

Olmstead and You

The Process to Develop a Plan for Virginia

by Dana Martin Johnson, Assistant Attorney General, Commonwealth of Virginia

The Supreme Court Decision

In 1999, the United States Supreme Court said in a decision called *Olmstead v. L.C.* that persons with disabilities who live in, are "at risk" of living in, or are eligible for placement in facilities or institutions, have a right to live in the community if:

- They and their treatment teams agree that they can live successfully in the community;
- They choose to live in the community; and
- There are resources available to help them live in the community.

The court stated that under the Americans with Disabilities Act, it is a form of discrimination to isolate and segregate persons in institutions when they can live like other people in the community and enjoy the benefits of society. States must avoid disability-based discrimination unless doing so would "fundamentally alter the nature of the service, program, or activity" provided by the state. For children, this means that parents and guardians have a choice about whether their children live in institutions, subject to limitations imposed by a child's condition or available resources.

What Olmstead Does NOT Say

The Olmstead Decision does NOT say:

- That institutions must be closed;
- That lack of resources alone is an acceptable excuse for failure to move eligible persons into the community;
- That states' responsibilities are limitless;
- That modifications must be made which would fundamentally change the nature of the service, program or activity.

The Executive Order

By a Presidential Executive Order, "the Federal Government must assist States and localities to implement swiftly the Olmstead decision", to help ensure that all Americans have the opportunity to live close to their families and friends, to live more independently, to engage in productive employment and to participate in community life.

Who is Affected

Olmstead applies to adults and children with either physical or mental disabilities that substantially limit one or more major life activities. This includes people with disabilities who reside in institutions now and people with disabilities whose needs might make them consider an institution. Many places can be considered institutions, including state hospitals, training centers, nursing homes, and more.

Virginia's Olmstead Planning

Like all states, Virginia is required to ensure that children with disabilities who meet the requirements set forth in Olmstead can live in the community rather than in facilities and institutions. Many states have developed "Olmstead Plans," which are policies and procedures about how they will meet the requirements of the Olmstead decision.

In 2002, Virginia's Olmstead Task Force was established. On September 15, 2003, the Task Force submitted a final report to the Governor and members of the General Assembly, with recommendations for an "Olmstead Plan" for Virginia. ■

For more information on the Olmstead Act and what is going on in Virginia and other states, see the official Olmstead website: www.olmsteadva.com

