Access to Justice: The Impact of Federal Courts on Disability Rights

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The federal court system has played a significant role in securing the most fundamental of rights for people with developmental disabilities and other disabilities, especially before the 1990 passage of the Americans with Disabilities Act. Certain federal court decisions have had an important impact on the evolution of disability rights.

Freedom from Involuntary Servitude

There were at least 10 federal lawsuits filed in the late 1960s and early 1970s against states that forced people with developmental disabilities to work while they were confined to a state institution.

Souder v. Brennan, 367 F. Supp. 808 (D.D.C. 1973)

In 1973, *Souder v. Brennan* established that the U.S. Department of Labor must enforce provisions of the Fair Labor Standards Act (FLSA) and provide guidelines and policy directives as to patient-laborers in state institutions.[1] The Fair Labor Standards Act was amended in 1966 to extend the minimum-wage and overtime provisions to all nonprofessional employees of "hospitals, institutions and schools for the mentally handicapped."[2] The court found that these provisions applied to working residents in institutions. Additionally, superintendents of state institutions must keep required records of patient-laborers and inform them of their rights under this decision. Addressing the Department of Labor's argument that it was hard to distinguish between work and work therapy or vocational training, the court noted:

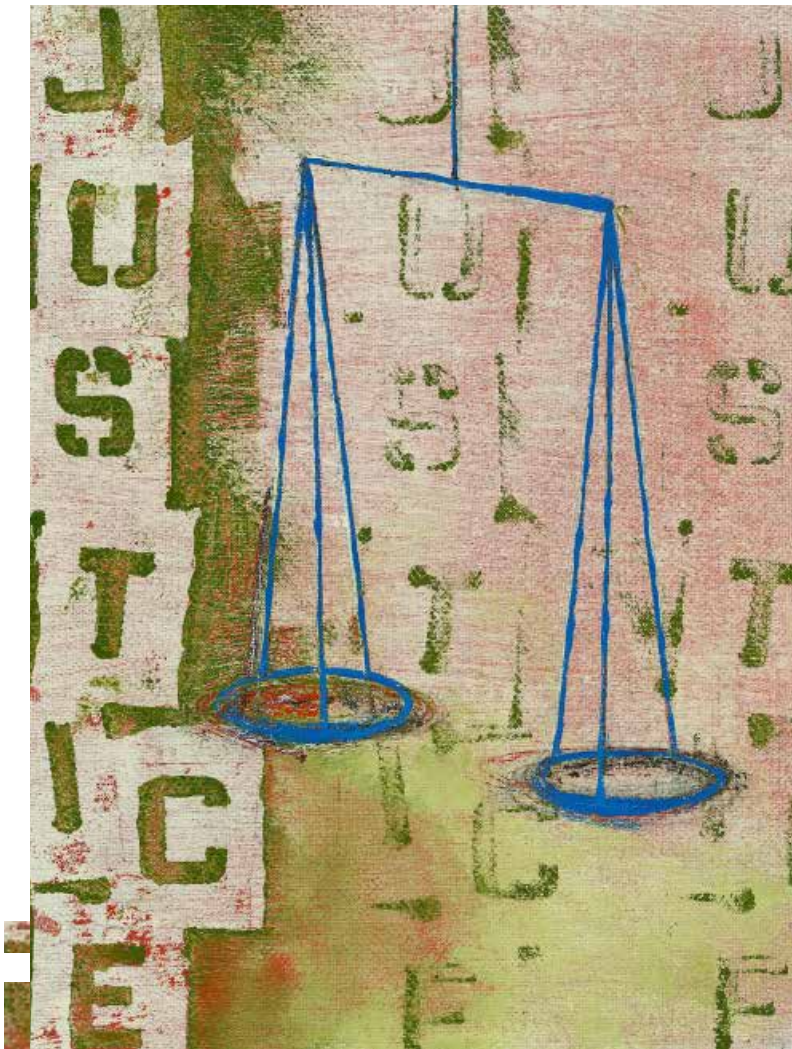
> Economic reality is the test of employment and the reality is that many of the patient workers perform work for which they are in no way compensated and from which the institution derives full economic benefit. So long as the institution derives any consequential benefit the economic reality test would indicate an employment relationship rather than mere therapeutic exercise.

A consent decree issued on June 18, 1974 in *Jortberg v. Maine Dep't of Mental Health* set an important precedent in which the state agreed to pay all resident workers, regardless of their level of performance, whether the work is "therapeutic" or not.[3]

Current controversy over "subminimum wage"

While the Fair Labor Standards Act (FLSA) sets a national minimum wage, Section 14(c) allows employers certified by the U.S. Department of Labor to compensate persons with disabilities at a rate less than the minimum wage, known as a "subminimum wage".[4] Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division of the U.S. Department of Labor, to pay subminimum wages to workers who have disabilities for the work being performed. According to the U.S. Department of Labor, Section 14(c) does not apply unless the disability actually impairs the worker's earning or productive capacity for the work being performed, and the fact that a worker may have a disability is not in and of itself sufficient to warrant the payment of subminimum wages. According to a 2012 report by the National Council on Disability, about 420,000 Americans with disabilities are employed under the arrangement.

Many have called for the abolition of Section 14(c), arguing that it is inconsistent with the national policy goals set forth in the Americans with Disabilities Act (ADA) because it discriminates against people with disabilities. Others argue that the subminimum wage program still has valuable role, as it may provide opportunities to people with disabilities who



have been unable to obtain employment with a competitive wage. In its 2012 report, the National Council on Disability, an independent federal agency that advises Congress and the President on disability issues, called for an end to the policy of allowing employers to pay workers with disabilities an amount less than the minimum wage. "The 14(c) program should be phased-out gradually as part of a systems change effort that enhances existing resources and creates new mechanisms for supporting individuals in obtaining integrated employment and other non-work services," wrote Jonathan Young, chairman of the National Council on Disability, in a letter to President Obama dated Aug. 23, 2012, accompanying the report. "NCD recommends a phase-out of the 14(c) program rather than immediate repeal because those who have been in the program for many years need time to transition to a supported employment environment."

Legal action is also being taken by opponents of the subminimum wage practice. In January 2012, the United Cerebral Palsy Association of Oregon and Southwest Washington, along with eight individuals representing thousands of Oregonians with disabilities, filed a class action lawsuit in the U.S. District Court for the District of Oregon against Oregon Governor John Kitzhaber and top managers at the Oregon Department of Human Resources.[5] According to the lawsuit, more than 2,300 Oregonians are "stuck in long-term, dead-end, facility based sheltered workshops that offer virtually no interaction with non-disabled peers." The lawsuit argues that some of these workers can work competitively and should be afforded to do so, and that confining people in segregated workshops violates the Americans with Disabilities Act and the Rehabilitation Act.

Right to Education

Two critical cases in the early 1970s addressed the issue of education for children with disabilities. In 1972 and 1973, the federal courts made it clear that schools owed all students the equal protection of the law without discrimination on the basis of disability. Before these decisions, millions of children with disabilities were either refused enrollment or inadequately served by public schools.[6] In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* and *Mills v. Board of Education*, the courts interpreted the due process clause of the Fourteenth Amendment to give parents specific rights that included prior notice, the right to discuss changes in their child's education plan before those changes occurred, and the right to appeal decisions made by school districts. In both *P.A.R.C.* and *Mills* the judges struck down local laws that excluded children with disabilities from schools and established that children with disabilities have the right to a public education.

P.A.R.C. v. Commonwealth of Pennsylvania

The Pennsylvania Association for Retarded Children et al. v. Commonwealth of Pennsylvania et al., 334 F. Supp. 279 (E.D. Pa. 1972) was a landmark decision that affirmed the right of children with disabilities to a free public education and certain due process procedural safeguards. Judge Raymond Broderick presided over this class action suit filed on behalf of 14 children with developmental disabilities who were denied access to public education. The issue before the court was the constitutionality of Pennsylvania statutes and practices that denied access to public education to children with developmental disabilities. The plaintiffs contested a state law that specifically allowed public schools to deny services to children "who have not attained a mental age of five years" at the time of enrollment in first grade.

A stipulation by the parties, approved and ordered into effect by the court on June 18, 1971, required that due process rights be given to children with disabilities. It specifically stated that no child may be denied admission to a public school program or have his educational status changed without first being accorded notice and the opportunity for a due process hearing. The parties' consent agreement stated:

> Expert testimony in this action indicates that all mentally retarded persons are capable of benefitting from a program of education and training; the greatest number of retarded persons, given such education and training, are capable of achieving self-sufficiency, and the remaining few, with such education and training, are capable of achieving some degree of self-care; that the earlier such education and training begins, the more thoroughly and the more efficiently the mentally retarded person will benefit from it; and, whether begun early or not, that a mentally retarded person can benefit at any point in his life and development from a program of education and training. ... It is the Commonwealth's obligation to place each mentally retarded person in a free, public program of education and training appropriate to the child's capacity.[7]

The court found that the statutes violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, and entered an order enjoining Pennsylvania from applying any statute that would postpone, deny access, or terminate a free, appropriate public education to any child with a developmental disability. The court ruled that each child should be offered an education appropriate to his or her learning capacities, and indicated that this should be done in the least restrictive environment.

Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972)

Mills v. Board of Education was similar to, and supported and expanded the *P.A.R.C.* case. *Mills* was brought as a class action on behalf of seven school-age children who had been denied placement in a publicly supported educational program for substantial periods of time because of alleged mental, behavioral, physical, or emotional disabilities. The plaintiffs sought an injunction on due process grounds. The District of Columbia government and school system conceded that it had the legal "duty to provide a publicly supported education to each resident of the District of Columbia who is capable of benefitting from such instruction" but argued it was impossible because they lacked the necessary fiscal resources. The *Mills* court was not persuaded and held that no child could be denied a public education because of "mental, behavioral, physical, or emotional handicaps or

deficiencies." The court further noted that defendants' failure to provide such an education could not be excused by the claim of insufficient funds, stating:

> If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System, whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child.

The procedures ordered in *Mills* would later be included by Congress in legislation codifying the right to education for all children.

Subsequent developments and current status

In 1975, the Education for All Handicapped Children Act (now called the Individuals with Disabilities Education Act, or IDEA) codified the right to a free, appropriate, public education for all students, including those with severe disabilities.[8] IDEA requires that all public schools accepting federal funds provide equal access to education to children with physical and mental disabilities, and that each child have an "individualized education program" in the "least restrictive environment" possible. However, the meaning of "appropriate" education is often a source for controversy and litigation. Under IDEA, states are required to develop plans with the following components: provision of "full educational opportunities" to all; due process safeguards to aid parents in challenging many decisions regarding the education of their children; a guarantee that children with disabilities will be educated to the fullest extent possible; procedures to assure that tests and other materials used to evaluate a child's special needs are not culturally or racially biased; and a plan to identify and evaluate all of the state's children with special needs.

As of 2010, nearly 6.5 million students are receiving services under IDEA.[9] A June 2012 Report to Congressional Requestors by the United States Government Accountability Office shows concern about certain burdensome requirements that may require legislative changes.[10] These concerns include IDEA's data collection requirements as well as issues surrounding the transition of preschool students with disabilities from what is called the IDEA Part C program (for children under 3 years of age) to the IDEA Part B program (for children 3 to 21 years old). Every state that receives IDEA funds must have in effect policies and procedures which ensure that an individualized plan has been developed and implemented by the third birthday of each child participating in the IDEA Part C program who will transition into the IDEA Part B program. According to the report, some district officials feel that the transition requirements impose a burden on them due to their lack of flexibility. Because the third birthday deadline is established by statute, the Secretary of Education lacks authority to provide exceptions to states and school districts. IDEA is currently up for reauthorization by Congress and it remains to be seen whether these suggestions will be incorporated into the statute.

Right to Treatment and "Least Restrictive Environment"

In the 1960s and 1970s, the courts began to address growing concerns about the conditions in public institutions for people with disabilities, as well as the lack of therapeutic services.

Wyatt v. Stickney

In 1970, the guardian of Ricky Wyatt brought suit against the Alabama Department of Mental Hygiene, alleging failure of the state to provide proper treatment at the Partlow State School and Hospital.[11] A federal district court judge in Alabama ruled that involuntarily committed patients "unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition." This court was the first to hold that there was a constitutionally based right to treatment for civilly committed patients. The court issued a decree stipulating that all community resources must first be explored before admission to an institution is considered, no individual should remain in a residential facility longer than necessary, and no person should be returned to the community indiscriminately.

A final order and opinion by Judge Frank Johnson was handed down on April 13, 1972, setting standards for minimum constitutionally and medically adequate habilitation and establishing a detailed procedure for implementation. These standards offered protections to ensure a humane psychological environment; minimum staffing requirements; detailed standards of physical care; nutritional requirements; provisions for individualized evaluations, habilitation plans, and education programs; and a requirement that every person has the right to the least restrictive setting necessary for habilitation. The opinion concluded that an institution should only be used as a last resort and only if the individual's needs can be met.

The Court of Appeals agreed, holding that the Fourteenth Amendment to the Constitution guarantees civilly committed individuals a right to treatment.[12] *Wyatt* became the model for cases challenging institutional conditions.

Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974)

In *Welsch v. Likins*, a Minnesota federal district court recognized that due process requires that civil commitment for individuals with developmental disabilities be accompanied by minimally adequate treatment designed to give each committed person a reasonable opportunity to be cured or to improve his or her mental condition. This case was brought by Patricia Welsch, a resident of Cambridge, against the Minnesota Commissioner of Public Welfare on behalf of all people committed to state institutions against their will. She argued that current treatment practices, such as seclusion, physical restraints, and excessive use of tranquillizing medication, violated her constitutional right to due process under the law. The State of Minnesota argued that neither the

Constitution nor state law required any specific treatment.

The court disagreed, holding that the court itself had a constitutional duty "to assure that every resident of Cambridge receives at least minimally adequate care and treatment consonant with the full and true meaning of the due process clause." The court found that the right to due process included the right to basic hygienic conditions, a safe and humane living environment, and reasonable access to exercise and outdoor activities. It noted that institutionalized individuals had not been convicted of any crime and were instead passive victims of an uncontrollable "status." The court ruled that if the state institutionalized a person, it had to provide that person with "adequate treatment" which would give the person "a realistic opportunity to be cured or to improve his or her mental condition." The court concluded:

> The evidence in the instant case is overwhelming and convincing that a program of 'habilitation' can work to improve the lives of [the institution]'s residents. Testimony of experts and documentary evidence indicate that everyone, no matter the degree or severity of 'retardation,' is capable of growth and development if given adequate and suitable treatment.

New York State Ass'n for Retarded Children v. Rockefeller, 357 F. Supp. 752 (E.D.N.Y. 1973)

This action was filed in the U.S. District Court for the Eastern District of New York, alleging that conditions at the Willowbrook State School for the Mentally Retarded violated the constitutional rights of the residents. On the testimony of parents and the affidavits of others, Judge Orin Judd found numerous failures to protect the physical safety of the children and that their condition was deteriorating rather than improving, due to poor physical maintenance and "conditions ... hazardous to the health, safety, and sanity of the residents." Judge Judd ruled that people with developmental disabilities should live free from cruel and unusual punishment, and that plaintiffs' constitutional right to protection from harm in a state institution meant that the residents of Willowbrook were "entitled to at least the same living conditioners as prisoners." Finding that the plaintiffs did not have such conditions, he issued a consent judgment setting forth guidelines and requirements for the operation of the institution. In 1975, the U.S. District Court for the Eastern District of New York approved the consent judgment settling the *Willowbrook* case.

Current Status

These legal actions helped to pave the way for deinstitutionalization and gave greater visibility to the potential impact of the legal system on improving the lives of people with disabilities.

Changes in federal laws soon followed. In 1974, President Richard Nixon issued Executive Order 11776, setting forth the national goal of returning about one-third of the 200,000 people with developmental disabilities in public institutions to community residential placements.[13] The Justice Department was directed to strengthen the full legal rights for people with mental disabilities. In October 1972, Congress amended the Social Security Act to create the federal Supplemental Security Income Program.[14] This program was intended to assist those who cannot work because of age, blindness, or disability by "set[ting] a Federal guaranteed minimum income level for aged, blind, and disabled persons."[15] Additionally, amendments to the Rehabilitation Act required that people with severe disabilities be given priority for vocational rehabilitation services, and Section 504 prohibited discrimination against people with disabilities in federally funded programs.[16]

Right to Habilitation

Halderman v. Pennhurst, 446 F. Supp. 1295 (E.D. Pa. 1977)

In 1974, Terri Lee Halderman, a minor resident of Pennhurst State School and Hospital, a Pennsylvania institution for care of those with mental disabilities, brought a class action in the District Court for the Eastern District of Pennsylvania on behalf of herself and all other Pennhurst residents against Pennhurst, its superintendent, and various officials of the Commonwealth of Pennsylvania responsible for the operation of Pennhurst. It was alleged that conditions at Pennhurst violated various state and federal constitutional and statutory rights of the class members. Specifically, the lawsuit argued that these conditions denied the class members due process and equal protection of

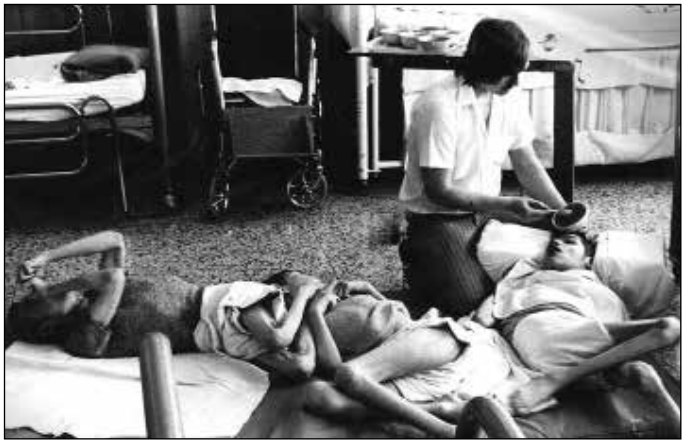


Exhibit at the *Welsch* trial in 1973: Man being fed, Boswell Hall.

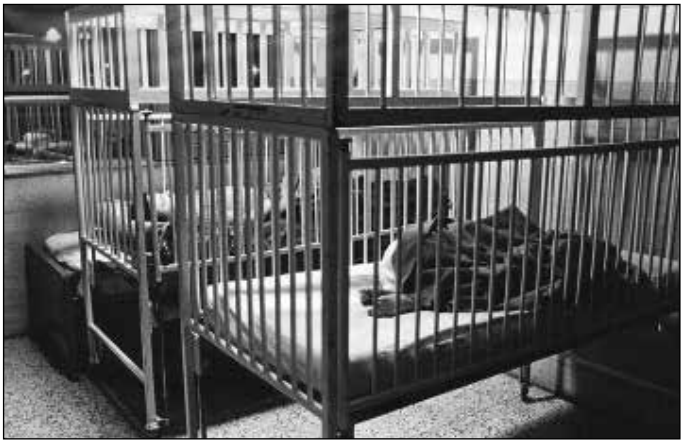


Exhibit at the *Welsch* trial in 1973: Crib enclosures, Boswell Hall.

the law in violation of the Fourteenth Amendment, that Pennhurst used cruel and unusual punishment in violation of the eighth and fourteenth amendments, as well as the Pennsylvania Mental Health and Mental Retardation Act of 1966. The class sought injunctive and monetary relief, as well as the closure of Pennhurst and the establishment of "community living arrangements" for its residents.

Ultimately, the district court awarded injunctive relief and ruled that certain rights of the patients had been violated. The district court held that there is a federal constitutional right to be provided with "minimally adequate habilitation" in the "least restrictive environment," regardless of whether the patients were voluntarily or involuntarily committed. According to the court, there also existed a constitutional right to "be free from harm" under the Eighth Amendment, and to be provided with "nondiscriminatory habilitation" under the Equal Protection Clause. Each of these rights was found to have been violated by the conditions at Pennhurst. The district court ordered that Pennhurst eventually be closed and that suitable "community living arrangements" be provided for all Pennhurst residents.

The Court of Appeals for the Third Circuit affirmed, but on a different rationale.[17] The Court of Appeals did not base its affirmation on the constitutional claims, but rather on a construction of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 6000 *et seq.* The court also affirmed the district court's holding that Pennhurst residents have a state statutory right to adequate habilitation. However, the decision was ultimately vacated by the U.S. Supreme Court based on the Eleventh Amendment principle that federal courts cannot order state officials to comply with state laws.[18] The institution was eventually closed pursuant to a settlement agreement.

Most Integrated Setting

Olmstead v. L.C., 527 U.S. 581 (1999).

In *Olmstead v. L.C.*, the U.S. Supreme Court rejected the state of Georgia's appeal to enforce institutionalization of individuals with disabilities, affirming the right of individuals with disabilities to live in their community. The Court based its decision on sections of the Americans with Disabilities Act, along with other federal regulations that require states to administer their services, programs, and activities "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." This decision marked the first time the U.S. Supreme Court had applied the ADA to institutionalization. The case reached the Supreme Court when the Georgia Department of Human Resources appealed an Eleventh Circuit decision holding that it had violated the ADA's "integration mandate" by segregating two women with mental disabilities in a state psychiatric hospital long after the agency's treatment professionals recommended their transfer to community care.

Current Status

The *Olmstead* decision opened the door for persons with disabilities and their families to request and receive a full range of community services as alternatives to services provided in institutionalized settings. The Court mandated that states make reasonable modifications to their programs to foster the placement of individuals in the least restrictive setting appropriate for each individual. In its letter to state Medicaid directors, the Centers for Medicare & Medicaid Services (CMS) suggested that states could comply with the *Olmstead* decision by developing "a comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings."[19] However, some have questioned the impact of the decision, noting that it is not based on a constitutional right and pointing out internal deficiencies that weaken the force of its integration mandate, including lack of guidance on standard of care and lack of direction on the respective roles of the courts and legislatures.[20]

Conclusion

The federal courts have played an important role in securing and enforcing the constitutional rights of those with disabilities. Court decisions frequently served as the impetus to legislative change codifying certain rights and protections. One significant law is the Americans with Disabilities Act, passed in 1990. Through the passage of the ADA, Congress set forth as a goal the assurance of equality of opportunity, full participation, independent living, and economic self-sufficiency for people with disabilities. The federal courts continue to play a crucial part in defining and enforcing both statutory and constitutional rights of those with disabilities. **TFL**

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Endnotes

[1]*Souder v. Brennan*, 367 F. Supp. 808 (D.D.C. 1973); Fair Labor Standards Act of 1938, 29 U.S.C. § 201.

[2]This article contains several different terms such as "retardation" and "handicap." Note that we are using out-of-date language to provide historical context, but current terminology uses terms such as "intellectual disabilities" or "developmental disabilities."

[3]*Jortberg v. Maine Dep't of Mental Health*, Civil No. 13-113 (D. Me.), consent decree, June 18, 1974.

[4]Fair Labor Standards Act of 1938, 29 U.S.C. § 201.

[5]*Lane v. Kitzhaber*, No. 3:12-cv-00138-ST (D. Ore. filed Jan. 25, 2012).

[6]U.S. Congress, Committee on Education and Labor, Ad Hoc Subcommittee on the Handicapped. Hearings. Testimony of Dr. Samuel Kirk, director, Institute for Research on Exceptional Children, University of Illinois. 89th Cong., 2d sess., 1966.

[7]*The Pennsylvania Association for Retarded Children et al. v. Commonwealth of Pennsylvania et al.*, 334 F. Supp.

279, 307 (E.D. Pa. 1972)

[8]Education of All Handicapped Children Act, Public Law 94-142 (1975), now codified as Individuals with Disabilities Education Act, 20 U.S.C. § 1400 (2004).

[9]U.S. Dep't of Education, NCES 2011-015, DIGEST OF EDUCATION STATISTICS: 2010 (2011).

[10]U.S. Gov't Accountability Office, GAO-12-672, K-12 EDUCATION: SELECTED STATES AND SCHOOL DISTRICTS CITED NUMEROUS FEDERAL REQUIREMENTS AS BURDENSOME, WHILE RECOGNIZING SOME BENEFITS (2012).

[11]*Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971) (right to treatment), 334 F. Supp. 1341 (M.D. Ala. 1971) (finding defendants' remedial plans insufficient), 344 F. Supp. 373 (M.D. Ala. 1972), aff'd, 503 F.2d 1305 (5th Cir. 1974).

[12]*Wyatt v. Stickney*, 503 F.2d 1305 (5th Cir. 1974).

[13]Exec. Order No. 11,776, 39 Fed. Reg. 11865 (Mar. 28, 1974).

[14]86 Stat. 1465, 42 U.S.C. § 1381 *et seq.*

[15]S. Rep. No. 92-1230, p. 4 (1972)

[16]29 U.S.C. § 794.

[17]*Halderman v. Pennhurst*, 612 F.2d 84 (3d Cir. 1979) (en banc).

[18]*Halderman v. Pennhurst*, 451 U.S. 1 (1981).

[19]Letter from Centers for Medicare & Medicaid Services (January 14, 2000). Available at www.acf.hhs.gov/programs/add/otherpublications/olmstead.html#letter.

[20]*See* David Ferlenger, *Disabilities and the Law: The Evolution of Independence*, FEDERAL LAWYER, Sept. 2010, at 29.

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[26]*Id.* at 985.

[27]*Messier v. Southbury Training School*, 562 F. Supp. 2d 294, 299-300 (D. Conn. 2008) (describing the success of this judicial oversight in a parallel case involving the same institution).

[28]*Jensen*, 2012 U.S. Dist. LEXIS 98703, at *14. ("He shall have *ex parte* access to the parties, their counsel and to the Court. However, in the event there is any information provided to the Court by David Ferleger which is utilized or otherwise relied upon by the Court for any reason relating to compliance with the Settlement Agreement, the Court will provide such information to counsel for the parties.").

[29]Scheindlin, *supra* note 3, at 482.

RULE 12 *continued from page 27*

to answer claims or counterclaims not subject to the motion under Rule 12(a)(4)); *Kent v. Green*, 2008 WL 150060 (D. Colo. Jan. 11, 2008) (filing a Rule 12(b) motion alters the deadline to respond to a complaint); *Beaulieu v. Board of Trustees of University of West Florida*, 2007 WL 2020161 (N.D. Fla. Jul. 9, 2007) (holding that a partial motion to dismiss extends the time to file a responsive pleading on unchallenged claims pursuant to Rule 12(a)(4)); *Shah v. KIK Intern. LLC*, 2007 WL 1876449 (N.D. Ind. June 26, 2007) (Rule 12(a)(4) applies to claims not challenged in a partial motion to dismiss); *Ideal Instruments Inc. v. Rivard Instruments Inc.*, 434 F. Supp. 2d 598 (N.D. Iowa 2006) (same); *Bertaut v. Parish of Jefferson*, 2002 WL 31528468 (E.D. La. Nov. 8, 2002) (same); *Finnegan v. Univ. of Rochester Medical Ctr.*, 180 F.R.D. 247 (W.D.N.Y. 1998) (same); *Oil Express Nat'l Inc. v. D'Alessandro*, 173 F.R.D. 219 (N.D. Ill. 1997) (same); *Brocksopp Engineering Inc. v. Bach-Simpson Ltd.*, 136 F.R.D. 485 (E.D. Wis. 1991) (same).

[23]*Brocksopp*, 136 F.R.D. at 486.

[24]Lisenbee & Moberly, *supra* note 6, at 61-62.

[25]*Gortat*, 257 F.R.D. at 366; *see also Ideal Instruments*, 434 F. Supp. 2d at 639 ("[T]his court also rejects the "piecemeal answer" rule proposed in *Gerlach* and holds that a motion pursuant to Rule 12(b), even one that challenges less than all of the claims asserted in the complaint or other pleading, extends the time to answer as to all claims in the pleading.")

[26]Lisenbee & Moberly, *supra* note 6, at 58-59.

[27]5A FEDERAL PRACTICE & PROCEDURE § 1346. (2d ed.).

[28]Lisenbee & Moberly, *supra* note 6, at 71 ("Indeed, the Gerlach court itself concluded that default is too harsh a penalty for a defendant's failure to submit an answer ...")

[29]To avoid default, a defendant can: (1) seek dismissal of only some of the plaintiff's claims by filing a motion for partial judgment on the pleadings under Rule 12(c); (2) file a partial answer simultaneously with its partial motion to dismiss; or (3) move to dismiss the entire complaint. For further explanation of these options. *See* Lisenbee & Moberly, *supra* note 6, at 72-80. *See also* Belinfante, *supra* note 6, at 21 (detailing several practice suggestions when filing a partial motion to dismiss, such as avoiding attaching affidavits and other forms of evidence and "carefully and precisely" informing the court of a party's intentions when filing the motion).

[30]*Talbot v. Sentinel Ins. Co.*, 2012 WL 1068763 (D. Nev. Mar. 29, 2012).

[31]*Id.* at *2 (requesting that the Court follow the "majority approach" and enlarge the time to respond until 14 days after a decision on the partial motion to dismiss).

[32]*Id.*

[33]*See, e.g.*, *Shkrobut v. City of Chicago*, 2005 WL 2787277, at **2, 4 (N.D. Ill. Oct. 24, 2005) (Defendants moved to continue the time to answer counts of a complaint until the court had ruled on their motion to dismiss); *Fairley v. Andrews*, 300 F. Supp. 2d 660 (N.D. Ill. 2004) (same); *In re Cendant Corp. Sec. Litig.*, 190 F.R.D. 331 (D.N.J. 1999) (same); *Sidis v. F-R Publ'g Corp.*, 113 F.2d 806 (2d Cir. 1940) (same).