Utah last June.²

TFC respectfully requests that the Civil Rights Division withdraw its October 2023 guidance regarding facility-based day programs and sheltered workshops and make it clear that such vocational programs, if chosen by the individual and her family, do not violate the ADA.

Residential Services

The prior administration was similarly dogmatic about residential services for individuals with intellectual disabilities. It filed a number of lawsuits against states claiming that congregate residential programs violated the ADA, even when such programs are chosen by the individuals being served. Unfortunately, a number of states have followed the lead of the Civil Rights Division and have implemented rules that strictly limit the types of homes an individual with a

¹ <https://www.ada.gov/resources/olmstead-employment-qa/>

² <https://www.justice.gov/crt/media/1356101/dl>



disability may choose. These restrictive rules do not apply to any other group of individuals and therefore discriminate on the basis of disability.

Pennsylvania and Illinois regulations are examples of this type of discrimination against individuals with disabilities. In Pennsylvania, 55 Pa. Code Sec. 6100.444 limits residential settings for individuals with disabilities funded on or after February 1, 2020, to four individuals. Sec. 6100.445 prohibits a residential setting for individuals with disabilities from being located adjacent to another residential location or a day service location. It also requires that no more than 25% of the units in an apartment building, condominium or town house building be occupied by individuals with disabilities. In Illinois, 59 Ill. Adm. Code Sec. 115.310 imposes the same restrictions.

These restrictions make it impossible for an individual with a disability to choose to live in a campus setting, farmstead, or intentional community. Only small, isolated homes or apartments in neighborhoods qualify for Medicaid funding.

The Pennsylvania and Illinois regulations restricting residential options violate the civil rights of individuals with disabilities. No other individuals or groups are prohibited from living in a home where others of their ethnicity, religion or race are living in an “adjacent” home. No other individuals or groups are prohibited from living in an apartment building because more the 25% of the units are occupied by “their kind.” This proposed rule singles out individuals with disabilities for these restrictions. These regulations discriminate on the basis of disability and violate the ADA. See *Valencia v. City of Springfield*, 2020 WL 1035229 (C.D. IL, March 3, 2020) (Springfield, IL ordinance that prohibits group homes for individuals with disabilities from being within 600 feet of each other is unlawful discrimination because it treats individuals with disabilities “less favorably than it does similarly situated . . . non-disabled people.”).

These discriminatory regulations cause significant harm to individuals with disabilities, especially those with severe autism or complex medical and behavioral challenges. The disabilities community is made up of a diverse set of men and women who have a wide array of needs and preferences. Some of these men and women thrive in a campus setting or on a farmstead and strongly prefer such settings. Many have tried living in small homes and apartments in neighborhoods but have found them isolating. Many have behavioral challenges such that small group homes do not properly meet their needs and only make their conditions worse. The government should not dictate where individuals with disabilities live. That decision must be left to the individual and her family and they should have the same wide range of choices as all other Americans.

We respectfully request that the Civil Rights Division under your leadership make it clear that state and local governments must not discriminate against individuals with disabilities by restricting the residential settings that receive Medicaid funding.



Together for Choice is looking forward to working with you to redirect the Civil Rights Division to protect the rights of individuals with disabilities. We would be happy to meet with you and your team to discuss the above issues.

Sincerely,

Scott Mendel

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