



The Arc of Texas

Position Statement on the Settlement Agreement between the U. S. Department of Justice and the State of Texas Regarding Texas State Schools

July 1, 2009

The Arc of Texas believes that the Settlement Agreement, even with the massive appropriations that it provides for Texas state schools, can never achieve the quality of care that persons with intellectual and developmental disabilities deserve. Nonetheless, to the extent that the Settlement Agreement will improve the health and safety of residents and other conditions at the state schools, The Arc will work toward its full and effective implementation. However, The Arc will continue to focus its advocacy efforts on building upon the successes of the 2009 Texas legislative session to expand community services options to deter future institutionalization and to create opportunities for current residents to move from inadequate institutional facilities to community-based programs.

Background:

On May 30, 2009, the Texas Legislature gave its approval to the Settlement Agreement between the United States Department of Justice (DOJ) and the State of Texas regarding Texas institutions serving persons with intellectual and developmental disabilities. In doing so, the state committed \$342.8 million of state and federal funds over five years to address issues of improper care and treatment of state school residents that have captured headlines throughout the nation. Much of this massive commitment of funding will go to hire, train, and supervise additional staff to care for the 4,600 residents now living in Texas state schools.

The Arc of Texas, a statewide volunteer organization advocating on behalf of Texans with intellectual and developmental disabilities, agrees that steps must be taken to protect the health and safety of state school residents. However, we are unconvinced that the Settlement Agreement will produce the fundamental reforms that will prevent incidents of abuse, neglect, and exploitation such as the recently disclosed "fight clubs" at Corpus Christi State School or the savage beating of a resident at Denton State School by a dorm attendant under the influence of drugs.

In 2007, the Texas Legislature approved an infusion of some one-hundred million state and federal dollars into the state schools; much of which was committed to hiring approximately 1,600 additional staff members for the system. This was historically the largest funding



The Arc of Texas

investment in the Texas state school system. Yet, despite this massive allocation, reports of inadequate care and abuses have continued and have been dramatically documented in the 2008 DOJ investigation report.

Research, stemming as far back as the 1970s, concludes the very nature of institutions prohibits them from providing meaningful, individualized services and supports that are free from abuse, neglect and exploitation.¹ We believe the commitment of an additional \$342.8 million over the next five years will only result in better staffed, better funded facilities that will continue to provide inadequate care to their residents.

Some of our respected colleagues suggest that The Arc of Texas or others take legal action to intervene in the Settlement Agreement before it is finally approved by the Federal District Court. Suggestions have been made that an intervention might lead to inclusion into the Settlement Agreement of more specific and transparent standards to ensure quality of care is attained in coming years. However, such litigation might take years, and if successful, implementation would likely demand even higher legislative appropriations; investing millions more into the institutional infrastructure with no real assurance that the outcome of quality services would be achieved.

At this time, we believe it is not in the best interest of Texans with intellectual and developmental disabilities for The Arc of Texas to pursue litigation and have instead determined to continue pursuing a systems advocacy approach.² This decision is not taken lightly, but is a culmination of over three decades of arduous work, including federal lawsuits, to decrease the institutional dominance in Texas.

Although, Texas legislators have adopted the Settlement Agreement, even they have come to understand that systems reform is necessary. Through the efforts of The Arc of Texas and other advocacy organizations, the Legislature now recognizes that increased funding for institutional settings is not the only answer to reform the current deficiencies in Texas state schools which have appropriately captured national attention and criticism.

¹ The Community For All Toolkit (<http://thechp.syr.edu/toolkit/>), a document that incorporates decades worth of research on the topic of institutional services and community-based services for persons with disabilities, describes the various factors (i.e. abuse and neglect, dehumanization, segregation and isolation from the community, lack of human and civil rights, lack of access to education and assistive technology) that are compounded when large numbers of individuals are housed in congregate care facilities.

² Systems Advocacy Approach: an effort to change policies, rules or laws which determine how services are provided to improve the entire system to the benefit of individuals.



The Arc of Texas

During the 2009 legislative session, The Arc of Texas worked closely with legislative leaders on responsibly reforming the service delivery system for persons with intellectual and developmental disabilities by focusing three key priorities:

1. Significantly reducing the waiting lists for community-based Medicaid Waiver programs for all Texans with disabilities. Of the 100,192 Texans waiting for services and supports, over 53,000 are individuals with intellectual and developmental disabilities and many of these have waited between eight and nine years for services.
2. Strengthening the safety-net, or the network of community-based programs, so individuals with intellectual and developmental disabilities in need of critical services and supports do not have to resort to institutionalization as the only means of receiving care.
3. Responsibly reforming the service delivery system for persons with intellectual and developmental disabilities, and in particular, Texas state schools, in order to bring it up to date with national policies and best practices. The Arc of Texas' responsible reform plan called for:
 - a. Adopting a multi-year plan to transition all children and a significant number of adults with intellectual and developmental disabilities residing in Texas state schools to the community, utilizing the Community Living Options Information Process and taking into consideration multiple variables including the needs of the individuals, the community's capacity and infrastructure to meet those needs, as well as the state school employees who currently serve those individuals; and,
 - b. Closing the front-door to Texas state schools, with the exception of individuals who are in crisis and need short-term residential services and supports.

As a result of these efforts, the 2009 Legislature adopted one of the most remarkable actions ever taken in support of Texans with disabilities. With its appropriation of \$464.5 million in state and federal funds over the next two years to develop community placements, more than 7,800 additional Texans with intellectual and developmental disabilities will receive community-based services and supports, substantially reducing the current waiting lists.

With this monumental appropriation, an additional 5,936 individuals will be served in the Home and Community-Based Services (HCS) Medicaid Waiver Program. This figure includes HCS funding for 620 individuals moving out of state schools, moving out of large community ICF/MR and for children aging out of the foster care system. The figure also



includes HCS funding for 196 “emergency placements” for children and adults who are at imminent risk of institutionalization. The significant appropriation will expand Community Living Assistance and Support Services (CLASS) and Deaf-Blind Multiple Disability (DBMD) Medicaid Waiver Programs to 1,890 and 6 individuals respectively. A significant amount of funds were also appropriated to restore the safety-net for this population.

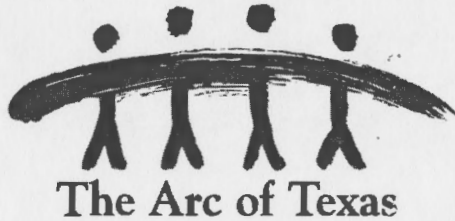
The legislature very strategically developed language to ensure that the appropriation is contingent upon several key policy directives. They are: (1) DADS must reduce the number of state school residents; (2) DADS must identify state school residents for community placement using the Community Living Options Information Process; and, (3) DADS transferring the case management function from HCS Medicaid Waiver Program Providers to local MR-Authorities. Furthermore, the legislature intends for the costs of serving state school residents in the community to be financed through reduced expenditures for state school operations. This, in itself, is a monumental statement. [The Community Living Options Information Process was re-established and strengthened by legislators during the 2007 legislative session. The process ensures that only an independent third-party can provide community living options information to state school residents. In conjunction, the transfer of the case management function from HCS Program Providers to MR-Authorities will provide oversight in the development and implementation of Individual Plans of Care.]

The actions by the Texas Legislature in 2009 represent a significant commitment in continuing efforts to reform the service delivery system for Texans with intellectual and developmental disabilities. Collectively, they establish a comprehensive initiative to expand the capacity of the community services system. This process will not only serve people in their communities, thereby preventing institutionalization; it will also support residents of state schools who choose to move from an institutional setting into the community.

Investing vast additional sums in the institutional infrastructure is not the long-term answer in meeting the support and service needs of persons with intellectual and developmental disabilities. Such funding streams will never result in the quality of care individuals and their families want and deserve. The real answer lies in building a community infrastructure that can serve all people with disabilities, including children and adults with significant intellectual, medical, behavioral, and physical support needs.

As an advocate for all people with intellectual and developmental disabilities regardless of where they live, The Arc of Texas commits itself to the following actions in regards to the Settlement Agreement:

1. We will advocate with the state to fully implement the Settlement Agreement;
2. We will meet with the DADS Commissioner to offer our input into the development of



- the Settlement Agreement implementation plan;
3. We will support the efforts Advocacy, Inc, of our state's Protection and Advocacy system agency, to address resident issues within the state facilities; and, as an advocate for residents of Texas state schools,
 4. We will work with agency leaders and legislators to ensure that all Settlement Agreement appropriations are spent effectively to improve conditions within the state schools.

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