

For The
Record

THE LAW OFFICE OF DAVID C. SHAW, LLC

34 Jerome Ave., Suite 210
Bloomfield, Connecticut 06002
www.davidshawatt.comTelephone: (860) 242-1238
Facsimile: (860) 242-1507
E-mail: dshaw@dcskawatt.com

February 21, 2012

State of Connecticut General Assembly
Program Review and Investigations Committee
Legislative Office Building
300 Capital Avenue, Room 2D
Hartford, CT

Re: H.B. Raised 5036

Ladies and Gentlemen:

I am an attorney with a private law practice in Bloomfield, Connecticut. I have represented the Plaintiff Class in *Messier v. Southbury Training School*, No. 94cv1706 (EBB) since 1994. I was directly responsible for filing and litigating the *Messier* lawsuit. I was involved in the negotiations that produced the Settlement Agreement that has been approved by the United States District Court. I have also participated in Parties' Meetings that have been and continue to be convened to discuss and resolve problems relating to the implementation phase of that lawsuit. As a result of my extensive involvement in the *Messier* lawsuit, I am familiar with the terms of the Settlement Agreement and the actions the Parties have taken during the implementation phase of that lawsuit.

Raised Bill No. 5036 appears to codify some of the provisions of the Settlement Agreement in *Messier* and attempts to apply its terms to other institutional facilities operated by the Connecticut Department of Developmental Services. While this attempt to apply the core provisions of the Settlement Agreement to other institutional facilities is commendable, Raised Bill No. 5036 will complicate and frustrate the implementation of the Settlement Agreement at Southbury Training School because Section 2 of the Bill is inconsistent with the interpretation of the Settlement Agreement and processes adopted by the Parties to the Settlement Agreement. I am writing to express my concerns and objections to the limited extent that Raised Bill No. 5036 conflicts with the *Messier* Settlement Agreement.

Paragraph 2 of Raised Bill No. 5036 is inconsistent with the *Messier* Settlement Agreement in several important respects. Paragraph 2 directs the interdisciplinary teams of each resident of Southbury Training School and the regional centers to make a professional judgment as to the "least restrictive" and "most integrated" residential setting in which the needs of the client are likely to be met. The interdisciplinary team is then instructed to notify

February 21, 2012
Page two

the client, guardian, conservator, parent or other legal representative in writing of the decision of the interdisciplinary team. These provisions are not consistent with the Parties' interpretation of the *Messier* Settlement Agreement in the following respects:

First, the Parties in *Messier* have agreed that a professional judgment as to the most integrated setting for each Southbury Training School resident must be made by the professional members of the interdisciplinary team only. The Parties and the Remedial Expert eventually agreed that the non-professional members of the interdisciplinary team, including the client, parent, guardian, conservator, or other legal representative, are not professionals under the holding in *Olmstead v. Zimring*, 527 U.S. 581 (1999) and therefore should not be participants in making the professional judgment by "treating professionals". This was a disputed matter that was resolved by the Parties with the assistance of the Remedial Expert. Implementation of Section 2 of Raised Bill No. 5036 is inconsistent with this agreement of the Parties in *Messier* and could force Southbury Training School to implement two inconsistent processes for making professional judgment. Given the sensitive nature of these decisions, implementation of Section 2 could disrupt the implementation process that has thus far gone relatively smoothly.

Second, Section 2 directs interdisciplinary teams at STS to determine the "least restrictive and most integrated residential setting" appropriate for each STS resident. The Parties in *Messier*, however, have carefully avoided using the term "least restrictive" because it encourages the professional staff to compare the restrictiveness of STS and community settings for each client, rather than make a professional judgment as to whether the client's needs can be met in an integrated community setting as required by the Americans with Disabilities Act and the holding of the Supreme Court in *Olmstead v. Zimring*. Again, this provision will require STS to implement a process that was carefully avoided by the Parties who negotiated the Settlement Agreement.

Third, Section 2 requires DDS to notify the clients, parents, guardians, conservators and other legal representatives in writing of the professional judgment. Again, this is inconsistent with the Settlement Agreement. The Settlement Agreement requires STS professionals to inform the STS residents, guardians, parents, conservators and other legal representatives of the professional judgment during an interdisciplinary team meeting attended by the client, parent, guardian, conservator and the treating professionals. This is consistent with the finding of the federal court in *Messier* that clients, parents, guardians and other legal representatives will undoubtedly benefit by having a face-to-face meeting with treating professionals to discuss the team's professional judgment relating to transferring the client to an integrated community setting. Informing STS residents in writing is potentially inconsistent with the process that is being followed under the Settlement Agreement at the urging of the Court.

Fourth, the Parties in *Messier* have agreed that clients, parents, guardians, conservators and other legal representatives are not likely to change their minds about keeping their family

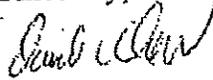
February 21, 2012

Page three

member or ward in STS unless they actually visit an appropriate community setting that can meet their family member's needs before they make an informed choice as to whether movement to an integrated setting is appropriate. The Parties agreed to this process in part because it has been demonstrated in Connecticut and in other states that parents and guardians often oppose community placement regardless of the conditions at the institution or the benefits of community integration unless they are shown a community setting will be beneficial and safe. Providing written materials to parents and guardians are helpful, but they are not likely to persuade parents or guardians to pursue a move out of the institution. While Section 2 of Raised Bill 5036 may not be fully inconsistent with the Settlement Agreement in this respect, it puts in place a process that asks institutionalized persons and their legal representatives to make a decision about community placement based on a review of documentation only. If the objective is to encourage DDS clients to move from institutions settings to community settings that are less costly and more beneficial, the process described in Raised Bill 5036 is unlikely to work.

Thank you for your attention to my views.

Sincerely,



David C. Shaw

DCS:cs