

# disABILITY LAW CENTER OF VIRGINIA



Protection & Advocacy for Virginians with Disabilities

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March 24, 2016

Dr. Jack Barber, Interim Commissioner  
Department of Behavioral Health and Developmental Services  
P.O. Box 1797  
Richmond, VA 23218-1797

Dear Dr. Barber,

The disAbility Law Center of Virginia is deeply concerned about DBHDS's failure to provide the necessary continuum of care to prevent institutionalization of individuals diagnosed with intellectual and developmental disabilities, particularly people dually diagnosed with behavioral health conditions. The Commonwealth has agreed "to prevent the unnecessary institutionalization of individuals with ID/DD and to provide them opportunities to live in the most integrated settings appropriate to their needs consistent with their informed choice" by developing and providing services in the community.<sup>1</sup> dLCV continues to observe the unnecessary institutionalization of people due to the state's failure to comply with the Settlement Agreement.

"Crisis services are a cornerstone in a community-based services system that prevents the unnecessary institutionalization."<sup>2</sup> The Commonwealth agreed to develop a crisis system by June 2012.<sup>1</sup> The Independent Reviewer reported that crisis services were not available to all people diagnosed with I/DD. The dLCV has also noted concerns regarding dually diagnosed<sup>3</sup> individuals admitted to state-operated psychiatric facilities, including Commonwealth Center for Children and Adolescents (CCCA), after the crisis system failed to meet their needs. During this quarter alone, dLCV is aware of multiple young adults who have been admitted, or are waiting to be admitted, to training centers from state-operated psychiatric facilities. None of these young adults have previously resided in a training center; however, the CCCA, local Community Service Boards, and REACH have all served these young adults. The state's continued non-compliance with the Agreement and reliance on institutional care is continuing to harm Virginians.

The state's crisis system for individuals with developmental and intellectual disabilities is fragmented and inadequate. REACH is meeting some of the community's needs. However, there are continued issues with crisis prevention and access to services, particularly for individuals deemed by REACH to

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<sup>1</sup> US vs VA Settlement Agreement, August 2012

<sup>2</sup> Report of the Independent Reviewer on Compliance with the Settlement Agreement, United States v. Commonwealth of Virginia, October 7, 2014 – April 6, 2015, page 41

<sup>3</sup> A person who is diagnosed with an intellectual and/or developmental disability and a behavioral health condition.

require more intensive supports than the Crisis Therapeutic Home can provide. Acute psychiatric facilities may be appropriate for some individuals; however, they are not well suited to many others. While state-operated psychiatric facilities are no-refusal sites, in most cases, they are not the appropriate providers to address the complex needs of individuals with intellectual and developmental disabilities. Such placements are often not therapeutic and may, in fact, subject the individual to substantial risk. As early as 1988, a federal court stated:

“There is a professional consensus that mentally retarded people who are continuously exposed to mentally ill patients begin to ‘model’ the dysfunctional behaviors of the mentally ill patients with who, they are confined.”<sup>4</sup>

This, however, is not an argument for training center placement. It is an argument for a crisis system that is more robust and that can provide specialized care in smaller settings, closer to the individual’s natural supports. It is an argument for adequate staffing and supports to enable comprehensive assessment of health, mental health and behavioral needs and to develop a behavior support plan and train the community provider on its implementation.

dLCV applauds the state’s post-move monitoring efforts as they have proven to be successful in providing support to people who have left the training centers. Unfortunately, none of the young adults who recently transferred to or are panning transfer to the training centers have had access to this exemplary service. The current structure requires institutionalization in a training center first. Conceivably, providing equal access to this quality service, regardless of the type of institution, would benefit the system as a whole and prevent unnecessary institutionalization.

Please respond with an outline of your plan to correct these deficits. We look forward to your response.

Sincerely,



Kara McCallum  
Disability Rights Advocate

Cc: Mr. Connie Cochran, Assistant Commissioner for Developmental Services  
Mr. Daniel Herr, Assistance Commissioner for Behavioral Health Services  
Mr. Donald Fletcher, Independent Reviewer  
Mr. Kyle Smiddie, Civil Rights Division, Department of Justice

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<sup>4</sup> Thomas S. v. Flaherty, 699 F Supp. 1178 (W.D.N.C 1988), *affd.* 902 F .2d 250 (4<sup>th</sup> Cir. 1990)