

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

Volume 1 Issue 4 • June 2009

..... Special Edition on Seclusion and Restraint



OHIO LEGAL RIGHTS SERVICE

OLRS Investigates the Death of a Child in Prone Restraint

The OLRs Ombudsman Section investigated the restraint-related death of a 17-year-old female at a children's residential treatment facility in northeast Ohio. The child choked on her vomit and suffocated after being held in a prone restraint by two staff members. The coroner ruled her death a homicide.

OLRS staff interviewed residential facility staff members and reviewed the resident's medical chart, the coroner's report and the investigative report completed by the Ohio Department of Job and Family Services (ODJFS), the state agency that licensed the unit where the child lived. The Ombudsman findings were consistent with those of ODJFS and the facility's internal investigation. The OLRs investigation found that the actions of staff before, during and after the restraint violated numerous state rules and facility policies. OLRs staff concluded the critical nature of these rule and policy violations significantly contributed to the restraint and the death of the resident.

The local coroner and law enforcement will address any criminal charges that may be filed.

Recommendations

The Ombudsman report included the following recommendations to the facility:

- The facility should discontinue the use of prone restraints and implement the use of positive behavioral interventions.
- The facility should provide additional staff training regarding duties and responsibilities for appropriate resident safety and supervision.
- The facility should continue to comply with the plan of correction developed by ODJFS and implement the additional oversight activities that were identified. ■

INSIDE THIS ISSUE

OLRS Investigates Death.....	1
OLRS Calls for Ban.....	2
Governor Convenes Group.....	2
Ohio's Lack of Wisdom.....	2
Interagency Workgroup.....	3
Chronology.....	3
Letter to Martin.....	4
National Perspective.....	5
OLRS Recommends Regs.....	6



OLRS Calls for a Ban on Prone Restraints

OLRS, in January, formally called for a ban in children's homes licensed by the Ohio Department of Job and Family Services on the use of prone restraints or other restraints that restrict breathing. The request followed an incident at a children's residential treatment facility in northeast Ohio where a child died during a prone restraint episode (see page 1).

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 reduce or eliminate the use of physical restraints. OLRs Executive Director Michael Kirkman said, "The goal should be to stop the use of prone restraints 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. The Ohio Department of Education has no regulations or standards for restraint of children in schools (see page 6).

OLRS also identified the need for improving state-level monitoring of restraints in certified and licensed settings, including oversight of all injuries sustained during restraint episodes. OLRs commented on proposed restraint rules, met with staff from state departments and developed publications — all activities designed to emphasize the importance of protecting children and adults from abusive restraint practices by reducing or eliminating their use and increasing oversight. ■

Governor Convenes Interagency Restraint Workgroup

On January 13, Governor Strickland instructed the Ohio Department of Mental Retardation and Developmental Disabilities (ODMRDD) to convene state agencies to develop a statewide restraint policy. The Governor called for a single statewide policy on the use of restraints and to examine the use of restraints that contributed to the death of a 17-year-old at a children's residential treatment facility (see page 1).

John Martin, director of ODMRDD, is leading the effort. In a memo to other state agency directors, Martin stressed the urgent nature of the work to be undertaken. "As you know, ODMRDD recently issued a ban on the use of prone restraints based on the research and recommendations of our Statewide Behavior Support Advisory Committee," Martin said. "This committee already has representation from many of your departments. It seems practical to use the work of this existing statewide committee and establish a new sub-committee from this group to focus on the immediate task of crafting a statewide policy," Martin suggested.

Martin said he hopes for the prone restraint ban to be adopted statewide. Authorities have said this type of restraint, which holds a person in a face-down position, contributed to the death of the youth in the children's residential treatment facility.

The state agencies on the interagency workgroup include the Departments of Alcohol and Drug Addiction Services, Education, Health, Job and Family Services, Mental Health, MRDD and Youth Services. ■

Ohio's lack of wisdom, poor communication cost teen her life

"...death has exposed a lethal level of inefficiency in the state's supervision of agencies charged with the protection and safety of some of Ohio's most vulnerable kids."

"The number of restraint-related injuries in the state is ambiguous, because no agency collects that data...And even though details about serious injuries and deaths are supposed to be reported to whichever agency licenses a facility, that information is not shared with other licensing agencies. And so it is that children die."

"The state should adopt one sensible policy on restraint that applies to all of its licensees. Anything less, as the...tragedy proved, risks the very lives the state has a duty to protect." ■

Excerpts from a January 15, 2009 Cleveland Plain Dealer Editorial about the restraint related death of a child (see page 1).

Interagency Workgroup Issues Restraint Recommendations

In late April, OLRs received a letter from the Ohio Department of Education Superintendent Deborah Delisle regarding progress of the Interagency Workgroup. The letter was in follow-up to OLRs Ombuds investigations of the abuse of students with disabilities restrained by educators in schools (see page 6).

Representatives from the seven state departments on the Interagency Workgroup agreed with the following position statement and that their recommendations be incorporated into a statewide policy on the use of prone restraints.

Position Statement

Ohio is committed to services that focus on assisting people to live meaningful lives that are free of coercion or violence of all kinds. Those services are to be provided by a caring and competent workforce in the safest and least intrusive or restrictive method possible. The safety of both staff and service recipients is of utmost concern. The use of physical restraint or seclusion is not viewed as a therapeutic intervention, but rather as the failure of treatment and is to be used only when there is imminent risk of serious harm to the individual or others. Such interventions may only be used by trained staff and under the approval, guidance and restrictions as outlined within each state department's policies.

The use of restraint and seclusion should be a last resort and the exception rather than the norm for daily service delivery. The focus for Ohio's service delivery systems should be on changing the culture of organizations toward a positive approach and eliminating the need for physical intervention.

Prone Restraint

While recommending that Ohio prohibit the use of the "prone restraint" across all seven systems due to overwhelming evidence that this face-down position carries a high risk of serious injury or death, the letter stated the use of "prone containment" may be permitted by some of the state departments under certain conditions. OLRs opposes prone containment (see page 4).

Training Components/Reporting/Tracking

The Workgroup also recommended that each state department develop a policy requiring staff training in various areas and create a process for tracking and reporting the use of restraint and seclusion

Chronology of OLRs, Federal and State Seclusion and Restraint Events

Summer-Fall 2008	The OLRs Ombuds section conducts two investigations involving the use of restraints on students receiving special education services in public schools.
Dec 18, 2008	The OLRs Ombuds section begins an investigation into the death of a client at a children's residential treatment facility while in restraints.
Jan 13, 2009	National Disability Rights Network releases report on seclusion and restraint in schools.
Jan 13, 2009	OLRS urges the Ohio Dept. of Job and Family Services to ban the use of prone restraints.
Jan 15, 2009	Cleveland Plain Dealer editorial calls for Ohio to adopt one policy on the use of restraints.
Jan 16, 2009	OLRS sends notice to the Ohio Dept. of Education to prohibit the use of restraints.
Jan 16, 2009	Cleveland Plain Dealer follows up on restraint death.
Jan 23, 2009	Governor calls for statewide restraint policy.
Jan 23, 2009	The Ohio Dept. of MRDD convenes state agencies to establish a statewide policy on the use of restraints.
Jan 27, 2009	House Committee on Education and Labor Committee Chairman asks General Accounting Office (GAO) to investigate cases of abuse and neglect of children in schools.
May 1, 2009	OLRS responds to Interagency Workgroup's restraint recommendations.
May 5, 2009	The Council of Parent Attorneys and Advocates, Inc. releases report asking Congress to stop the use of restraints, seclusion and aversives upon children with disabilities in schools.
May 19, 2009	GAO issues report on use of seclusion and restraint in schools.
May 19, 2009	House Committee on Education and Labor holds hearing. ■

Interagency Workgroup Issues (continued)

in all service areas. This will allow departments to more closely monitor the risks and measure progress toward creating a positive approach to service delivery. Furthermore, the Workgroup recommended that the group continue to collaborate toward a single state policy on the use of restraints and seclusion. ■

OLRS Opposes Use of “Prone Containment” Recommendation

OLRS, after reviewing the recommendations of the Interagency Workgroup, advised the group that it is strongly opposed to any restraint that has the potential to restrict an individual’s ability to breathe or compromises respiratory and cardiac functions. While the recommendations bar “prone restraint,” they permit “prone containment,” defined as a brief

physical or manual face-down restraint. The Workgroup’s recommendation would continue the dangerous and potentially lethal use of face-down restraints. OLRs, in a letter (see below) to John Martin, expressed concern that prone containment, like prone restraint, causes injuries and death and urged the Interagency Workgroup to reconsider the use of prone containment in Ohio. ■



50 West Broad Street
Suite 1400
Columbus, Ohio 43215-5923
olrs.ohio.gov

Telephone 614.466.7264
Toll Free 1.800.282.9181
TTY Toll Free 1.800.858.3542
Fax 614.644.1888

for people with disabilities

John Martin
Ohio Department of MRDD

May 1, 2009

Dear Director Martin,

The Ohio Legal Rights Service (OLRS) understands that the Governor will be issuing an Executive Order pursuant to the interagency workgroup's mandate to develop a statewide policy and recommendations regarding prone restraint. OLRs is deeply concerned that the recommendations will not remedy the abuse, trauma and deaths experienced by children and adults with disabilities during restraint and seclusion.

OLRS recently received a letter from Ohio Department of Education Superintendent Deborah Delisle regarding progress of the interagency workgroup. This letter was in follow-up to OLRs Ombuds investigations of the abuse of students with disabilities who were restrained by educators in schools. Her letter indicates that Governor Strickland will prohibit the use of prone restraint across all seven systems. OLRs applauds this recommendation.

However, the Superintendent's correspondence notes that "prone restraint" will be replaced by "prone containment". It is OLRs' understanding that the Department of Youth Services, part of the interagency workgroup team, uses prone containment and handcuffs on children in its custody, and plans to continue these practices. Apparently, some local school districts use prone containment as well.

As stated before, OLRs is strongly opposed to any restraint that has the potential to restrict an individual's ability to breathe or comprises respiratory and cardiac functions. In Attachment A of the Recommendations for a State-Wide Policy on Restraint in Ohio, prone containment is defined as a brief physical or manual face-down restraint. Prone containment is a type of prone restraint. Both allow restraint in face down positions. Both are dangerous and potentially lethal.

New York's Commission on Quality of Care issued a report describing the death of Neil Larkin from traumatic asphyxia during face down restraint of less than five minutes in duration. The Commission noted that death from traumatic asphyxia can occur within five minutes of the "take down." [www.cqcapd.state.ny.us/could_this_happen/caseneillarkin.htm]

The Commission reports that other factors contribute to or hasten death by traumatic asphyxia during face down restraint, such as medications (prescribed or not), pre-existing problems compromising an individual's respiratory and circulatory systems, and metabolic changes that occur in the presence of decreased oxygenation and increased energy expenditure. This information is not always known to the individuals using restraint. Thus there is a viable and recognized risk of potential harm in every incident.

Additionally, the workgroup's recommendation does not define "brief." As an example of potentially harmful interpretation, the Ohio Department of Mental Health's proposed rule 5122-26-16, states, "Prone containment shall be limited to the minimum amount of time necessary to safely bring the person or situation under control." This situational interpretation could be construed as a duration from several seconds to much longer, with all incidents considered within acceptable guidelines.

OLRS agrees with the workgroup's position that the use of physical restraint or seclusion is not therapeutic, but rather an indicator of treatment failure. The body of research on the use of restraint and seclusion concludes that their use is dangerous and counter-therapeutic. The risk of injury, including death, during these episodes is increased for both individuals experiencing the restraint and seclusion, as well as employees involved.

ODMRDD has taken the lead in recognizing the need for and value of positive, individualized behavior interventions. OLRs strongly recommends that the strategies necessary for positive culture change be included in an Executive Order and addressed consistently across the seven systems. With the move toward eliminating restraints, the field needs alternatives that work. Ohio needs positive interventions that promote therapeutic settings and promote rights and safety, and consistent and effective reporting and monitoring tools.

These matters are of paramount importance. At stake are the lives of the individuals we are charged with protecting. We urge the committee to reconsider the use of prone containment across all seven systems.

Sincerely,
Cathy Royster, OLRs Advocacy Supervisor

Seclusion and Restraint in Schools Gain National Attention

NDRN Releases Report on Seclusion and Restraint in Schools

The National Disability Rights Network (NDRN), on January 13, released a report titled, "School is Not Supposed to Hurt: Investigative Report on Abusive Restraint and Seclusion in Schools." The report documents incidents in schools across the nation of children dying or being injured in school while restrained or secluded.

NDRN identified inconsistent state laws and a lack of government oversight and investigation as contributing to this issue and called for the Obama administration and 111th Congress to ban the use of prone restraint and seclusion under federal law. NDRN also called for a national summit to devise plans to implement these bans and encourage the use of evidence-based positive behavioral supports.



The report is a compilation of cases outlined by NDRN's 57-member Protection and Advocacy (P&A) network, including two cases investigated by the OLR's Ombuds unit (see page 6). NDRN is the nonprofit membership organization for the federally mandated P&A Systems 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. The NDRN report is available at www.ndrn.org/sr/SR-Report.pdf.

GAO Issues Report to House Education and Labor Committee

A report issued by the U.S. Government Accountability Office (GAO) on May 19, in response to a request from the House Committee on Education and Labor to investigate whether allegations of deadly and abusive seclusion and restraint in schools were founded and widespread, found "no federal laws restricting the use of seclusion and restraints in public and private schools and widely divergent laws at the state level."

The GAO investigated hundreds of cases nationwide of alleged abuse and death related to seclusion and restraint and also examined the details of ten restraint and seclusion cases in which there was a criminal conviction, a finding of civil or administrative liability or a large financial settlement. The report stated the cases

shared the following common themes: involvement of children with disabilities who were restrained and secluded, often in cases where they were not physically aggressive and their parents did not give consent; restraints that block air to the lungs which can be deadly; teachers and staff were often not trained on the use of seclusions and restraints; and teachers and staff from at least 5 of the 10 cases continue to be employed as educators.

Congressman George Miller, Chairman of the House Committee on Education and Labor, requested the GAO investigation in January, after NDRN released a report highlighting these abuses.

The GAO report, "Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers," is available online at www.gao.gov/products/GAO-09-719T.

Congressional Hearings Held on the Use of Seclusion and Restraint in Schools

The GAO testified about its findings at a Congressional committee hearing on the same day of the release of its report. Two parents of the victims in cases identified in the report also testified, including a mother whose foster son died as a result of a prone restraint.

Committee Chairman Miller, in his opening statement, said that the hearing was "the first ever Congressional investigation of the abusive and deadly misuse of seclusion and restraint in our schools." He pointed out that the "issue of abuse and seclusion and restraint of children was not new to the committee," referring to hearings held in 2008 that examined allegations of abuse and death of teens in residential treatment programs. Those hearings led to the passage of H.R. 911, a bill that establishes basic health and safety standards in those programs. Miller further stated that federal law restricts the use of seclusion and restraint to emergency circumstances for children in hospitals, community-based residential treatment facilities and other facilities supported by federal dollars – but those same rules do not apply to public or private schools.

"We plan to look at this closely, with the Obama administration, to determine whether federal guidance is warranted. In light of this report, we encourage leaders of all of our nation's schools who are working hard every day to educate our kids to immediately review their policies regarding restraint and seclusion," said Miller.

article continues on page 6

Read more about the Congressional hearings at <http://edlabor.house.gov/hearings/2009/05/examining-the-abusive-and-dead.shtml>.

COPAA Releases Report Asking Congress to Stop the Use of Restraints, Seclusion and Aversives

Supporting the findings of the NDRN and GAO reports, the Council of Parent Attorneys and Advocates, Inc. (COPAA), on May 5, released a report, "Unsafe In The Schoolhouse: Abuse Of Children With Disabilities." The report details 143 incidents of the use of abusive interventions against children with disabilities in school settings. The report also includes suggested legislative remedies. The report notes that in the majority of cases, parents had not consented to the interventions and schools did not provide comprehensive Positive Behavioral Intervention Plans.

COPAA stated in a press release, "Congress should act immediately to ban prone and mechanical restraints, all restraints that interfere with breathing, locked seclusion rooms, and the application of painful aversives. In addition, physical restraint may only be permitted when there is an imminent threat of serious injury to self or others." COPAA added that school districts and their personnel must be held accountable for any violations of the law, parents must have all legal remedies to pursue justice and emphasized that all children must receive comprehensive Positive Behavioral Intervention Plans and schools must provide training on positive behavioral intervention. Read COPAA's report and recommendations at www.copaa.org/pdf/UnsafeCOPAAMay_10_09.pdf.

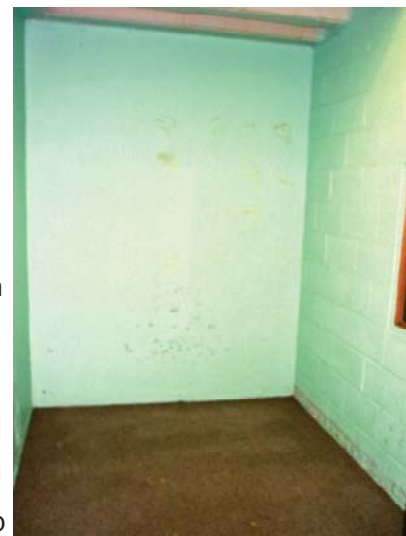
COPAA is a national nonprofit organization of parents, advocates, and attorneys who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. ■



OLRS Recommends Seclusion and Restraint Regulations in Schools

Children with disabilities in Ohio's public school system are subjected to the use of seclusion and restraints and are not afforded the same health and safety protections as those children who receive services in hospitals, agencies and residential facilities across the state. This is the conclusion of OLRs investigations into complaints around the use of seclusion and restraint in two Ohio school districts.

OLRS' Ombudsman Section conducted the investigations involving the use of seclusion and restraint in public schools serving children receiving special education services. One investigation involved an allegation of a student being placed in a Humane Body Wrap (mechanical restraint) and transported to a concrete block room in the lower level of the school building.



The investigation confirmed that the room and mechanical restraints were used to control students with challenging behaviors. In addition, the OLRs investigator found that the school staff did not have training on the use of the restraints nor had they received instruction on positive behavioral interventions. The local children services board also investigated and substantiated an allegation of neglect over the use of mechanical restraints at the school.

Children were left alone, sometimes restrained by a Humane Body Wrap, in this cinderblock room.

In the second case, OLRs investigated a complaint alleging the use of inappropriate behavioral interventions in a self-contained classroom. OLRs investigators determined that teachers documented the use of emergency behavioral interventions, but the school could not produce written policies or guidelines related to the use of emergency behavioral interventions, such as seclusion, time out and physical or mechanical restraints.

article continues on page 7

In both cases, OLRS investigators found the use of inappropriate behavioral interventions in self-contained classrooms and that staff were not trained in positive behavioral intervention techniques.

Ombuds reports to the involved school districts and the Ohio Department of Education (ODE) included specific recommendations to the schools and requested ODE to address the lack of administrative rules regarding the use of physical or mechanical restraints, seclusion and time out for classrooms in Ohio. Currently, ODE has no specific laws or regulations to protect children from emergency behavioral intervention.

Letter of Complaint Identifies Lack of Rules

Prompted by deficiencies identified during the course of the investigations and ODE's unwillingness to respond to the Ombudsman reports, OLRS sent a formal letter of complaint to ODE on January 16. The letter recommended that ODE address the lack of administrative rules regarding the use of emergency behavioral interventions in schools, referencing regulations in the Children's Health Act of 2000 and in the Individuals with Disabilities Education Act (IDEA).

The Children's Health Act prohibits the use of mechanical restraints in non-medical, community-based facilities for children and youth and requires a doctor's order to use seclusion or restraints with children.

The unregulated practice of using emergency behavioral interventions in Ohio's schools also violates the IDEA which requires the implementation of positive behavioral interventions and strategies to address a child's behavioral concerns. IDEA states that the student's Individualized Education Program (IEP) team shall "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other

OLRS Ombudsman Section

OLRS is the state designated protection and advocacy agency for persons with disabilities in Ohio. The Ombudsman Section authority is derived from Sections 5123.601 to 5123.604 of the Ohio Revised Code. Ombudsman investigations are conducted for the purposes of resolving and mediating complaints or deficiencies that are brought to its attention concerning any activity, practice, policy or procedure that is determined to adversely affect or may adversely affect the health, safety, welfare, and civil or human rights of individuals with disabilities.



A seclusion room in a basement of a school in southwest Ohio.

strategies, to address that behavior.”

Emergency Behavioral Interventions Guidelines

The OLRS Ombudsman Section determined that a deficiency exists that adversely affects the health, safety, welfare and civil or human rights of individuals with disabilities in school settings. OLRS, in the complaint letter, requested ODE to take immediate steps to develop and promulgate rules that would require schools, at a minimum, to meet the following:

- prohibit the use of prone restraints, or any restraint that restricts or obstructs a child's airway and breathing,
- allow the use of emergency behavioral interventions only when there is an imminent risk of physical harm to self or others and never for punishment or discipline,
- require the development of a positive behavioral plan whenever an emergency behavioral intervention is used with a student,
- require school personnel to be required to receive on-going training on the use of positive behavioral interventions,
- require that parents/guardians be notified of each episode of an emergency behavioral intervention,

Seclusion and Restraint (continued)

- require schools to maintain a log that records each instance of an emergency behavioral intervention,
- require schools to compile annual reports on the number of emergency behavioral interventions used, and
- within 24 hours of any serious injury or death during an emergency behavioral intervention, require schools to report the incident to the local school district:
 - require ODE to notify OLRS, as the federal Protection and Advocacy System, within 48 hours of these reports, and
 - require ODE to recognize that OLRS is authorized to investigate incidents involving serious injury or death during an emergency behavioral intervention.

By enacting administrative rules on the use of emergency behavioral interventions, ODE will provide schools the information, training and guidance that will result in protecting the well being of students with disabilities receiving educational services in Ohio. ■



An Ohio school's seclusion room with double locks on the metal door.

Funding

OLRS is funded by grants from:

- ▶ 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:

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

