

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

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OHIO LEGAL RIGHTS SERVICE

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OLRS Calls for State Agencies to Ban Restraints

OLRS' Ombuds section sent formal written complaints in mid-January to the Ohio Department of Job and Family Services (ODJFS) and the Ohio Department of Education (ODE) regarding the use of restraints in facilities and schools. OLRs and other state and national organizations have advocated for many years that licensed and certified providers across all settings — education, residential treatment facilities, community residential, and hospitals — that serve children and adults with disabilities should reduce or eliminate the use of physical restraints.

The complaint letter to ODJFS called for a ban in children's facilities licensed by the Department on the use of prone restraints or other restraints that restrict breathing. OLRs investigated the death of a 17-year-old girl who died following a prone restraint episode at a children's residential treatment center in northeast Ohio. OLRs also recommended to ODJFS the need to improve reporting and state-level monitoring of restraints in all settings, including oversight of all injuries sustained during restraint episodes. Agencies responsible for monitoring facilities are often unaware of restraint related injuries due to the lack of a comprehensive reporting and monitoring requirement.

Michael Kirkman, executive director of OLRs, said, "The goal should be to stop the use of prone restraints

Governor Calls for a Single, Statewide Policy on Restraint

Governor Strickland, on January 23, 2009, requested John Martin, director of the Ohio Department of Mental Retardation and Developmental Disabilities to chair an interdepartmental group of representatives from relevant state agencies, to create a statewide policy on the use of restraints.

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immediately and to eventually reduce or eliminate the use of all other restraints because of their lethal and traumatizing effects.” Kirkman said there is a need for standardization across all state departments regarding restraint use. Currently, there are multiple state departments that license and certify facilities and each system establishes its own standards and rules governing restraints. ODE has no regulations or standards for restraint of children in schools.

Deficiencies identified during the course of OLRs investigations into the use of restraints in public schools led to the ODE complaint letter. Investigators, acting on complaints, found school staff used a mechanical restraint (Humane Body Wrap) to transport a student to a concrete block room in the building. The use of inappropriate behavioral interventions in a self-contained classroom and the lack of written policies or guidelines related to the use of emergency behavioral interventions — seclusion, time out, physical or mechanical restraints — were found in the other investigation. Both schools and ODE were notified of the deficiencies.

The complaint sent to ODE recommended that the Department address the lack of administrative rules regarding the use of physical or mechanical restraints, seclusion and time out for classrooms in Ohio. OLRs urged ODE to take immediate steps to promulgate rules that (1) require schools to prohibit the use of prone restraints or any other restraints that restrict breathing, (2) require school personnel to receive ongoing training on the use of positive behavioral interventions and (3) require schools to maintain a log that records each incident of an emergency behavioral intervention and report serious injury or death.

OLRS' call to ban prone restraints and to require ODE to promulgate rules coincides with the National Disability Rights Network's (NDRN) issuance of a report, “School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools.” This document reports incidents of children dying or being injured in school while restrained or secluded and calls for swift action to ban the use of prone restraint and seclusion in schools.

For more information about restraint and seclusion, visit: <http://olrs.ohio.gov/asp/restraintseclusion.asp>. ■

OSBF Grant Provides Funds for Web Redesign

The Ohio State Bar Foundation (OSBF) awarded OLRs a grant to redesign the OLRs website and to create a juvenile justice web portal for attorneys and people with disabilities. The redesign will allow OLRs to more effectively communicate the agency's mission to protect and advocate, in partnership with people with disabilities, for their human, civil and legal rights.

“Our website is long-overdue for a redesign, both in appearance and in how information is presented,” said Kim McConnell, OLRs' webmaster. “The funding from OSBF will permit us to move forward with making the site a usable, accessible and interactive place for Ohioans with disabilities and the disability community to learn about OLRs and disability rights.” McConnell added that OLRs will collaborate throughout the redesign process with people with disabilities and other legal aid organizations on shared web resources and content development. “People with disabilities will be instrumental in testing the site to make sure that it is accessible,” McConnell emphasized.

The grant will fund the development of an online tutorial on special education and the juvenile justice system. The tutorial will be an e-learning module based on an OLRs training called, “Closing the Floodgates: Keeping Students with Disabilities from the Juvenile Justice System.” This training was offered last year to juvenile judges, legal services programs and the organized bar.

Redesign plans also include the creation of a legal section for lawyers who represent clients with disabilities. According to OLRs Executive Director Michael Kirkman, “OLRS attorneys receive an extraordinary amount of research, information and data through national partnerships and in the course of day-to-day legal work. We appreciate the opportunity to work with OSBF to make this information and expertise available to Ohio attorneys through the website.”

Please take a brief survey to provide your comments and ideas for the redesigned site. Go to: https://www.surveymonkey.com/s.aspx?sm=CUVic8kg_2bQaDbPkZE_2bOuDQ_3d_3d. ■

Broad Support Received for PLEAS Appeal

The Legal Aid Society of Columbus (LASC) and National Health Law Program (NHeLP) filed an *amicus curiae* brief in support of OLRs' appeal to uphold the preliminary injunction in *Parents' League for Effective Autism Services (PLEAS), et al. v. Helen Jones-Kelley, Director of the Ohio Department of Job and Family Services, et al.* The lawsuit stems from complaints OLRs received from families of children with autism. Defendants' proposed rules, if implemented, would eliminate Medicaid reimbursement for medically necessary services to children with autism.

LASC attorney Vanessa CotereI stated, "This case impacts the ability of low income children across the state to access critical mental and behavioral health care services. These services are essential to ensuring that many low income children have a better opportunity to grow up to be independent, self-sufficient adults."

Attorneys for *amicus curiae* stated in the brief to the U.S. Court of Appeals for the Sixth Circuit that Congress intended for Medicaid's Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) program to ensure comprehensive and preventative health care to children; however, the State's narrow definition of rehabilitative services is contrary to Congress' intent that preventative and broad coverage be provided to low-income children under EPSDT. "The District Court's decision reinforces Medicaid's guarantee to eligible children, which is that they will receive all necessary mental and behavioral health care services and treatment without regard to the type of conditions and disabilities children may have," stated NHeLP attorney Sarah Somers.

In the *amicus* brief, attorneys argued that low-income children will suffer irreparable harm if they are denied access to meaningful health care treatment by the State's overly restrictive administrative rules. Moreover, it is in the public interest to ensure that low-income children receive comprehensive, early and effective health care services.

Broad group of organizations support amicus

In addition to LASC and NHeLP, a broad group of organizations representing national advocacy groups, Legal Aid organizations throughout Ohio and several health providers supported OLRs' position in the

appeal of this case. The *amici curiae* group includes:

- St. Vincent Mercy Children's Hospital
- Family Healthcare, Inc.
- The Academy of Medicine of Toledo and Lucas County Ohio
- Warran Kleinberg, MD, Medical Director St. Vincent's Mercy Family Care Center
- Advocates for Basic Legal Equality and Legal Aid of Western Ohio, Inc.
- Community Legal Aid Services
- Legal Aid of Greater Cincinnati and Legal Aid Society of Southwest Ohio, LLC
- Ohio State Legal Services Association
- Southeastern Ohio Legal Services
- The Legal Aid Society of Cleveland
- National Disability Rights Network
- The Judge David L. Bazelon Center for Mental Health Law
- Disability Law & Advocacy Center of Tennessee
- Michigan Protection & Advocacy Service, Inc.
- Kentucky Protection and Advocacy

"We appreciate the collaboration and support of *amicus curiae*," said OLRs Legal Director Kerstin Sjoberg-Witt. "Their involvement demonstrates not only the support of our position but the importance of providing medically necessary services to Medicaid beneficiaries," added Sjoberg-Witt.

The court is expected to schedule oral arguments in the case. Updates will be posted on the OLRs Web site at: www.olrs.ohio.gov. ■

On January 12, 2009, OLRs filed a brief in the U.S. Court of Appeals for the Sixth Circuit in *Parents' League for Effective Autism Services (PLEAS), et al. v. Helen Jones-Kelley, Director of the Ohio Department of Job and Family Services, et al.* OLRs asked the Court to uphold the preliminary injunction and to remand the case for trial in the district court. OLRs argued that the trial court did not abuse its discretion and it properly relied on governing law when it enjoined Defendants' proposed rules.

OLRS Submits Comments on the Rules of Superintendence

OLRS submitted written comments on proposed amendments to the Rules of Superintendence of the courts of Ohio. The Rules of Superintendence relate primarily to the internal operations of all courts of appeal, courts of common pleas, municipal courts and county courts in the state of Ohio. The proposed amendments address issues such as certification and general requirements for sign language interpreters for people who are deaf or hard of hearing.

OLRS commended the Ohio Supreme Court for sending a clear message that persons who are deaf or hard of hearing must be included and accommodated in courtroom proceedings. Also acknowledged was the Court's support for specialized certification, training and continuing education for sign language interpreters who work in courtroom settings.

OLRS expressed concern that the proposed definition of "sign language interpreter" may not include oral interpreters. OLRs stated the need to include oral interpreters in the definition, especially for those individuals who are deaf or hard of hearing who do not use sign language, but do lip-read English. The use of an oral interpreter, explained OLRs, might well have averted a situation in a recent criminal case where the trial judge seated a juror who was hard of hearing. In this case, the judge did not appoint an oral interpreter to assist the juror. The court of appeals reversed the defendant's conviction because there was no assurance that the juror did in fact hear all the testimony and because the juror had no way of discerning the defendant's voice inflections and demeanor on the 911 tape.

OLRS also recommended that the proposed amendments include a requirement for courts to appoint two or more interpreters in those cases where the court function will last two or more hours, is unusually complex or involves multiple participants who require interpreters. Furthermore, a third sign language interpreter was suggested if one of the parties is deaf and there is a need to interpret confidential communications between the party and counsel. The requirement to appoint two or more interpreters will ensure an accurate interpretation is conveyed to the person who is deaf or hard of hearing, OLRs concluded.

Read OLRs' comments on proposed amendments to the Rules of Superintendence at: <http://olrs.ohio.gov/other/InterpretersComments.pdf>. ■

OLRS Wins Guardianship Appeal for Individual in District Court

OLRS' client won an appeal challenging a county board of mental retardation and developmental disabilities' authority to move for removal of the individual's parent guardians and appointment of Advocacy and Protective Services, Inc. (APSI) as guardian. OLRs filed the appeal in Ohio's Eleventh District Court of Appeals on behalf of the individual, a 21-year-old man with multiple disabilities. The individual did not want APSI as his guardian, but wanted his father to be his guardian.

The Geauga County Board of Mental Retardation and Developmental Disabilities (GCBMRDD) asked the probate court, through an emergency *ex parte* motion, to remove the parents as guardians and appoint APSI as guardian. After a hearing on the issue, APSI was awarded guardianship of the individual. On appeal, the Eleventh District held that the GCBMRDD does not have standing, statutory authority, or a statutory duty to intervene in a guardianship case to remove a guardian outside the purview of its statutorily-mandated functions. The case was reversed and remanded to the probate court in which it originated with instructions to dismiss the GCBMRDD from the case.

The GCBMRDD filed an appeal to the Supreme Court of Ohio along with a Motion for a Stay of Decision. The Supreme Court granted the Motion for the Stay of Decision and OLRs filed a Motion to Vacate the Stay.

This case is significant because it serves as an important step in the direction of imposing safeguards in probate court procedures to protect the rights of individuals subject to guardianship.

Read the decision: <http://www.sconet.state.oh.us/rod/docs/pdf/11/2008/2008-ohio-6978.pdf>. ■

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

Investigation Results in Reimbursement of Stolen Funds

Three men living in a group home in southeastern Ohio were repaid money that was stolen from them by a management level staff person at their home.

OLRS Ombuds Adonna Wilson, during her investigation, reviewed financial documents and met with the men, the executive director of the provider agency and staff from the local county board of mental retardation and developmental disabilities.

Wilson's investigation revealed that nearly \$25,000 had been misappropriated by the staff member. Wilson negotiated for the men to be repaid.

The provider repaid the full amount owed, developed a staff training and significantly improved procedures to ward off future theft. The staff person responsible for the theft was criminally charged. ■

Hospital Changes Procedures

A hospital emergency room changed their procedures to assure a safe environment for patients by only using security or law enforcement in criminal situations and providing staff education regarding use of a Taser.

Pat Washburn, OLRs disability rights advocate, met with hospital administrators when a person who is deaf and has a mental illness requested assistance from OLRs to file a grievance after he was mistreated in an emergency room.

The client was taken to the hospital emergency room for medication where he was met by medical staff and a security guard. The staff asked him to change from his clothes to a gown but he refused. The security guard told the client he would use a Taser if he did not put on a gown. The guard used the Taser causing the client to fall and strike his head resulting in an injury that needed medical attention.

Washburn met with hospital staff to review the incident. An agreement was reached that included the hospital sending the client a written statement outlining how they would change procedures and that they would conduct staff trainings to assure a safe environment for all patients. ■

Access to Park Areas Developed

An OLRs client who uses a power wheelchair now has easy access to participate in his favorite activities at an Ohio state park. The client's typical mode of transportation at the park was a golf cart which can traverse beaches and other rough terrain that his power wheelchair cannot safely do. However, rules in state parks prohibit a motor vehicle off-road and when the park manager started to enforce the law, the client stopped using the golf cart.

Monica Burgi, OLRs disability rights advocate, and the client sought a reasonable accommodation from the Ohio Department of Natural Resources (ODNR) permitting the client to continue to use the golf cart. ODNR did not grant the golf cart exemption but through negotiations, agreed to build paths to accommodate wheelchair use, increase the number of accessible parking spaces and make shelter houses and restrooms more accessible.

The client was invited by ODNR to assist in the discussion and selection of placement of the new paths. ■

Client Receives Funding for Nursing Training

Negotiations with Ohio's Bureau of Vocational Rehabilitation (BVR) resulted in an agreement to provide financial support to an OLRs client for nursing training. The client successfully completed licensed practical nurse (LPN) training and wanted to pursue training to become a registered nurse.

BVR felt that she was already employable as an LPN and refused to amend the individualized plan for employment (IPE) to reflect her desired job goal. Ron Smith, OLRs supervising attorney, represented the client at an informal resolution meeting where he argued that a BVR directive disfavors restricting a consumer to an entry level employment position if the person has the ability and desire to pursue a more advanced position.

BVR agreed to amend the job goal on the IPE and provide support for registered nurse training. ■

Commissioner Appointed



Patrick Risser was appointed to the OLRs Commission by the President of the Senate, Bill Harris, on December 18, 2008. He joins the seven-member Commission, the governing authority of OLRs.

Risser's experience and background in the disability arena as a human rights activist and mental health advocate for over 20 years have earned him a national reputation as a trainer, facilitator, presenter, author and consultant. His expertise is training on trauma issues, recovery, self-determination and on employing consumers as part of the mental health workforce.

Prior to returning to his hometown of Ashland, Ohio, Risser lived in California, Colorado and Oregon where he served on the state mental health advisory board in each of those states. In Ohio, Risser has been appointed to several state and local boards including OLRs' Protection and Advocacy for Individuals with Mental Illness Advisory Council.

Risser has received recognition at both the state and federal levels. He was the winner of the prestigious Clifford Beers Award from the National Mental Health Association in 2005. He was formally appointed as a consumer/survivor whose role was to advise the federal government on mental health consumer/survivor issues.

"Risser is a very talented individual who possesses a rich background in patient rights and self-direction. He understands the value of consumer driven advocacy. I look forward to Pat's involvement on the Commission," said Michael Kirkman, OLRs executive director.

"I am excited to be involved at the state level with an organization that provides client directed legal advocacy to individuals with disabilities," commented Risser after learning of his appointment. "I would like to thank Senator Harris for this opportunity."

Risser's initial appointment to the Commission ends April, 2010. ■

New Staff



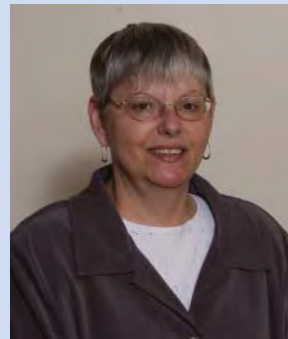
Kerstin Sjoberg-Witt
Legal Director

Sjoberg-Witt was employed at the Jones Day law firm for four years where her practice covered a variety of complex litigation matters in state and federal courts including several significant pro bono representations. Prior to joining

Jones Day, Sjoberg-Witt served as a judicial law clerk to the Honorable John D. Holschuh, U.S. District Court, Southern District of Ohio. She also served for two years as chair of the Pro Bono Committee for the Columbus Bar Association.

Sjoberg-Witt received her juris doctor from The Ohio State University Moritz School of Law and a bachelor of arts degree from The Ohio State University.

Sjoberg-Witt looks forward to furthering the agency's legal advocacy goals.



Laura Bordeau
Paralegal

Prior to coming to OLRs, Bordeau worked in the field of real estate law. She was a paralegal at a private law firm and also worked in the legal department of a Columbus based real estate developer.

Bordeau has a bachelor of science degree in business administration from Ohio Dominican University and recently received a masters degree in legal studies.



Angela Jenkins
Paralegal

Jenkins was a legal secretary for eight years at Bricker & Eckler LLP, where she participated in a job share program so she could spend time at home with sons Tyler, who has autism, and Jared.

Jenkins received her juris doctor from The Ohio State University Moritz School of Law and a bachelor of arts degree in sociology from The Ohio State University. Her background includes litigation, international law and French. ■

OLRS Submits Comments on Medicaid School Program

OLRS, along with Advocates for Basic Legal Equality, Legal Aid of Western Ohio, Legal Aid Society of Columbus, Northeast Ohio Legal Services, Ohio State Legal Services Association and Southeastern Ohio Legal Services, submitted comments to the Ohio Department of Job and Family Services (ODJFS) on the proposed rules implementing the Medicaid School Program. The proposed rules were emergency filed on December 1, 2008 and will remain in effect until March 1, 2009.

The comments, prepared by OLRs, raise substantive issues of timely and adequate access to health care, state wideeness and comparability of services. It appears the Medicaid School Program would violate the statewide requirement as medically necessary services will only be available to children who live in districts where the school district chooses to participate. Moreover, OLRs is concerned that children will not be provided with at least the same amount, duration and scope of services available to others. OLRs also raised a number of other issues (see table below) and provided recommendations to address each issue.

View the comments on OLRs' website: <http://olrs.ohio.gov/asp/MedicaidSchoolComments.asp>. ■

OLRS' comments addressed definitions and conditions in the Medicaid School Program rule that potentially limit the number of children or services provided. Some of the other issues include:

- Definition of eligible child
- Habilitation vs. rehabilitation
- Medicaid authorized prescriber
- Medically necessary
- Skilled services
- Prior authorization
- Covered services
- Mental health services
- Failure to show progress
- Transportation services
- Targeted case management

OLRS Successfully Appeals MBI Decision

OLRS successfully represented a client who had been determined ineligible for the Medicaid Buy-In (MBI) program. The client's application to the MBI program was initially approved and she was scheduled to start receiving benefits on June 1, 2008. However, prior to the start date, she received written notification from the Ohio Department of Job and Family Services (ODJFS) that she was not eligible. She was ruled ineligible because she and her husband's resources exceeded the \$10,000 limit. Although the client's own resources were well within the eligibility limit, ODJFS informed her that she must reduce their combined resources to under \$10,000 to be eligible.

The client appealed ODJFS' decision and contacted OLRs seeking assistance. A Medicaid hearing was scheduled and OLRs attorney, George Cronheim, provided representation. At the hearing, OLRs argued that spousal resources, according to ODJFS rules, are not counted when determining MBI eligibility. The hearing officer upheld the decision to deny her application for MBI.

OLRS appealed the hearing officer's decision. The administrative appeal officer ruled that, "Only the individual's resources are considered when determining resource eligibility for the program." The administrative appeal officer's decision was final.

The client is now enrolled in the MBI program, working full-time and paying taxes. ■

OLRS Supports SOLIDARITY

OLRS is again financially supporting the SOLIDARITY '09 conference, Ohio's largest conference planned by and for people with disabilities. The conference will take place in Columbus, April 14-16, 2009.

The conference will feature more than 30 workshops, a health fair, technology exhibits, and keynote addresses. Actor Chris Burke and band members Joe and John DeMasi will provide evening entertainment.

For a registration packet, visit www.dnos.org or phone toll-free (866) 966-2028. A limited number of scholarships are available. To request a scholarship, register by March 1. ■

Hildebrant Joins National Board



Kristin E. Hildebrant, supervising attorney at OLRS was invited to join a committee of the National Advisory Board of the Sarah Jane Brain Foundation. The mission of this foundation is to assist in the research of new developments and rehabilitation for children with pediatric acquired brain injury (PABI).

The committee will review the legal, regulatory and financial issues facing children with PABI and their families and help develop, implement and fund the National Plan and Comprehensive Model System of Care for children with PABI.

The Sarah Jane Brain Foundation is named after 3-year-old Sarah Jane Donohue, who was shaken by her nurse when she was only five days old causing a severe brain injury. To learn more about The Sarah Jane Brain Foundation visit: www.TheBrainProject.org. ■

OLRS Continues Partnership with AARP

OLRS continues to partner with the American Association of Retired Persons (AARP) to provide opportunities for seniors to improve their work skills, obtain training and find a job through their Senior Community Service Employment Program. AARP coordinates the program and pays the senior worker.

OLRS values the community service and support provided by the program participants and welcomes the opportunity to work with AARP. This association with AARP is especially important given the link between disability and aging and common areas of concern such as guardianship, Medicaid waivers and community inclusion.

Tom Roule is OLRS' most current placement from AARP. Roule was employed for 16 years as a writer, editor and manager with TV Guide magazine and was a cancer research technician for 10 years with Baylor University Medical Center. OLRS welcomes Roule and future senior workers. ■

Funding

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- ▶ Client Assistance Program (CAP) - 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 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.

And also funding from the State of Ohio General Revenue Fund.

This newsletter is published bi-monthly by OLRS and is available on the web at www.olrs.ohio.gov. If you would like to receive email notification when a new edition is published, contact Tom Hemmert at Themmert@olrs.state.oh.us or contact OLRS at:

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