



THE LEGISLATURE  
STATE OF NEW YORK  
ALBANY

Honorable Kathy Hochul  
Governor, New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Hochul,

To begin, we are very much looking forward to working with you and your administration to assist the children and families of the State of New York.

We write to you today with regard to several recent actions taken by the Office of People with Developmental Disabilities (OPWDD) that violate the spirit and intent of Chapter 478 of the Laws of 2014. The original legislation, Jaffee (A.9729) / Bonacic (S.7374), provides fundamental due process protections to the parents or guardians of a developmentally disabled adult in transitional care after they turn 21 years old.

That bill, signed into law 11/21/2014, provided the critical right to a hearing, and judicial review, for parents and guardians of an adult with developmental disabilities in transitional care after they turned 21. It allowed them to challenge the settings that OPWDD deemed appropriate for their family members. The law also requires OPWDD to notify the parents of their right to appeal the placement within 30 days of notification.

At the time the bill was signed, due process protections were denied to those who had aged out of a special education placement and were in transitional care. Chapter 478 of the Laws of 2014 guaranteed that all developmentally disabled persons that reach 21 and are continuously disabled and in need of residential care would be treated equally.

The due process protections in the law are crucial in order to avoid inappropriate placements that disrupt current treatment, home life and familiar surroundings, which can lead to self-injury, improper or excessive medication, or even abuse or death. The hearing, and the legal mechanism for review, takes into account the overall appropriateness of the placement and potential harm that can result.

It is our understanding that several parents and guardians have recently been contacted by OPWDD about their children being moved from their existing facilities to an “Intense Care” developmental center.

These parents and guardians have been given the Hobbesian choice of agreeing to the placement recommended by OPWDD or the parents will lose their subsidy for care for their child.

The developmental center being recommended is inappropriate for these individuals for a variety of reasons. First, the facility houses sex offenders and persons who have committed violent acts who lack the legal capacity to be tried criminally. It is also our understanding that the facility is fenced in, lacks video monitors 24 / 7 and may lack the necessary level of clinical & direct care staff, behavioral support planning or tracking their child requires. The isolated, fenced in setting denies the person any meaningful opportunities to socialize and integrate into the community.

One of the parents who received a notice of placement wrote that it is wrong for OPWDD to force “clients who are now thriving living in group homes in the community, to live in locked developmental centers in remote parts of New York, 10 hours from their family.” We agree.

Even more troubling is the fact that these OPWDD placement notices have been received just weeks – in some cases as little as 7 days - before the due process rights of these parents are due to take effect. We understand that placements in certain facilities are more cost effective, but when these clients regress behaviorally, it can lead to permanent physical and psychological injury, as well as isolation from community and family which frequently lead to significant future costs.

There are several families that are now fearful their children will regress, that they will have great difficulty visiting due to distance, that behavioral and psychological supports may be reduced, that use of psychotropic medications as a chemical restraint may increase, and worst of all...the potential that their child will be placed in a setting where they are more likely to act out, which puts them in danger of winding up involved in the criminal justice system.

In addition, we believe that the recent actions of OPWDD violate the Olmstead decision, which requires that disabled persons are entitled to care in the least restrictive, most integrated setting for their needs. Worst of all, these families have a sword of Damocles hanging over their head: the threat of a loss of funding, with no right to contest the appropriateness and adequacy of the OPWDD placement decision.

We therefore respectfully request that all recommended placements by the Office for People with Developmental Disabilities for those about to “age out” be immediately halted until administrative and legislative changes can be implemented to ensure that these parents, guardians and their children are not intentionally or unintentionally stripped of their due process rights. In the interim, funding should be restored for those individuals.

Thank you for your consideration of this request, we look forward to working with your administration to protect these families.

Sincerely,



Assemblyman Andrew Hevesi  
Chair Children and Families



Senator Samra Brouk  
Chair, Committee on Mental Health



Assemblyman Thomas J. Abinanti  
Chair, Committee on People with Disabilities



Senator John W. Mannion  
Chair, Committee on Disabilities



Assemblyman John T. McDonald III  
Chair, Committee on Oversight, Analysis  
and Investigation