

The News from  
Ohio Legal Rights Service  
Ohio's Protection and  
Advocacy System for  
People with Disabilities

Volume 1 Issue 3 • April 2009



OLRS Commissioner Sipes, PAIMI Vice Chair Kvinta and  
Legal Director Sjoberg-Witt receive the TASC Award.

## Agency and Client Receive National Advocacy Award

The Ohio Legal Rights Service (OLRS) and one of its clients each received the Training and Advocacy Support Center's (TASC) Advocacy Award at TASC's Annual Conference in Baltimore, Maryland. The 2009 TASC Advocacy Award acknowledges the client and OLRS' legal advocacy efforts in the *Doe v Salvation Army* employment discrimination case. OLRS PAIMI Advisory Council Vice Chairperson Anna Kvinta accepted the award on behalf of the client and OLRS Commissioner Ted Sipes and OLRS Legal Director Kerstin Sjoberg-Witt accepted the award on behalf of the agency.

TASC annually recognizes state Protection and Advocacy (P&A) systems for excellence in protecting and advocating for the rights of people with disabilities. Ohio and Wisconsin were the only state P&A agencies to receive TASC awards this year.

In *Doe v Salvation Army*, OLRS' client won an employment discrimination appeal when the 6th U.S. Circuit Court of Appeals overturned a decision of a district judge who had dismissed the complaint filed against the Salvation Army for its failure to hire him because of his disability. The client, in response to a question during a job interview for a truck driving position, disclosed that he took psychotropic medications. The district court granted summary judgment, holding that the client failed to establish that he was a person with a disability.

OLRS, on behalf of the individual, appealed the decision and the appeals court held that the dismissal was inappropriate because there were genuine issues of material fact as to whether the client qualified as disabled under the federal Rehabilitation Act of 1973, and whether the Salvation Army's failure to hire him was based solely on his purported disability.

The case was returned to the district court for trial.

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# OLRS Provides Budget Testimony

Michael Kirkman, executive director of OLRs, testified before the House Finance Human Services Subcommittee in support of House Bill (HB) 1, Ohio's biennial budget bill. His support of HB 1 was specific to the executive proposals related to OLRs and the OLRs Commission.

Kirkman's testimony provided the subcommittee members background information about the agency as Ohio's protection and advocacy (P&A) system to protect the legal rights for people with disabilities and updated them on OLRs' diverse individual and policy level case work, activities and initiatives.

Kirkman testified that since he became executive director in 2007, he has focused on making the agency more accountable to clients, the OLRs Commission and the agency's appointing authorities. He noted that the agency is in full compliance with controlling statutes.

In addition to being in full compliance, Kirkman said the agency is making other changes to improve efficacy and service capacity. He told the subcommittee, "Most

importantly, I can also report to you that our service to clients is more robust than ever. We have developed an improved, professional, intake unit. Short term assistance, including referrals, follow up, information and referral, and legal advice, is being provided to more clients than ever."

"...our service to clients is more robust than ever."

*Michael Kirkman in testimony on HB 1*

Finally, Kirkman addressed language in the bill that directs the OLRs Commission to conduct a study and make recommendations to the Governor and leadership in the General Assembly on the proper model for P&A and Ombuds services for people with disabilities in Ohio (see box below). Kirkman said that OLRs and the Commission support the study and that, "We view this as an important opportunity to involve people with disabilities and their families as we evaluate the proposal."

To read Kirkman's complete testimony visit: [www.olsr.ohio.gov/other/olsrbudgettestimony3\\_5\\_09.pdf](http://www.olsr.ohio.gov/other/olsrbudgettestimony3_5_09.pdf). ■

## Governor Proposes Non-profit Transition Study

Language included in House Bill (HB) 1 requires the OLRs Commission to conduct a study concerning a potential transition of federal protection and advocacy grants from a public entity to a non-profit organization effective July 1, 2011.

The study must report on the:

- feasibility of a transition to a non-profit;
- effects on service delivery, including needed resources;
- organizational effects, including potential costs savings and grant opportunities; and
- amount of time needed to transition.

The study must be completed and delivered to the Governor and leadership of the General Assembly by no later than six months after the effective date of HB 1. The bill also requires the Commission to develop a process plan by which a transition to a non-profit organization could be implemented no later than July 1, 2011.

Read the OLRs budget language: [www.olsr.ohio.gov/other/Section317.pdf](http://www.olsr.ohio.gov/other/Section317.pdf). ■

# Legal Update

by Kerstin Sjoberg-Witt, OLRs Legal Director



## **G.D. v. Riley**

OLRS filed action on behalf of a plaintiff class of Medicaid eligible children to ensure that children and their families are informed of the Early Periodic Screening Diagnosis and Treatment (EPSDT) benefits and are able to access necessary EPSDT services with reasonable

promptness. Mediation is ongoing.

## **Doe v. State of Ohio**

OLRS represents a class of students with disabilities enrolled in or seeking enrollment in Ohio's public school system who are entitled to special education, related services or accommodations as a result of their disabilities.

OLRS anticipates that the parties will soon reach agreement on a consent decree that partially settles this action by strengthening the Ohio Department of Education's monitoring and enforcement of the requirements of the Individuals with Disabilities Education Improvement Act and improving the state's system for filing and resolving parents' complaints against local school districts.

The proposed consent decree, once finalized and agreed to by the parties, will be presented to the district court judge for approval. Notice of the proposed consent decree will be provided to the class members. The district court will hold a hearing on the fairness of the proposed consent decree before making a final decision on whether to approve the decree.

## **D.M. v. Butler County**

OLRS represents residents of an intermediate care facility for the mentally retarded (ICF/MR) in Butler County who filed this action seeking assessments and placement in the least restrictive environment appropriate for the needs of the residents.

OLRS is currently engaged in briefing an appeal to the 6th U.S. Circuit Court of Appeals seeking to reverse the district court's dismissal of this action based on *res judicata* and other grounds.

OLRS is also engaged in efforts to amicably resolve plaintiffs' claims.

## **PLEAS v. Lumpkin**

OLRS obtained a preliminary injunction to prevent Ohio Administrative Code provisions from going into effect that would preclude children with autism from receiving services paid for by Medicaid. The Ohio Department of Job and Family Services and the Ohio Department of Mental Health appealed the preliminary injunction and the matter is now before the 6th U.S. Circuit Court of Appeals. The court will hear argument on this matter on April 30, 2009.

The law firm of Jones Day will provide *pro bono* moot court assistance to OLRs attorneys preparing for the oral argument.

## **State of Ohio v. Scott Speer**

OLRS collaborated with the National Association of the Deaf and the Ability Center of Greater Toledo to file a joint *amici curiae* brief in support of jurisdiction in the Ohio Supreme Court. The appeal is of a decision by the Ohio 6th District Court of Appeals, which reversed a conviction and held that a trial court should have excused for cause a juror with a hearing impairment.

The *amici* brief framed the critical issue for the court that a juror with a hearing impairment should not be dismissed for cause based on that hearing impairment unless there is evidence at the time the challenge for cause is made that the juror cannot fully participate as a juror and afford the defendant a fair trial.

Read the amici curiae brief: [www.olrs.ohio.gov/other/amicusbriefdeafjuror.pdf](http://www.olrs.ohio.gov/other/amicusbriefdeafjuror.pdf). ■

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## OLRS Annual Report Available

OLRS' Annual Report for fiscal year 2008 is available online on the OLRs website. The annual report captures the diversity of OLRs' individual and policy case work and reflects the wide range of important legal advocacy work completed by OLRs staff on behalf of Ohioans with disabilities.

To review the Annual Report, go to: [www.olrs.ohio.gov/asp/OLRSAnnualReport2008.asp](http://www.olrs.ohio.gov/asp/OLRSAnnualReport2008.asp). ■



# OLRS Advocating and Protecting Rights in Partnership with People with Disabilities

## **Accommodation Allows Student to Complete Degree Requirements**

An OLRS client is enrolled in a private photography and technology school taking his final two courses online to complete his associates degree. The client, recently diagnosed with a medical condition that prevents him from taking classes on campus, requested the school for online home study as a reasonable accommodation so he could finish his degree requirements.

When the school refused his request, he contacted OLRS. OLRS staff attorney George Cronheim provided advice to the client and negotiated with the school's attorney. The school granted the accommodation to allow the client to finish his coursework online at home. OLRS assisted with the implementation of the accommodation and contacted the client's Bureau of Vocational Rehabilitation counselor to assure tuition and services were not disrupted.

## **Client Moves Closer to Friends and Family**

Living closer to her friends and family in a smaller, less-restrictive placement is a reality for an OLRS client.

The client lived, for three years, in a large intermediate care facility for the mentally retarded (ICF/MR) nearly three hours from her friends and family. The client was told that she would have to remain there indefinitely because she was committed by a court order.

OLRS staff attorney Jason Boylan investigated and determined that the client had been placed at the facility by her guardian and that, contrary to the guardian's and the ICF/MR administration's belief, she was not bound to stay there by a court order. OLRS facilitated the client's move to a facility closer to her home and ensured that future contact with friends and family would be granted.

## **Negotiation Results in a Job Coach for Client**

Working in the community with a reliable, long-term job coach is now an every day activity for an OLRS client.

The client, who has a job in the community, needed a job coach. The county board of mental retardation and developmental disabilities (CBMRDD) was unable to maintain a job coach for any reasonable length of time. His employer was concerned because they were required to train each new job coach.

The client filed a complaint with the CBMRDD. The CBMRDD responded to the complaint with a list of options that were not acceptable to him. He contacted OLRS for assistance.

David Baxter, an OLRS disability rights advocate, became involved to protect the client's legal rights and to assure supports outlined in his Individual Service Plan, including job coach support, are provided. The CBMRDD agreed to contract with a nonprofit provider of employment services for people with disabilities to provide a long-term job coach for the client at his community job.

## **HUD Guidelines Waived to Ensure a Safe Home**

A county's guidelines for lead paint removal were waived to accommodate a family whose nine-year-old son has an eating disorder, pica, which is characterized by persistent and compulsive cravings to eat non-food items. The child was eating paint chips and the family was concerned about his elevated blood lead levels. The family contacted OLRS after their county's Housing and Urban Development (HUD) lead removal program refused their application for the removal of lead paint from their home because their child was over age six.

OLRS staff attorney Virginia Wilson contacted the HUD lead program and negotiated a waiver of the age limit for the program based on the child's disability and the effect the disability was having on his risk for continued lead exposure. The family re-applied for the program and their application was approved for removal of lead paint from their home.

### **OLRS Mission**

to protect and advocate,  
in partnership with people with disabilities,  
for their human, civil and legal rights.

# OLRS Advocating and Protecting Rights in Partnership with People with Disabilities

Community integration is a priority area for OLRs legal advocacy. Among other activities, OLRs represents when individuals are placed in nursing homes against their will and the facility is not the most integrated setting appropriate to the client's needs. OLRs also represents when clients face discrimination, or have been improperly denied access to a Home and Community-Based waiver, or services from a county board.

The following cases illustrate how OLRs advocates for community integration of individuals with disabilities. Case representation was provided by George Cronheim, a staff attorney, and Pat Washburn, a Disability Rights Advocate.

## **Veteran Receives Waiver Services**

A veteran with multiple disabilities who uses a wheelchair lived in a nursing home and had many complaints about the quality of care. The individual was discharged from the facility and returned home with improper discharge planning and no services in place. The Department of Veterans Affairs (VA) discontinued the individual's home care services, and was not cooperating with the Ohio Department of Job and Family Services (ODJFS) to process an application for the Home Care Waiver.

OLRS attorney George Cronheim negotiated among the VA, ODJFS and CareSource to expedite the client's application. The application process was soon completed, and the veteran now receives the waiver services he needs to live at home.

## **OLRS Client Prevails in Payeeship Dispute with Landlord**

An individual applying for an apartment was told that the landlord required her to apply for a Social Security representative payeeship as a condition of her tenancy, because she has a disability. The individual manages her finances independently. With her doctor's support, she cancelled the payeeship. As a result, her landlord served her notice to vacate her apartment.

OLRS attorney George Cronheim investigated and advised the client of her rights. OLRs negotiated with the landlord and wrote a demand letter about the discriminatory practice. The landlord rescinded the notice to vacate, and the client remains in her home.

## **Clients Successfully Transition after OLRs Intervention**

A resident of a state operated psychiatric hospital was ready to return to the community. Hospital staff made numerous unsuccessful attempts to coordinate discharge with the community provider.

OLRS disability rights advocate Pat Washburn provided representation. Washburn negotiated with the local mental health board and the provider for appropriate discharge planning, including housing. The board and provider agreed to work with the client and the hospital, and the individual is now living successfully in the community.

Washburn also represented a young man who was living in a hotel in poor conditions after he was improperly evicted from a group home. OLRs negotiated with the mental health board and agency.

The client now lives in an apartment of his choosing with appropriate services, and reports that he is happy with his new home. ■



Title II of the Americans with Disabilities Act (ADA) requires states to provide services to people with disabilities in a non-discriminatory way. The ADA regulations also require the state to administer programs in the most integrated setting appropriate to the needs of the person with a disability.

## Medicaid Buy-In Resource for People Living in ICFs/MR

OLRS staff attorney, George Cronheim, developed an online resource for people living in intermediate care facilities for the mentally retarded (ICFs/MR) who want to access the Medicaid Buy-In for Workers with Disabilities (MBIWD) program. MBIWD is an Ohio Medicaid program that was created to enable Ohioans with disabilities to work and still keep their health care coverage. The MBIWD program is administered locally by the county Department of Job and Family Services (CDJFS).

This online resource lists the complete MBIWD eligibility criteria and states that people living in an ICF/MR cannot be denied participation in the MBIWD program based on their residency. Cronheim also identified and clarified other financial and programmatic standards that CDJFS case workers may mistakenly use to deny a person living in an ICF/MR access to the MBIWD program.

Contact OLRs if you, or someone you know, live in an ICF/MR and have been denied participation in the MBIWD program because of residence in an ICF/MR.

Go to [www.olrs.ohio.gov/asp/mbiparticipation.asp](http://www.olrs.ohio.gov/asp/mbiparticipation.asp) to review this resource. ■

### OLRS Award (continued)

OLRS staff attorney Jane Perry, who was the attorney in this case said, "This is a wonderful award for the client because he is working very hard to attain and maintain employment."

TASC is a division of the National Disability Rights Network, a nonprofit membership organization for the federally mandated P&As and Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States.



Read more about *Doe v Salvation Army* at: [www.olrs.ohio.gov/asp/salvarmy.asp](http://www.olrs.ohio.gov/asp/salvarmy.asp). ■

## OLRS Submits Testimony; RSC to Re-file Rule



OLRS staff attorney Barbara Corner submitted written testimony to members of the Joint Committee on Agency Rule Review (JCARR) challenging the statutory authority of the Rehabilitation Services Commission (RSC) to promulgate administrative rule 3304-2-62, Consumer Appeals.

Corner argued that RSC only has the authority to enact rules governing the vocational rehabilitation (VR) program if the rules are in conformity with the federal Rehabilitation Act. She stated that the proposed rule only mandates that services listed on an Individualized Plan for Employment (IPE) be provided until an appeal is resolved. This conflicts with federal law that requires all services including evaluation and assessment services and plan development be continued pending resolution of the appeal by a hearing officer.

Corner also stated that enactment of the rule as proposed would have a negative impact on individuals seeking VR services from RSC causing unnecessary delays of perhaps months.

OLRS proposed new language to resolve the conflict with federal law. Upon review of the language, RSC decided to refile the rule and adopt the language suggested by OLRs.

OLRS is the designated Client Assistance Program (CAP) and is charged with providing assistance in informing and advising clients of all available benefits under the Rehabilitation Act of 1973.

Read OLRs' complete testimony at: [www.olrs.ohio.gov/other/testimonyrscrule.pdf](http://www.olrs.ohio.gov/other/testimonyrscrule.pdf). ■

# OLRS Supports Advocacy Events

Advocates across the state gathered in Columbus for a Legislative Event and Rally hosted by The Arc of Ohio and for the Solidarity 2009 Conference. OLRs was a major sponsor for these events and provided scholarship funds to support people with disabilities so they could attend.

Both the Legislative Event and Rally and Solidarity 2009 highlighted advocate activities that are making a difference in the public policy and legislative arenas. John Martin, director of the Ohio Department of MRDD, in his remarks at the Legislative Event, announced that the Department removed language from House Bill 1, the biennial budget bill, that would have increased the number of unrelated people in supported living settings from 4 to 5 individuals. Director Martin acknowledged that the opposition by advocates was the reason for the Department's change in position.

Governor Strickland in his keynote address at Solidarity 2009 expressed his support for Senate Bill 79, the "name change" legislation, that would re-name the Ohio Department of Mental Retardation and Development Disabilities (MRDD) and the County Boards of MRDD to the Ohio Department of Developmental Disabilities and the County Boards of Developmental Disabilities. This bill demonstrates the effectiveness of grassroots advocacy and its passage will be a significant victory for the many advocates who met with their legislators and testified in support of this legislation.

## Workshops

OLRS staff presented at both conferences where workshops were designed to encourage a dialog between the presenters and the participants. An interactive Town Meeting at the Legislative Event was hosted by Michael Kirkman, executive director at OLRs and Lynne Cleveland, president of the National Arc. At the Town Meeting, Kirkman and Cleveland provided an

overview of issues and proposed changes at the national and state level related to the rights of people with disabilities which was followed by a lively discussion among the participants.



*Cronheim and Perry at Solidarity 2009.*

OLRS staff attorneys, George Cronheim and Jane Perry, presented about the rights and remedies for people with disabilities under the Fair Housing Act and Ohio's Fair Housing Law.

## Statehouse Rally

The second day of the Legislative Event, advocates gathered on Ohio's Statehouse lawn to rally in support of state budget initiatives that would improve the lives of Ohioans with disabilities. Speakers included individuals with disabilities, parents of children with disabilities, representatives of disability organizations and state policymakers. Each stressed the importance of individuals telling their stories to their House and Senate representatives to advocate for change. Following the rally, individuals met with their state legislators to discuss disability issues. ■



*Kirkman addresses the group at the conference.*



*Mike Groleau, Vice President of People First of Ohio, motivates advocates at the rally on the Statehouse lawn.*

# OLRS Invited to National Trauma Informed Care Meeting



Pat Risser

Pat Risser, OLRs Commissioner and PAIMI Advisory Council member, and Beth Oberdier, OLRs disability rights advocate, participated in the second State Dialogue Meeting on Trauma Informed Care in Baltimore, Maryland. Risser and Oberdier were invited by staff from The Center for Mental Health Services' (CMHS) National

Center for Trauma Informed Care (NCTIC) because of their advocacy efforts promoting trauma informed care in Ohio.

The first dialogue, which convened in early December, addressed the basic elements of trauma informed systems and the importance of planning and implementing this organizational change in collaboration with consumers/peers and survivors. The second dialogue focused on the implementation of trauma informed system elements both in community mental health programs and in mental health facilities. The meeting brought together consumers/peers and survivors, CMHS and NCTIC staff, commissioners and designated program staff, and state medical directors to work together to create dynamic learning communities to advance the development of trauma informed systems of care.

According to Oberdier, "The refreshing aspect of the meeting was to see consumers and survivors as leaders and be treated as equal partners. Their voices and opinions are valued and respected at the federal level."

A display at the meeting that inspired and informed many was a Glass Books exhibit, an ecological approach to facilitate trauma informed transformation. This exhibit was created in collaboration between students in the Department of Visual and Performing Arts at Rutgers University-Newark and two national experts on trauma, Ruta Mazelis, an Ohioan who is an expert on self-inflicted violence (SIV) and Helga Luest, chief executive officer of Witness Justice. The students' Glass Book designs communicated to trauma survivors an understanding and acknowledgement of their SIV and informed the mental health community the need for transformation to a trauma informed system of care.

For more information about the Glass Books project, visit: [www.facebook.com/home.php#/group.php?gid=83324477164&ref=fn](http://www.facebook.com/home.php#/group.php?gid=83324477164&ref=fn). ■

## Funding

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- ▶ Protection & Advocacy for Individuals with Developmental Disabilities (PADD) - Developmental Disabilities Assistance and Bill of Rights Act of 1975 (PL 94-103); Administration for Developmental Disabilities of the United States Department of Health and Human Services.
- ▶ Protection & Advocacy for Assistive Technology (PAAT) - Assistive Technology Act of 1998 (PL 105-394); Office of Special Education and Rehabilitative Services of the United States Department of Education.
- ▶ Protection & Advocacy for Individuals with Mental Illness (PAIMI) - Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PL 99-319); Center for Mental Health Services United States Department of Health and Human Services.
- ▶ Protection & Advocacy for Beneficiaries of Social Security (PABSS) - Ticket to Work and Work Incentives Improvement Act of 1999 (PL 106-170).
- ▶ Work Incentives Planning and Assistance (WIPA) program - Office of Employment Support Programs Social Security Administration.
- ▶ Protection & Advocacy for Individual Rights (PAIR) - Rehabilitation Act of 1973 (PL 93-112) as amended; Office of Special Education and Rehabilitative Services of the United States Department of Education.
- ▶ Protection & Advocacy for Individuals with Traumatic Brain Injury (PATBI) - Children's Health Act of 2000 (PL 106-310); Maternal Child and Health Bureau of the United States Department of Health and Human Services.
- ▶ Protection & Advocacy for Voting Access (PAVA) - Help America Vote Act of 2002 (PL 107-252); Administration for Children and Families of the United States Department of Health and Human Services.

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50 West Broad Street, Suite 1400  
Columbus, Ohio 43215-5923

TEL 614-466-7264  
800-282-9181 (in Ohio)  
TTY 614-728-2553  
800-858-3542 (in Ohio)  
FAX 614-644-1888

