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HOW MINNESOTA'S RELIANCE ON PRIVATE GROUP HOMES IMPACTS THE RIGHTS OF INDIVIDUALS WITH DISABILITIES

Abbie J. Thurmes*

I. Introduction

The State of Minnesota has become well known for its reliance on group homes, and lack of progression when it comes to the rights of individuals with disabilities.¹ Due to a large number of individuals living in group homes, Minnesota has also become known for segregating individuals into group homes. At first glance, this might seem to be a progressive movement, compared to the traditional institutionalization that used to take place. These individuals with disabilities are given the opportunity to live in a home and be in a community setting. But, these homes that are in a community setting are just amounting to be smaller institutions that are now in a different location.

These individuals may have more access to the community, but Minnesota is not doing enough to integrate these individuals into the community.² ““The system Minnesota has relied on has not evolved since the early 1980s. The state has promised people with disabilities the chance to be integrated into their communities, but for many it only offers housing in group homes. The Americans with Disabilities Act (ADA) requires more than that[.]”³

Stories told from residents in the home about treatment and conditions of the homes confirm that Minnesota is not meeting its required standards.⁴ Many individuals who live in the homes are not there by choice, and it is not easy for them to leave.⁵ According to the State of Minnesota, these individuals have no other options, thus, they are forced to stay against their will.⁶

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¹ Chris Serres, *State Accused of Segregating Minnesotans with Disabilities in Group Homes*, STAR TRIBUNE (Aug. 4, 2016), <http://www.startribune.com/state-accused-of-segregating-minnesotans-with-disabilities-in-group-homes/389129591/>.

² MINNESOTA DEPARTMENT OF HUMAN SERVICES MENTAL RETARDATION DIVISION, *New Housing Options for People with Mental Retardation or Related Conditions*, available at <https://mn.gov/mnddc/parallels2/pdf/80s/89/89-NHO-DHS.pdf>. “Life in the community for people with disabilities is often built around places designed especially for them, around group homes and other residences, around sheltered workshops and day activity centers. Throughout this country, we often build the places, design the programs, and then try to fit the people into the services. We then help people to overcome the barriers imposed by the segregated settings.”

³ Access Press Staff, *Housing is Focus of Class Action Law Suit*, ACCESS PRESS, (Aug. 10, 2016) (quoting Legal Aid attorney Sean Burke), <http://www.accesspress.org/blog/2016/08/10/housing-is-focus-of-class-action-lawsuit/>.

⁴ Serres, *supra* note 1.

⁵ Access Press Staff, *supra* note 3.

⁶ *Id.*

The implementation of group homes began in the 1950's with the deinstitutionalization movement.⁷ The movement began with public developed community-based housing for the mentally disabled.⁸ The purpose of the movement was to integrate individuals with disabilities into the community.⁹ Eventually licensed privatized group homes were created to get individuals out of psychiatric institutions, and integrated into the community.¹⁰ However, the group homes that were created have begun to resemble the institutions they were trying to dispense with in the first place.

In 1999, the United States Supreme Court made a landmark decision in the case *Olmstead v. L.C.*, and the Court held that unjustified institutionalization of individuals is discrimination, and violates the Americans with Disabilities Act.¹¹ *Olmstead* addressed the question of whether the Americans with Disabilities Act requires individuals to be placed in community settings rather than in institutions. The United States Supreme Court in *Olmstead* answered this question, and decided the answer was yes.¹² States are required to place individuals with disabilities in community settings rather than place them in an institutionalized setting.¹³

The Americans with Disabilities Act (“ADA”) provides special protections against segregation and discrimination.¹⁴ The *Olmstead* decision combined with the protections of the ADA mandate how the states treat individuals with disabilities.¹⁵ Thus, states must give an alternative to institutionalization once an individual is found to be ready to live in the community.

Finally, the basic human rights of individuals in group homes are being violated. One of the goals of this paper is to demonstrate through the analysis of group homes – their history, function, and presence in Minnesota – that, “[h]owever different persons with disabilities may be, they are nevertheless born free and equal in dignity and rights and, hence, are entitled to equality of respect and treatment, even if that equality does not entail identical treatment under all circumstances.”¹⁶

⁷ Glenna Riley, *The Pursuit of Integrated Living: The Fair Housing Act As A Sword for Mentally Disabled Adults Residing in Group Homes*, 45 COLUM. J.L. & SOC. PROBS. 177, 182 (2011).

⁸ *Id.*

⁹ *Id.* at 183.

¹⁰ *Id.* at 184.

¹¹ 527 U.S. 581, 582 (1999).

¹² *Id.* at 587.

¹³ *Id.*

¹⁴ See Americans with Disabilities Act, 42 U.S.C. § 12101 (2009).

¹⁵ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

¹⁶ Harold Hongju Koh, *Different but Equal: The Human Rights of Persons with Intellectual Disabilities*, 63 MD. L. REV. 1, 4 (2004).

This article analyzes the laws, constitutional rights, and basic human rights of individuals with disabilities. Minnesota has frustrated the community integration purpose behind the deinstitutionalization movement, in violation of the rights of people with developmental disabilities. This is in violation of *Olmstead* and the ADA, discussed briefly above. This article explores the *Olmstead* decision and the ADA, and how the State of Minnesota is violating the protections they provide.

This paper first reviews the definition of disability. Reviewing the definition assists in examining the problem in Minnesota regarding the institutionalization of individuals with intellectual and developmental disabilities. In addition, this article touches on the definition of institution, and how Minnesota is institutionalizing what should be considered to be community settings.¹⁷

II. WHAT IS A DISABILITY?

Approximately 56.7 million people in the United States have a disability.¹⁸ This amounts to nearly one in every five people.¹⁹ But, what is meant by the term “disability?” There are many different definitions of what a disability is, or what disabled means. “The term ‘disabled’ refers to an especially diverse group of people including those with hearing, ambulatory, visual, cognitive, or emotional disabilities.”²⁰

The analysis of this paper specifically concerns people living in group homes with intellectual and developmental disabilities.²¹ Group homes serve many different types of individuals with a variety of

¹⁷ See any of the following discussing the current lawsuit against Minnesota Department of Human Services: <http://www.startribune.com/state-accused-of-segregating-minnesotans-with-disabilities-in-group-homes/389129591/> <http://kstp.com/news/class-action-lawsuit-discrimination-restriction-choice-minnesota-department-of-human-services-medicare-american-disabilities-act/4221659/> <http://www.accesspress.org/blog/2016/08/10/housing-is-focus-of-class-action-lawsuit/>

¹⁸ United States Census, NEWSROOM ARCHIVE, available at <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>

¹⁹ *Id.*

²⁰ Riley, *supra* note 7, at 181.

²¹ American Association on Intellectual and Developmental Disabilities, available at <http://aaidd.org/intellectual-disability/definition#.WHwwwfkrI2x> According to the American Association on Intellectual and Developmental Disabilities (“AAIDD”), an intellectual disability is “a disability characterized by significant limitations in both intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18.” You might wonder, well what is an adaptive behavior? The AAIDD also defines adaptive behavior, stating, “[a]daptive behavior is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.” AAIDD also gives some helpful examples of what conceptual, social, and practical skills are:

- Conceptual skills—language and literacy; money, time, and number concepts; and self-direction.
- Social skills—interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e., wariness), social problem solving, and the ability to follow rules/obey laws and to avoid being victimized.

disabilities. But, the individuals who are living in these homes typically have either an intellectual or developmental disability. “It is estimated that there are between 4.6 and 7.7 million Americans living with intellectual and developmental disabilities.”²² This narrows down the number of individuals from an all-encompassing 56.7 million. However, 4.6 to 7.7 million is still a large number of individuals who are living with some type of disability.

For purposes of this article, the most applicable definition of disability comes from the ADA. The ADA defines disability as:

The term “disability” means, with respect to an individual--(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)).²³

Because there are so many different types of disabilities, it is important to keep this definition in mind when discussing the institutionalization of people with disabilities. Most group homes contain individuals with a versatile number of disabilities.²⁴ People living in the homes are not required to all have the same disability. Surprisingly, some people with these types of disabilities may be almost completely functional on their own, but just need some guidance in their lives. This is why when group homes start to mirror an institution, it is troubling.

III. HISTORICAL OVERVIEW OF HOUSING FOR PEOPLE WITH DEVELOPMENTAL AND INTELLECTUAL DISABILITIES

The legal rights of individuals with disabilities have been slowly developing.²⁵ The first movement of change began in the 1950’s; people with disabilities were moved out of state-run hospitals.²⁶ “During what is now known as the deinstitutionalization movement, society became aware of the depravity of the

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- Practical skills—activities of daily living (personal care), occupational skills, healthcare, travel/transportation, schedules/routines, safety, use of money, use of the telephone.

Developmental disability is “an umbrella term that includes intellectual disability but also includes other disabilities that are apparent during childhood.”

²² Jonathan G. Lerner & Daniel Pollack, *Where Have All the Developmental Centers Gone? The Federal Push for Community-Based Services for People with Intellectual and Developmental Disabilities*, 43 CAP. U. L. REV. 751, 752 (2015).

²³ Americans with Disabilities Act, 42 U.S.C. § 12102 (2009).

²⁴ Through my own experience working in group homes, and having completed the appropriate training to work in these homes, even if two individuals have the same disability, it can affect them differently.

²⁵ James T. Hogan, *Community Housing Rights for the Mentally Retarded*, 1987 DET. C.L. REV. 869, 870 (1987) (“The legal rights of the mentally retarded have been slow in developing, and usually in jumps and starts.”).

²⁶ Riley, *supra* note 7, at 182.

conditions in public psychiatric institutions and the inhumane treatment of those confined in them.”²⁷ This led to psychiatric institutions closing, and more private group homes opening.²⁸ As the group homes were implemented, they have slowly begun to mirror the psychiatric institutions that they were created to dispense of.²⁹ As Glenna Riley notes in her article, this is due to two factors: (1) the manner in which the homes run that ultimately denies the individuals a choice; and (2) the individuals living in the homes are often segregated from the outside world, and are not allowed to leave the home often.³⁰ “As former president of the American Psychiatric Association John Talbot observed, the result of deinstitutionalization has simply been that ‘the chronic mentally ill patient [has] his locus of living and care transferred from a single lousy institution to multiple wretched ones.’”³¹ Thus, while there was a movement to deinstitutionalize these individuals, the discrimination and segregation is far from over.³²

IV. WHAT IS AN INSTITUTION?

The term “institution” brings to mind a prison, jail, or even psychiatric hospital. An institution at least means some program that restricts the rights of free decision making. Neither the ADA nor *Olmstead* define institution.³³ Thus, what constitutes an institution may be subjective.³⁴ There are vast amounts of definitions for “institution,” but their application varies.³⁵ What may be considered an institutional setting

²⁷ *Id.* at 182-83.

²⁸ *Id.* at 183-84. As noted in the article, this became a useful tool for politicians to “advertise” that there would no longer be wasted taxes on public psychiatric wards by implementing deinstitutionalization to create more group homes.

²⁹ *Id.* at 184.

³⁰ *Id.* at 184-85.

First, they are run in a regimented manner that denies individual choice. For example, the district court in *Disability Advocates* recounted evidence that ‘aides instruct residents as to what to do at various times of the day, including when to eat, bathe, and take medications.’ The court also cited ‘evidence that adult homes have visiting hours, and visitors must identify themselves and sign in with the home.’ Second, residents are confined and segregated, depriving them of the opportunity to interact with the outside world. The district court in *Disability Advocates* found evidence that ‘individuals with mental illness in the adult homes reside in close quarters entirely with other persons with disabilities and with significant numbers of other persons with mental illness.’

³¹ *Id.* at 185 (alteration in original).

³² Hogan, *supra* note 25, at 871 (“The battle to return the retarded to the community shows no sign of abating, with forces on both sides poised to confront one another on executive, judicial and legislative lines.”).

³³ Kevin M. Cremin, *Challenges to Institutionalization: The Definition of “Institution” and the Future of Olmstead Litigation* Jacobus Tenbroek Disability Law Symposium, 17 TEX. J. C.L. & C.R. 143, 151 (2012).

³⁴ This is because with so many definitions of institution floating around, what I believe to be an institution may be different than you, as a reader, believe to fit into the definition of an institution. It is hard to come up with a universal one-size-fits-all definition.

³⁵ Cremin, *supra* note 33, at 144-45.

under one definition may not fit the same standard under another definition.³⁶ Interestingly, because of the many definitions of “institution” there has been an entire article written about what the definition of “institution” is.³⁷

The definition of “institution” and what constitutes an institution is important for the analysis of Minnesota’s reliance on group homes. Minnesota does define institution in its Department of Health Chapter.³⁸ The definition has a broad application, stating that it is for “the care of human beings.”³⁹ This definition may be helpful in analyzing how Minnesota determines what an institution is. The statute defines institution as:

Hospital, sanitarium or other institution for the hospitalization or care of human beings, within the meaning of sections 144.50 to 144.56 shall mean any institution, place, building, or agency, in which any accommodation is maintained, furnished, or offered for five or more persons for: the hospitalization of the sick or injured; the provision of care in a swing bed authorized under section 144.562; elective outpatient surgery for preexamined, prediagnosed low risk patients; emergency medical services offered 24 hours a day, seven days a week, in an ambulatory or outpatient setting in a facility not a part of a licensed hospital; or the institutional care of human beings. Nothing in sections 144.50 to 144.56 shall apply to a clinic, a physician's office or to hotels or other similar places that furnish only board and room, or either, to their guests.⁴⁰

Notably, it talks about “five persons or more,” which would typically include a group home.⁴¹ This is important because what Minnesota considers to be group homes in “community” settings, may actually mirror more of an institutionalized setting.⁴² Sticking a house in a community and actually integrating the individuals into the community are two different things.

³⁶ *Id. see also* 42 U.S.C.A. § 1997(1)(B). This article looks at the many different applications and definitions of institutions. One of the most interesting is under the Civil Rights of Institutionalized Persons Act of 1980 which has a really broad definition for institution.

³⁷ *See* Cremin, *supra* note 33.

³⁸ MINN. STAT. § 144.50, subdiv. 2 (2016).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See* Peter W. Salsich, Jr., *Group Homes, Shelters and Congregate Housing: Deinstitutionalization Policies and the NIMBY Syndrome*, 21 REAL PROP. PROB. & TR. J. 413, 418 (1986) (stating in his article based upon research done that “[n]umerous forms of group homes exist, but the most common type appears to be ‘a community-based living facility offering a family or home-like environment and supervision or training for 4 to 16 live-in clients, some or all of whom are mentally retarded or mentally ill.’”).

⁴² Hogan, *supra* note 25, at 870 (“For the most part . . . deinstitutionalization has manifested itself in the form of small group homes, community centered workshops and semi-independent living facilities.”).

V. NOW LET'S TALK ABOUT GROUP HOMES: CHARACTERISTICS OF GROUP HOMES

“Group homes have evolved as an alternative to the institutionalization of mentally retarded persons, which Justice Marshall has characterized as ‘state-mandated segregation . . . that . . . paralleled the worst excesses of Jim Crow.’”⁴³ Group homes typically have about four to sixteen individuals living in them.⁴⁴ The homes are typically in a residential area, and are built to blend in with the homes they are around.⁴⁵ There are different types of group homes, but the ones being discussed here, and “the most common type, “appears to be ‘a community-based living facility offering a family or home-like environment and supervision or training.’”⁴⁶ The group homes promote “normalizing” and acceptable behavior with the community, it also promotes the individuals’ ability to “learn, socialize and develop.”⁴⁷

However, group homes are not entirely successful in doing this, and may end up being more like “mini-institutions.”⁴⁸ Individuals living in group homes are not always able to get out into the community, and become engaged members of society. Instead, because of lack of services, or lack of staff, they are stuck inside the home.⁴⁹ Or, the homes are run like an institution: locked thermostats, locked cupboards; a desk for staff.⁵⁰ This is not how “normal” living is, and it is definitely not meeting goals of having these individuals be engaged in the community.⁵¹

⁴³ Salsich, Jr., *supra* note 41, at 418 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 462 (1985) (opinion of Marshall, J.)).

⁴⁴ *Id.*

⁴⁵ Hogan, *supra* note 25, at 902.

⁴⁶ Salsich, Jr., *supra* note 41 (citing General Accounting Office, GAO-HRD-83-14, *An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 1 (1983)).

⁴⁷ Hogan, *supra* note 24, at 903, 906.

Placement within the community is in itself a normalizing factor. The clients in the group home, able to see the behavior of their neighbors, will learn from this exposure. Whether by watching groups of children engaged in play or adults tending their homes and gardens, exposure to community life will provide the mentally retarded resident with a wide array of role models from which to learn.

⁴⁸ Hogan, *supra* note 25, at 909.

⁴⁹ *See id.* at 907 (stating “Once in the home, adequately trained individuals will be needed in order to supervise the care and treatment of the residents. When under-trained and under-staffed, the group home will only act as a quasi-institution or worse, thus denying the residents the benefits of community placement.”).

⁵⁰ These examples come from my own experience of working at a group home. *See also* Hogan, *supra* note 25 (“For the most part . . . deinstitutionalization has manifested itself in the form of small group homes, community centered workshops and semi-independent living facilities.”).

⁵¹ The more “normal” people with developmental and intellectual disabilities are treated, the more “normal” they will feel, and the more successful they will be. *See* David Ferleger & Penelope A. Boyd, *Anti-Institutionalization: The Promise of the Pennhurst Case*, 31 STAN. L. REV. 717, 731 n.49 (1979) (“The theory of habilitation through

These dignities, while small, are essential in reaching the goals of the group homes. The group homes were supposed to get away from institutions, yet here they are, inching closer and closer to what they were meant to get away from. Every little action is important when it comes to the lives inside the home. “The actions being taken both inside and outside the group home . . . determine the success of these programs. Only time will tell whether the group home will grow . . . [to] be transformed into nothing more than ‘mini-institutions’ where the retarded will again vegetate within confined surroundings.”⁵²

WHAT IS “COMMUNITY MEMBERSHIP” OR “COMMUNITY ENGAGEMENT?”

As discussed above, simply living inside a home located in a community setting is not being a member of the community. Instead, “full community membership requires that people be active participants in a variety of individual and group relationships.”⁵³ Some guidelines to promote community membership are:

- Program time should allow opportunities for individual and small group participation in community events and activities such as entertainment, religious services, etc.
- People should not spend their days in the same area they call home: except when individual needs dictate otherwise, work or school should take place in community settings.
- People should learn to use generic health care and other services. The minimum amount of services consistent with individual needs should be provided within the walls of the home.
- The program makes some social participation a reality, regardless of the person's current ability. Social participation is not an all or none possibility, available only to those who “earn” it.⁵⁴

Essentially, getting the individuals involved in the community requires the individual to participate and be as active and engaged as possible. Engagement in the community will not come from simply going out in the community one time. Instead, becoming engaged in the community “is a process that recognizes the value of creating ongoing, long-term relationships for the benefit of the greater community.”⁵⁵ With those ongoing and long-term relationships comes “an interactive, collective problem-solving element into the process that capitalizes on the collective strengths of various stakeholders.”⁵⁶

normalization is grounded on the premise that people respond to the manner in which they are treated. Treating a retarded person as much as possible like a ‘normal’ person will minimize the effect of his or her handicap.”)

⁵² Hogan, *supra* note 25, at 909.

⁵³ MINNESOTA DEPARTMENT OF HUMAN SERVICES MENTAL RETARDATION DIVISION, *supra* note 2, at 14 (citing John O'Brien, THE PRINCIPLE OF NORMALIZATION (Georgia Advocacy Office 1980)).

⁵⁴ *Id.* at 14-15.

⁵⁵ OLMSTEAD IMPLEMENTATION OFFICE FOR CE 2A, CE 1A, CE 1B, AND OV 3A, OLMSTEAD COMMUNITY ENGAGEMENT PLAN 4 (2015), http://www.dhs.state.mn.us/main/groups/olmstead/documents/pub/dhs16_193724.pdf.

⁵⁶ *Id.*

VI. ANALYZING NEWLY ESTABLISHED GROUP HOMES AND THE CONSTITUTIONAL RIGHT AGAINST INSTITUTIONALIZATION.

The United States Constitution guarantees the right to community services through the Due Process Clause of the Fourteenth Amendment, which states, “nor shall any state deprive any person of life, liberty, or property, without due process of law.”⁵⁷ The United States Constitution also guarantees that all laws will be applied equally, through the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause provides that, “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁵⁸

A. THE PENNHURST DECISION

The Supreme Court’s landmark decision in *Olmstead* played a large role in the change that occurred in living conditions for people with disabilities. It was a long awaited decision that held institutionalization, without justification, equals discrimination under the ADA.⁵⁹ However, *Halderman v. Pennhurst State School & Hospital* paved the way for the *Olmstead* decision.

The *Pennhurst* case was filed in 1974. The case began in an unusual way, by the administrator of the hospital suggesting to one of the concerned parents to contact the Mental Patient Civil Liberties Project in Philadelphia to bring a lawsuit.⁶⁰ It was expected that the lawsuit would propose the clean-up of the institution, it was never a thought in anyone’s mind that anti-institutionalization would be proposed.⁶¹

The *Pennhurst* case involved horrific conditions. Individuals were restrained as a measure of control, and the institution also had seclusion rooms, used as a form of punishment.⁶² The living environment at Pennhurst was also unacceptable.⁶³ There was urine and feces on the floor, and often no privacy for

⁵⁷ U.S. CONST. amend. XIV, § 1.

⁵⁸ *Id.*

⁵⁹ David Ferleger, *The Constitutional Right to Community Services*, 26 GA. ST. U. L. REV. 763, 763–64 (2010) (citing *Halderman v. Pennhurst State Sch. & Hosp.*, 446 F. Supp. 1295, 1318 (E.D. Pa. 1977), *aff’d in part, rev’d in part*, 612 F.2d 84 (3d Cir. 1979), *rev’d*, 451 U.S. 1 (1981)).

⁶⁰ Ferleger & Boyd, *supra* note 51, at 720 (“When the mother of a Pennhurst resident brought complaints of injuries and lack of care to the administrator, his response was to urge her to contact David Ferleger, then director of the Mental Patient Civil Liberties Project in Philadelphia, for the purpose of filing suit.”).

⁶¹ *Id.* at 724.

⁶² *Pennhurst*, 446 F. Supp. at 1306 (“Seclusion rooms have been used to punish aggressive behavior. One eighteen-year-old individual spent six consecutive days in seclusion in 1974 for assaulting a Down’s Syndrome resident.”).

⁶³ *Id.* at 1304.

individuals.⁶⁴ Physical abuse was another problem at Pennhurst.⁶⁵ There was abuse by residents to other residents.⁶⁶ Even worse, there was staff abuse to residents including a rape, throwing a resident, and hitting a resident.⁶⁷

United States District Judge Raymond J. Broderick was the author of *Pennhurst* case. Judge Broderick did his research in coming to his opinion.

He spent the early days of trial listening to and interrogating expert after expert to find out whether an institution was not in fact needed in the southeast corner of Pennsylvania to serve 400 people. The answer was no. For 350 people? No. One institution for the entire state? No. An institution for the most profoundly retarded with physical handicaps? Again, the answer was no. Even the superintendent of the institution told the court that there was no need to continue incarceration of the retarded at Pennhurst.⁶⁸

It was at this point that he said his famous words, “Would you agree with the other witnesses I've heard that it is time to sound the death knell for institutions for the retarded?”⁶⁹

Judge Broderick’s decision in *Pennhurst* permanently enjoined the Commonwealth to:

[P]rovide suitable community living arrangements for the retarded residents of Pennhurst, and those retarded persons on its waiting list, together with such community services as are necessary to provide them with minimally adequate habilitation until such time as the retarded individual is no longer in need of such living arrangement and/or community service.⁷⁰

This decision in *Pennhurst* paved the way for deinstitutionalization. Judge Broderick’s decision was considered a “call to order” a “call to conscience” and a “call to action.”⁷¹ The decision was a move in the right direction for individuals with disabilities across the nation.

⁶⁴ *Id.*

⁶⁵ *Id.* at 1320.

⁶⁶ *Id.* at 1308 (“Injuries to residents by other residents, and through self-abuse, are common. For example, on January 8, 1975, one individual bit off three-quarters of the earlobe and part of the outer ear of another resident while the second resident was asleep.”).

⁶⁷ *Id.* at 1309 (“In 1976, one resident was raped by a staff person; one resident was badly bruised when a staff person hit him with a set of keys; another resident was thrown several feet across a room by a staff person; and one resident was hit by a staff person with a shackle belt.” (citations omitted)).

⁶⁸ Ferleger & Boyd, *supra* note 51, at 718.

⁶⁹ *Id.*

⁷⁰ *Pennhurst*, 446 F. Supp. at 1326.

⁷¹ Ferleger & Boyd, *supra* note 51, at 747.

B. OLMSTEAD AND THE AMERICAN'S WITH DISABILITIES ACT

As noted earlier, the United States Supreme Court held in the *Olmstead* case that unjustified institutionalization of individuals is discrimination, and violates the Americans with Disabilities Act. The *Olmstead* decision began with two women, L.C. and E.W., who were both mentally retarded.⁷² The women brought their claim after they were hospitalized and treated for, and then their physicians said they could be cared for in a community-based setting, yet they remained institutionalized.⁷³ The women claimed that the institutionalization violated Title II of the ADA when she was capable of living in a community-based setting.⁷⁴

The Court concluded that “unnecessary institutional segregation constitutes discrimination *per se*, which cannot be justified by a lack of funding.”⁷⁵ The Court also held that individuals with disabilities must be provided community-based services when: “(1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.”⁷⁶

Ultimately, “[t]he involuntary institutionalization of people with intellectual disabilities is unconstitutional on due process and equal protection grounds[.]”⁷⁷ To be specific, “where it is unjustified in the sense recognized in *Olmstead*, that is, when they can ‘handle and benefit from’ community services based on professional assessment. Periodic review of each person's need for institutionalization is required.”⁷⁸

⁷² *Olmstead*, 527 U.S. at 581.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 582.

⁷⁶ United States Department of Justice Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, ADA.GOV, https://www.ada.gov/olmstead/olmstead_about.htm (last visited Mar. 22, 2017).

⁷⁷ Ferleger, *supra* note 59, at 800.

⁷⁸ *Id.*

VII. COOL WHIP SANDWICH FOR BREAKFAST? “IT’S MY RIGHT”⁷⁹

This author worked at a transitional living home while in college. The homes were made up of four duplexes that five individuals lived in, and they were all connected. The staff was typically assigned to work only in one house, so that a close relationship could be formed with those individuals. However, you could be assigned to work in any home, if needed. This author was assigned to work on one of the homes this author had never been assigned to work in before. This author was assisting the residents with breakfast. One of the residents told this author that she was having a cool whip sandwich (bread and cool whip) for breakfast. This author was baffled, and didn’t know what to say. Finally, this author told her it wasn’t a very healthy choice, and didn’t think it was part of her diet regimen. She responded to this author, saying “It’s my right. If you don’t let me, I’ll sue you.” This author remembers thinking at the time, before law school, “Wow, can she really sue me?” Doing the research today, this author realizes she may not have had a claim to sue me, but she was right: it was her basic human right to have a cool whip sandwich for breakfast, if she wanted to.⁸⁰

“The concept of human rights, and of institutions responsible for their enunciation and implementation, took form after the horrors of World War II[.]”⁸¹ This resulted in the implementation of the United Nations in 1945, and the Universal Declaration of Human Rights (“UDHR”), which was adopted in 1948.⁸² UDHR affords individuals with intellectual disabilities the same rights as everyone else. Article I of the Universal Declaration of Human Rights states that, “[a]ll human beings are born free and equal in dignity and rights.”⁸³ It goes on to state in Article II, “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸⁴

The Convention on the Rights of Persons with Disabilities was signed by the United States in 2009.⁸⁵ It affords individuals with the “freedom to make one’s own choices.”⁸⁶ The Convention also provides

⁷⁹ Inspired from Sean Burke, *Person-Centered Guardianship: How the Rise of Supported Decision-Making and Person-Centered Services Can Help Olmstead’s Promise Get Here Faster*, 42 MITCHELL HAMLINE L. REV. 873, 886 (2016) (including a section titled “Twinkies for Breakfast? ‘It’s My Human Right and You Can’t Stop Me.’”).

⁸⁰ However, it could affect her basic human rights if she had a guardian who informed us that she could not have cool whip sandwiches for breakfast.

⁸¹ Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 COLUM. HUM. RTS. L. REV. 93, 131 (2012).

⁸² *Id.*

⁸³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, (Dec. 10, 1948).

⁸⁴ *Id.* (emphasis added).

⁸⁵ Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3

⁸⁶ *Id.* art 3 (a).

individuals with “the opportunity to choose their place of residence and where and with whom they live on an equal basis with others[.]”⁸⁷ Additionally, individuals are “not obliged to live in a particular living arrangement.”⁸⁸ The United States Supreme Court has also stated that, “a state cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.”⁸⁹ Minnesota is currently violating these constitutional rights in its continual placement of individuals in group homes, which will be discussed below.

QUICK NOTE ABOUT GUARDIANS

Guardianships are not something new. Historically, the concept of guardianships “was one premised on status: incapacity as a defect that deprived an individual of the ability--and consequently the legal right--to make choices.”⁹⁰ A “[g]uardianship is the legal process by which the state deprives a person of the power to make and act on some or all decisions, and grants that power to another individual or entity, upon a finding that the person lacks capacity.”⁹¹ Because guardianships take away rights from individuals and give them to another person, it can be difficult in situations (like the cool whip sandwich situation) to know who to listen to: the individual or the guardian? If the person has a guardian, their wishes must be followed.⁹²

VIII. THE CURRENT ALLEGATIONS IN MINNESOTA RESULTING IN A LAWSUIT: DENIAL OF ACCESS TO INDIVIDUALIZED HOUSING OPTIONS

⁸⁷ *Id.* art. 19 (a).

⁸⁸ *Id.*

⁸⁹ *O'Connor v. Donaldson*, 422 U.S. 563, 576 (1975).

⁹⁰ Glen, *supra* note 81, at 94 (“Thus, under early English law, guardianships were imposed on persons declared to be ‘idiots’ or ‘lunatics.’”).

⁹¹ *Id.* at 93.

⁹² For this reason, more of a focus has been given to Person-Centered Planning. *See id.* at 130-31 (quoting *Self Directed Services*, Medicaid.gov, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Dehvery-Systems/Self-Directed-Services.html> (last visited Oct. 24, 2012)) (“[Instead of having a guardian,] a person-centered planning process and assessment [are] used to develop a person-centered plan. The process *is directed by the individual, with assistance as needed or desired from a representative of the individual's choosing*. It is intended to identify the strengths, capacities, preferences, needs, and desired measurable outcomes of the individual. The process may include other persons, freely chosen by the individual, who are able to serve as important contributors to the process.”).

There is currently a class action lawsuit against the Minnesota Department of Human Services (DHS).⁹³ The suit was filed August 3, 2016, and alleges that Minnesota has placed restrictions upon individuals.⁹⁴ Specifically, the suit alleges that individuals in group homes are denied the housing of their choice.⁹⁵ “The lawsuit states that Minnesota Department of Human Services (DHS) allows very few people to access individualized housing options and refuses to help hundreds of people currently forced to remain in corporately owned and operated group homes.”⁹⁶ The main reason the lawsuit was brought was so that these individuals can get “help to find and move into homes they choose with services they control, instead of experiencing the isolation, helplessness and lack of control over their lives they currently face.”⁹⁷ Individuals are being denied basic human rights, including the freedom and liberty to live their life as they choose.⁹⁸

VIOLATION OF HUMAN RIGHTS

These restrictions are a violation of the landmark *Olmstead* case.⁹⁹ The individuals in the home are being stripped of their basic human rights. Being placed in a home where they have to, for example, go to the grocery store when they are told, bathe when they are told, eat dinner when they are told, go to bed when they are told, get up when they are told; the list goes on and on.

In the community, mentally retarded persons are also too frequently deprived of fundamental rights enjoyed by ‘normal’ citizens, including the right to education, to enter into a contract (to marry or even to buy a television set ‘on time’), to be licensed (for such diverse activities as selling real estate or being a beautician), to buy insurance, to vote, and to be free from discrimination in securing suitable employment and housing. Discrimination against mentally retarded people may deprive them of virtually all of their legal rights.¹⁰⁰

⁹³ Gordon v. Minnesota Dep’t of Human Servs., 0:16-cv-02623 (2016). See also Serres, *supra* note 1.

⁹⁴ Access Press Staff, *supra* note 3.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* A plaintiff of the lawsuit, Dionne Swanson, told the Access Press “I’m 43 years old and I want to have the freedom to make my own choices, basic stuff – like what time I go to bed.” I have not actually been able to see the documents from the lawsuit, so I am unsure of what the basis of their *Olmstead* claim is. Based upon articles written about the suit, it seems to be a human rights, civil rights, and an *Olmstead* action.

⁹⁸ 90 A.L.R. Fed. 2d 1 (Originally published in 2014).

⁹⁹ 527 U.S. at 582.

¹⁰⁰ Paul R. Friedman, *Human and Legal Rights of Mentally Retarded Persons*, INT. J. MENT. HEALTH, Vol. 6, No. 1, 50-72, 50 M. E. Sharpe, Inc., 1977.

To top it off, individuals who would like to choose where they are living are being denied that right. Each of these factors amount to discrimination, and violation of human rights.

Even when living in the community, these individuals are being segregated from actually being a part of the community. The state has become so concerned with creating homes for individuals with “special needs” it has forgotten about basic human rights, and basic human needs. Minnesota has forgotten that these individuals are human. The state is forgetting that “people with disabilities have the same needs as other people: for a home, for warm relationships with other people, and for a chance to give as well as receive. Often, in our attempts to meet the ‘special’ needs of people, we have forgotten their basic human needs.”¹⁰¹

The segregation of individuals is not acceptable, and it amounts to discrimination. Discrimination, in the form of unjustified segregation of individuals with disabilities in institutions (which are the group homes in this situation), is thus prohibited in the administration of state programs.¹⁰² Additionally, “[c]ommunity-based services must be available to all retarded persons according to need, irrespective of such factors as commitment to guardianship or ability to pay.”¹⁰³ Instead of starting first with an institutionalized setting, and then incorporating in community-based services, Minnesota needs to begin with community-based services. “We need to stop building special places for people with disabilities, and start instead with families and homes . . . and with the recreational, educational, and other services we *all* use.”¹⁰⁴

States must give an alternative to institutionalization once an individual is found to be ready to live in the community.¹⁰⁵ While there is not a set list of requirements for the state, the Minnesota Mental Retardation Planning Council has stated that, “residential placement should be made only if it meets the specific needs of the individual better than any other kind of service. Placement in a residential facility must be based on comprehensive diagnostic evaluation. A plan for periodic re-evaluation is essential and should be a legal requirement.”¹⁰⁶ This does not mean that every eligible or qualified individual with disabilities must go

¹⁰¹ MINNESOTA DEPARTMENT OF HUMAN SERVICES MENTAL RETARDATION DIVISION, *supra* note 2, at 4.

¹⁰² *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 317-18 (E.D.N.Y. 2009).

¹⁰³ MINNESOTA MENTAL RETARDATION PLANNING, *Actions Speak Louder than Words*, at 11, *available at* <https://mn.gov/mnddc/past/pdf/60s/66/66-ASL-MRP.pdf>.

¹⁰⁴ MINNESOTA DEPARTMENT OF HUMAN SERVICES MENTAL RETARDATION DIVISION, *supra* note 2, at 4 (*emphasis added*).

¹⁰⁵ MINNESOTA DEPARTMENT OF HUMAN SERVICES, *Programs and Services*, *available at* <http://mn.gov/dhs/people-we-serve/people-with-disabilities/services/home-community/programs-and-services/> I searched to find who makes this determination, and was not able to find an answer. However, an assumption can be made that multiple people weigh in on this decision: the Department of Human Services, the individual, the guardian (if there is one), a parent, doctor, and any program coordinators (if there is one). The Department of Human Services certainly plays some role, according to their page that serves as an “overview of eligibility rules, benefits, and application process for home and community services and supports.”

¹⁰⁶ MINNESOTA MENTAL RETARDATION PLANNING, *supra* note 101, at 13.

into a community placement. Individuals have the choice to stay in an institutionalized setting if that is what they desire, but they must at least be given the option to be placed in a community setting.¹⁰⁷ However, there are problems with this. The homes are only technically in “community settings.” The homes are actually amounting to smaller institutions, which was discussed earlier. Minnesota’s group homes are inching closer and closer to what institutions used to be. Individuals are not getting the benefits from living in group homes that they should be, and therefore, they are seeking to transition into independent living. The state of Minnesota has been denying them their right to choose their own living options.¹⁰⁸ This gives them the ability to bring an *Olmstead* claim. In order to bring an *Olmstead* claim, they only have to be at *risk* of institutionalization.¹⁰⁹

IX. MINNESOTA’S DARK PAST: HISTORY OF DENYING RIGHTS?

This is not the first time that Minnesota has been accused of denying individuals their rights, and violating the purpose of *Olmstead* and the ADA. In 2009, a class action lawsuit was brought against Minnesota Department of Human Services.¹¹⁰ The lawsuit alleged that residents of Minnesota Extended Treatment Options, a group home, were unconstitutionally segregated, and restrained.¹¹¹ Parents of individuals in the group home became concerned when individuals had bruises from being restrained in a downright position, and were placed in handcuffs.¹¹² There were many horrific accounts of abuse in the homes, and the individuals being victimized could not always verbally communicate what was happening in the home.¹¹³

They ended up settling the case, and created a new plan of action for the State of Minnesota.¹¹⁴ The parties were able to come to a proposed resolution for the case, and the United States District Court

¹⁰⁷ *Olmstead*, 527 U.S. at 582.

¹⁰⁸ See Access Press Staff, *supra* note 3 (“A group of people with disabilities August 3 filed a class action lawsuit in federal district court in Minneapolis on behalf of people with disabilities who are being denied access to homes of their choice. The lawsuit states that Minnesota Department of Human Services (DHS) allows very few people to access individualized housing options and refuses to help hundreds of people currently forced to remain in corporately owned and operated group homes. The plaintiffs are asking for help to find and move into homes they choose with services they control, instead of experiencing the isolation, helplessness and lack of control over their lives they currently face.”).

¹⁰⁹ 90 A.L.R. Fed. 2d 1 (Originally published in 2014).

¹¹⁰ *Jensen v. Minnesota Dep’t of Human Servs.*, Civ. No. 09-CV-1775 (DWF/FLN), 2013 WL 1776408 (D. Minn. Apr. 25, 2013).

¹¹¹ Sasha Aslanian, *Lawsuit Settled Over Treatment of Disabled Residents in State-Run Institution*, MPR NEWS, (Dec. 1, 2011), <http://mn.gov/dhs/general-public/featured-programs-initiatives/jensen-settlement/>.

¹¹² *Id.* “Bradley Jensen was restrained 251 times.”

¹¹³ *Id.*

¹¹⁴ *Id.*

adopted a Settlement Agreement, naming it “The Jensen Settlement Agreement.” The lengthy settlement outlines new policies and procedures, with a Comprehensive Plan of Action put in place.¹¹⁵

A. THE OLMSTEAD PLAN

Another term predicated in the Jensen Settlement Agreement was that Minnesota needs to create an “Olmstead Plan.”¹¹⁶ The Olmstead Plan was started by an Executive Order issued in January 2013 by Governor Mark Dayton. Executive Order 13-01 put in place an Olmstead Subcabinet. The Subcabinet included Minnesota agencies with duties to “implement a comprehensive Minnesota Olmstead Plan: (i) that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the most integrated setting, and (ii) that is consistent and in accord with the U.S. Supreme Court’s decision in *Olmstead v. L. C.*, 527 U.S. 581 (1999).”¹¹⁷

The subcabinet was formed to create and put in an Olmstead Plan in accordance with the Jensen Settlement Agreement.¹¹⁸ The subcabinet was successful in implementing the Olmstead Plan, and the Plan was approved in September 2015. However, the subcabinet continues to meet and work on this Olmstead Plan.¹¹⁹ The meetings of the subcabinet appear to be productive. A review of the subcabinet’s meeting minutes reveals that the cabinet goes over goals from the Olmstead Plan, and discusses which have been met, which are on track, and which have not been met.¹²⁰ It is exciting to see that the subcabinet is following through on the goals of the Olmstead Plan. But, it seems as if that is what it is: a lot of planning. There seems to be a lack of actual implementation, or if there is, it is at a slow pace.

¹¹⁵Anne M. Barry, *Jensen Settlement*, MINNESOTA DEPARTMENT OF HUMAN SERVICES, <http://www.house.leg.state.mn.us/comm/docs/83caabd4-3e4a-4ec6-9224-0d6b0f443d88.pdf> (noting “[p]art I addresses the closure and replacement of the Minnesota Specialty Health System (MSHS)-Cambridge facility with community homes and services. Part II addresses the modernization of Rule 40. Part III addresses the development of Minnesota’s Olmstead Plan.”).

¹¹⁶*Id.* Part III of the *Jensen Settlement* addresses the implementation of an Olmstead Plan.

¹¹⁷Minn. Exec. Order No. 13-01 (Jan. 28, 2013), https://mn.gov/governor/assets/EO-13-01.pdf_tcm1055-91830.pdf.

¹¹⁸ Barry, *supra* note 115. Thus, the Jensen Settlement can be viewed as a success, because it brought the implementation of the Olmstead Plan. However, the Olmstead Plan has not been completely successful, since it is failing to regard the individuals in the class action lawsuit that has been brought in Minnesota.

¹¹⁹*Id.*

¹²⁰ MINNESOTA DEPARTMENT OF HUMAN SERVICES, Minnesota’s Olmstead Plan, Subcabinet meeting minutes, meeting materials, quarterly reports, *available at* http://www.dhs.state.mn.us/main/ideplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=opc_documents (last visited Mar. 22, 2017).

The Olmstead Plan reveals Minnesota's move in the right direction, but comes at a later time than most states.¹²¹ The plan lays out outlines, goals, and its vision moving forward. While the plan strives for individuals to have a voice and be able to express their choice about how they live, where they work, and how they are educated, it fails to outline how it will steer away from private group homes.¹²²

The Olmstead plan is lengthy, and includes a framework for what the Olmstead plan needs to do. However, there is no implementation plan, and the failure to mention new implementation of transitional living is concerning. This is in large part, the reason for the class action lawsuit that has been brought recently in 2016. To change Minnesota's reliance on group homes, the Olmstead plan needs to implement a section addressing how it will change its reliance on group homes and begin to give individuals more of a voice.

B. OTHER STATE'S OLMSTEAD PLANS

In 2013, a study was done on each state's Olmstead Plan in order to “determine the extent to which they address the role of the built environment in community integration of individuals with disabilities.”¹²³ The study was completed by obtaining an Olmstead Plan from each state.¹²⁴ Some states had alternative plans, which were the equivalent to an Olmstead Plan.¹²⁵ The study looked specifically at “built environments” which means:

[T]he human-made environment that provides the setting for human activity, [and] can influence the social integration of individuals with disabilities into a community in a way that may be either positive or negative, depending on the degree to which the environment meets the needs of the users. The built environment mediates access to community resources, physically and socially, necessary for participation in community life. A supportive environment facilitates participation in everyday activities and relationships, provides opportunities for self-determination, and allows individuals to build social capital. An unsupportive environment can lead to lack of access to goods and services, isolation, and social exclusion.¹²⁶

While this paper has not specifically focused on a built environment, this study was helpful in comparing Minnesota's Olmstead Plan to other states Olmstead plans.

¹²¹ Serres, *supra* note 1.

¹²² See Olmstead Plan, Doc. No. 486-1, (Aug.10, 2015) (updated June 1, 2016), available at <http://www.dhs.state.mn.us/main/groups/olmstead/documents/pub/dhs-287592.pdf>.

¹²³ Keith M. Christensen & Betsy C. Byrne, *The Built Environment and Community Integration: A Review of States' Olmstead Plans*, J. OF DISABILITY POL'Y STUDIES, Vol. 25, No. 3, 186-195, 187 (2014).

¹²⁴ *Id.*

¹²⁵ *Id.* (citations omitted).

¹²⁶ *Id.*

Overall, other states' Olmstead Plans seem to be lacking in their Olmstead Plans as well. However, Minnesota could still be doing better when compared to other states. For example, the study looked at the number of policy actions that states included in their Plans, "Maryland had the most policies with 13, and although 7 states, such as California, West Virginia, and South Carolina, had 8 to 10 policies, the majority (16) had only 1 to 3 policies."¹²⁷ Since Minnesota is a more progressive state, one would think they would want to lead by example, and be grouped with the best states.

Additionally, the study found that "[w]ithin the housing policy actions, there is limited acknowledgment of the importance of the distribution of housing throughout the community."¹²⁸ However, Georgia was used as an example to demonstrate its excellent policy actions for community involvement.¹²⁹ Minnesota was never used as an example in the study. The study found that there is an overall lack of concern given to housing by the states, and that "it appears that the dominant focus of the state Olmstead Plans is the coordination of support services, primarily medical services, and minimal activities of daily maintenance, rather than living."¹³⁰

The authors of the study make an impactful statement that Minnesota should strive to abide by in its Olmstead Plan:

[T]he goal of disability housing policy actions should not be to develop pockets of accessible housing, intended for individuals with disabilities, but to develop the community's diverse housing types and tenure accessibly to support individuals with disabilities' home choices. Doing so requires careful planning and coordination with recreation, education, employment, transportation, governance, and service opportunities, in addition to the more commonly recognized physical structure access requirements.¹³¹

Just because other states are lacking in their Olmstead Plans does not mean that Minnesota should allow their policies to slip through the cracks. Instead, Minnesota should strive to be a chief state for individuals with disabilities, and should focus on making a change.

C. IDEAS FOR CHANGE IN MINNESOTA

¹²⁷ *Id.* at 189.

¹²⁸ *Id.* at 190.

¹²⁹ *Id.* Georgia in its Olmstead Plans includes a specific policy and goal to "create over a five-year period at least 2000 new integrated, scattered-site and other supportive residential options to be available to individuals with mental illness, including those in state hospitals, nursing facilities and at significant risk of re-institutionalization (400 new units per year)." Minnesota does not have anything comparable to this in its Olmstead Plan.

¹³⁰ *Id.* at 192. This was really sad to read, and to think about. One glimmer of hope that the study notes is that this could be because of the authors that are writing the plans. They may be making the plans off from more of an administrative model rather than a social model.

¹³¹ *Id.* at 191.

An idea for change would be the implementation of more transitional living homes instead of just group homes.¹³² The Family & Youth Services Bureau describes transitional living as a “[t]ransition plan from supervised participation to independent living or another appropriate living arrangement.”¹³³ While this program is geared towards homeless runaway and at risk youth, I think it would be a good idea for individuals with intellectual and developmental disabilities to have this as an option. The basic needs of homeless at risk youth and those with disabilities are very similar, as they need to learn to integrate into the community and live independently and successfully.

Transitional living would house individuals who might be capable of independent living, but need help learning basic skills.¹³⁴ Again using the Family & Youth Services Bureau program as an example, the learning of basic life skills is essential.¹³⁵ The youth learn “Money management, budgeting, consumer education, use of credit, Parenting skills (Maternity Group Homes program only), Interpersonal skill-building, Educational advancement, Job attainment skills, [and] Mental and physical health care.”¹³⁶ There could be special programming for this sort of living where they will learn the skills to live independently. There could also be a time-line put in place for how long it should take an individual to learn these needed skills. Once the individual is transitioned to living independently, they still could have staff check in on them if they need it. They could maybe have a staff person check in on them once a week, or something similar to this.

Often times there are long wait lists for group homes, and not enough people moving in and out of them.¹³⁷ The implementation of transitional living homes would also free up space in group homes, and would allow those who need the structure of the group home to be there. However, it is still important to make sure the group homes are not turning in to institutions. This in turn would shorten the length of the waiting list.

Another idea for change is the implementation of traditional or semi-independent living. Minnesota has implemented Semi-Independent Living Services (“SILS”), services that are similar to transitional

¹³² See, e.g., *Transitional Living Program Fact Sheet*, FAM. & YOUTH SERVICES BUREAU, (June 24, 2016), available at <http://www.acf.hhs.gov/fysb/resource/tlp-fact-sheet>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* While not all of these may be applicable to the transitional living of individuals with disabilities, it would be a good set of basic skills for them to learn while living in a home, and would help them to transition to living on their own.

¹³⁷ Lerner & Pollack, *supra* note 22, at 758.

living.¹³⁸ SILS are defined as “services that include training and assistance in managing money, preparing meals, shopping, personal appearance, hygiene and other activities needed to maintain and improve the capacity of an adult with a developmental disability to live in the community.”¹³⁹ The goal of SILS is to “support people in ways that will enable them to achieve personally desired outcomes and lead self-directed lives.”¹⁴⁰ Some aspects of these programs include “training and assistance in managing money, preparing meals, shopping, personal appearance, hygiene and other activities needed to maintain and improve the capacity of an adult with a developmental disability to live in the community.”¹⁴¹ More implementation of programs like these would be a positive for individuals with intellectual and developmental disabilities. Hardly any negatives to these programs can be identified, and would lead to a more independent group of individuals with intellectual disabilities.

The last idea for change for the Olmstead plan is to create new initiatives for the group homes that are having the most problems. This would likely be more resourceful than just creating new programs. One initiative could be that the Olmstead plan could implement better training for staff. To make group homes more livable and less like institutions, the staff needs to know how to handle the people living in the home(s). The staff needs to learn how to treat individuals, and to get them to participate in the community.¹⁴² To help with this, the placement of individuals should also be taken into account. Individuals who are at the same functioning level may do better in a house than with members who are less functioning.¹⁴³

X. CONCLUSION

Minnesota has become well known for its reliance on institutions in the past, and currently its group homes. It is clear that Minnesota has taken a step in the right direction in correcting its discrimination against individuals. But, there are individuals in Minnesota who are still being segregated and discriminated against. The implementation of the Olmstead Plan has helped to create better living

¹³⁸ MINNESOTA DEPARTMENT OF HUMAN SERVICES, *Semi-Independent Living Services*, available at http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_003730 (last visited Mar. 22, 2017).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² MINNESOTA MENTAL RETARDATION PLANNING, *supra* note 103 (stating “[a]ll professionals working with the retarded should be familiar with the entire spectrum of community facilities. County welfare departments, community mental health centers, and local Associations for Retarded Children should serve as information centers.”).

¹⁴³ Hogan, *supra* note 25, at 93 (stating that “[i]deally, a group home should consist of clients with similar intellectual and adaptive functioning levels and physical abilities, with staffing levels adjusted according to those levels and abilities.”).

situations for the individuals, but there are still problems with them. The fact that some of the group homes are becoming more institutionalized is a step in the wrong direction.

Hopefully further implementation of the Olmstead plan will get things back on track. Additionally, the Olmstead Plan will undoubtedly have a positive impact for the years to come, but changes will be at a steady pace. The impact of the Olmstead Plan appears to be a distant future for individuals looking for a remedy as of right now. Until the Plan has really been put into motion, the quality of individual's lives will continue to be diminished.

In the interim, individuals living in group homes will have to rely on hope that the recent lawsuit brought against the State of Minnesota will heighten awareness of Minnesota's reliance on group homes. A long road lies ahead for the State of Minnesota, and the individuals who are living in group homes. Hopefully there will be a road that paves greater goals and plans for individualized living plans for those with disabilities.