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May 1, 2009

The Honorable Edmund A. Sargus, Jr.
United States District Judge
85 Marconi Boulevard
Columbus, Ohio 43215

Re: *Martin v. Strickland*, No. C2:89-220 ³⁶²

Dear Judge Sargus:

I am writing to ask for whatever assistance the Court may be able to offer in resolving an impasse related to the consent order in the above referenced case and the potential for relief for those class members who were involved in the case of *D.M. v. Butler County Board of Mental Retardation and Developmental Disabilities*, No. C2:08-00399 (hereinafter *D.M.*).

As you know, the consent order in the case of *Martin v. Strickland* provided very specific relief to a broad class of individuals with developmental disabilities. That relief was designed to begin the process of remedying decades of undue segregation of class members due to the policies of the state of Ohio. Thus, the settlement was to be implemented over a fixed period of time, twenty six months, and the consent order expires by its own terms on June 30, 2009.

When that settlement was reached between the plaintiff class and the state defendants, it was apparent to the parties that 1500 waivers over two years was an achievable number, both in terms of system capacity and budgetary constraints. At the same time, that number could only address a portion of the class members' needs for home and community based services, and could not possibly address every contingency that arose during even the limited period that the order would be in effect.

That situation has now been complicated by events that were certainly unforeseen at the time of the negotiation in *Martin*, and which led to the litigation in *D.M.*. As you know, that case resulted in an order from the court finding that the res judicata effect of *Martin* barred the *D.M.* plaintiffs from litigating the merits of their claims under Title II of the Americans with Disabilities Act. (That dismissal is currently on appeal to the Sixth Circuit U.S. Court of Appeals.)

The court's order in *D.M.* seems to invite the *Martin* class to seek further relief against the county board within the confines of *Martin*. ("If plaintiffs contend that the Butler County MR/DD Board is not complying with the *Martin* settlement agreement and Consent Order, their remedy is to file a motion seeking to enforce the Consent Order." Opinion and Order at 5) At the same time, as

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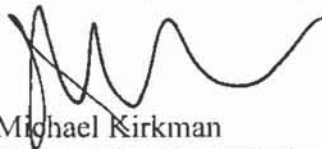
counsel for the *Martin* class, I am disinclined to consider revisiting a consent order that is about to expire, especially where all indications are that the state defendants have fully complied with their obligations under the consent.

Further, it is unclear to me what remedy would be available in *Martin* for the Butler County residents. It may be that the Butler County Board has failed to take full advantage of the opportunities for *Martin* class members; there is, however, a serious question regarding whether a particular county board had any obligation to take any action under the *Martin* decree, which was negotiated by the plaintiff class and the state defendants exclusively.

Thus, I am writing you today to ask for assistance from the Court in resolving this situation. If the Court agrees, a status conference with all parties from *Martin* (including the county intervenors) may help to clarify for the parties the Court's view of the relationship between the final consent order and the earlier dismissal agreement with the intervenors. Additionally, as the number of class members from Butler County seeking individual relief is now reduced to thirteen, a solution to this impasse might be achieved by bringing all of the parties together under the guidance of the Court.

Thank you in advance for your consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Kirkman", with a stylized, wavy flourish extending to the right.

Michael Kirkman
Counsel for Plaintiff Class

c: Roger Carroll
Franklin Hickman