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# Children in PRTFs Looking to Courts to Keep Them in Their Communities

In a recent case, class action plaintiffs alleged that the commissioner of the Alabama Department of Human Resources engaged in discriminatory practices in psychiatric residential treatment facilities.

By Elisa Reiter and Daniel Pollack

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Often by court order, a psychiatric residential treatment facility (PRTF) customarily tries to provide clinical care to children who exhibit such behaviors as excessive aggression, self-harm, substance abuse, inappropriate sexual behavior, and other complex traumas. According to [a study conducted by Roderick A. Rose and Paul Lanier](#), in 2015 there were 384 such facilities in the United States. Ideally, each child in a PRTF is in an individually tailored, therapeutic group living situation. Common diagnoses may include anxiety disorders, bipolar disorders, mood disorders, neurodevelopmental disorders, stress disorders, and disruptive, impulse control, and conduct



disorders. Often the parents of children and youth who are unnecessarily in residential treatment centers have had their parental rights terminated. [Such children may not be returning to their families](#); those children should be either initially placed in or stepped down to integrated community-based placements, not institutions. Each child's need for treatment may be short or long term. Often serving as "step-down" facilities, many PRTFs provide treatment to prepare children to either return home or go to a family foster home (preferably with relatives or kin placement) or other community setting.

Nebraska's [statutory language](#) regarding the certification of need for services for this kind of service is typical of the language used by other states:

- 1 Ambulatory care resources available in the community do not meet the treatment needs of the individual;
- 2 Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and
- 3 The services can reasonably be expected to improve the individual's condition or prevent further regression so that the services will no longer be needed.

In the recent case of [A.A. v. Buckner](#) in the U.S. District Court for the Middle District of Alabama (October 29, 2021), the plaintiffs filed a class action lawsuit alleging that Nancy T. Buckner, in her capacity as the commissioner of the Alabama Department of Human Resources (DHR), engaged in discriminatory practices in violation of the [Americans with Disabilities Act \(ADA\)](#) and [section 504 of the Rehabilitation Act \(RHA\)](#). The complaint asserts that minors in the care of PRTFs

are cut off from family and friends and have few opportunities to interact with persons without a disability. Placement is also alleged to prevent the formation of meaningful relationships with adults, leading to toxic stress. The complaint alleges that DHR overuses residential facilities for children in foster care, so that fifty-two percent of all children and youth in residential facilities are placed

in PRTFs. The complaint further alleges that DHR unjustifiably places and maintains children in PRTFs because it fails to fulfill its duty to procure, support, and maintain family homes and integrated community settings.

*A.A. v. Buckner*, No. 2:21CV367-ECM (wo), slip op. at 1 (M.D. Ala. Oct. 29, 2021).

Who were the plaintiffs? The plaintiffs were minors in the custody of DHR, described as follows:

A.A. is an 18-year-old African American female suffering from mental impairment and a history of self-harm and anger, taken into custody in 2016 at the age of 12, following an outcry of abuse by a member of her custodial family. A.A. initially had very brief placements when she first entered care, and then was warehoused and shuttled between five PRTFs, with placements varying from 8 months to almost 30 months. A.A. was in a transitional living program at the time suit was filed. A.A. wanted to live with a family in the community, attend a regular school, and engage in activities like other teens her age, including skating even though skating was scary. Instead, she was forced to live in regimented PRTFs. At one such facility, she was subjected to discipline known as “Group Ignorance” (GI) which involves “institutionalized shunning.” Once on GI, a resident was not to interact with peers and, in fact, was to remain at a distance of 10 feet from other residents, and further, in lieu of watching TV with other residents, an individual on GI was forced to sit on a chair facing the wall. Prohibited from progressing through the level system once categorized GI, such an individual was further punished by being trapped in the PRTF. Jenny Carroll, a professor of law at the University of Alabama School of Law, seeks to be appointed as A.A.’s next friend.

B.B. is a 19-year-old Hispanic female, diagnosed with major depression and conduct disorder. B.B., sexually abused by her father, was placed in a PRTF in 2019, facing multiple placements thereafter, until she ran

away in August 2021. When B.B. was one year old, her mother's parental rights were terminated. B.B. and her brother continued to live with their father, but the family was frequently homeless. She was taken into care in 2016 when she was 14, after an outcry of being sexually assaulted by the son of a family with whom she and her family were residing. Her father's parental rights were terminated in 2019. From 2016 through 2019, B.B. lived in highly restrictive PRTFs. B.B. would have liked to go to a traditional school. PRTFs are to be used as placements for children with mental impairments that limit one or more of their major life activities. B.B. has been designated such a child by virtue of her placements, unable to engage in simple age-appropriate activities such as singing in her high school choir or dancing at her senior prom. B.B. was prohibited from developing friendships outside her PRTF and never learned to drive or to navigate via public transit. A mental health professional deemed B.B. eligible for a community-based placement, and she remains eligible for that placement.

C.C. is a 15-year-old African American male diagnosed with post-traumatic stress disorder, oppositional defiant disorder, and attention deficit/hyperactivity disorder (ADHD), who was the victim of sexual abuse. C.C. was removed from his grandmother's care in 2016, where he had resided since the death of his mother. C.C. spent the majority of the preceding five years in PRTFs and has been in a moderate unit in such a facility since March 2019. C.C. reached the maximum benefit of PRTF programming as of May 2020, so the facility provided DHR with a 45-day discharge notice. A less restrictive placement was recommended, with another notice of discharge being promulgated in September 2020; however, due C.C.'s increasing verbal threats, physicality, and defiance, the recommendation was for a lateral rather than a lesser placement. C.C. remained in the PRTF for three months over his established discharge date, where he remained at the time of the filing of amended pleadings in the case. C.C. did not receive the type of supported placement and services that he should have

received. C.C. joined as a plaintiff through his uncle, who is acting as his next friend and who is familiar with C.C.'s experiences.

D.D. is a 16-year-old white male diagnosed with ADHD, depression, childhood conduct disorder, anxiety, and obsessive-compulsive disorder. D.D. is medicated for depression and ADHD. D.D. was placed with DHR after an allegation of inappropriately touching a sibling in 2016 and was admitted to a PRTF at that time. Despite being recommended for treatment in the community by a psychologist, he was instead moved to another PRTF in 2018. D.D. has lived in PRTF facilities for one-third of his life. He has been deprived of being in a community school for five years. D.D. was eligible for community-based placement and was assessed for that by a psychologist, but instead he remains in a PRTF. D.D. was a plaintiff in this action via his next friend, Christine Freeman, the executive director of the Middle District of Alabama Federal Defender Program and the Alabama Post-Conviction Relief Project.

E.E. is a 16-year-old Caucasian girl, diagnosed with post-traumatic stress disorder and ADHD, a victim of incest and sexual, verbal, and physical abuse. E.E. was placed with her maternal grandmother when E.E.'s mother battled homelessness and unemployment. She has been in the custody of DHR since December 2019, living in hospital or residential facilities, but she spent three short sojourns in the care of foster families. Her progress through the system was delayed as she engaged in bartering with other residents of the facility, such as giving a pen to another resident, in addition to other minor disciplinary infractions. A mental health professional indicated that E.E. was eligible for community-based placement, if one is found for her.

What do these plaintiffs have in common? They suffer mental impairments, were removed from the care of their families, and were placed in the custody and control of DHR. All of them were either placed in a PRTF or at risk of being placed in a PRTF. The plaintiffs argued that their case was not



about individual placement decisions but, rather, focused on DHR's system-wide failure to address the needs of mentally impaired children under the age of 21 and to ensure that these individuals can and will emerge from foster care able to be placed in integrated community settings.

On behalf of the class, the court was asked to grant prospective injunctive relief, mandating that Commissioner Buckner

- 1 develop and sustain community-based placements to maintain mentally impaired children in foster care;
- 2 implement and maintain a system to ensure that children with mental impairments in foster care nonetheless have the right to transition to integrated settings within the community (to be mainstreamed); and
- 3 create programs to transition the plaintiffs and similarly situated minors in foster care who suffer from mental impairment to integrated settings within the broader community.

Under Rule 17c, all minor children are entitled to bring claims through next friends; the unique issue presented in this Alabama decision is whether a “next friend” can be a “stranger” to the named plaintiff child in the litigation. In other words, can a proposed next friend lack a sufficiently significant relationship with the plaintiff and adequately represent the child plaintiff's best interests?

In the Eleventh Circuit, proceeding by next-friend is appropriate where the real party in interest cannot appear on his own behalf and the next friend is truly dedicated to the best interests of the person she represents.

*A.A. v. Buckner*, No. 2:21CV367-ECM (wo), slip op. at 5.

Counsel for the plaintiffs argued that where mentally impaired children have been removed for cause from their parents' care, such significant contacts should not be mandated to appoint a next friend. Plaintiffs' counsel also alleged that guardians ad litem are unauthorized to represent children in

federal court and therefore may not serve as next friends. The Alabama Court held:

[T]his Court is persuaded by its analysis that a non-family member next friend is appropriate where state law does not confer general authority on guardians ad litem to represent children outside of family court and the children are in the care of the state and not their natural parents.

*Id.* at 6.

Attorneys for Commissioner Buckner argued that she is entitled to governmental immunity under the [Eleventh Amendment to the Constitution of the United States](#).

However, the Alabama court found that the Eleventh Amendment fails to insulate defendants sued in their official capacity from cases in which prospective injunctive relief is sought. Moreover, the Alabama court noted that the Eleventh Amendment does not bar fees awarded ancillary to prospective relief. The claims raised by the plaintiffs are not subject to the abstention doctrine. Instead, the Alabama court granted the plaintiffs the chance to file an amended complaint that reflects that “they seek only systematic relief for DHR’s failure to provide services in violation of the ADA and Rehabilitation Act.”

In addition, the Alabama court granted the plaintiffs additional time to re-plead claims on behalf of other members of the class action, to assert that the additional class action members were assessed by a professional (not limited to a DHR treatment professional) who has concluded that class action members are eligible for community-based placement. A First Amended Class Action Complaint for Declaratory and Injunctive Relief was duly filed on November 19, 2021. The court appointed next friends for the class members to fight on for the rights of youth with mental or behavioral health needs in foster care within Alabama.

The ADA and RHA mandate placement in least restrictive settings. The ADA/RHA claim in the Alabama case is that these children should not be segregated and, instead, should have their needs met in integrated, individualized settings. The ADA and section 504 should ensure that such youth have their needs met in the most integrated community setting possible. The cost of caring for youth with mental or behavioral health needs is estimated to be [seven to ten times greater](#) in a PRTF than the costs associated with caring for such youth in a family setting. Taxpayers and agencies could find room in their budgets if they would focus on less restrictive settings, rather than mandating placement in such restrictive settings.

At a minimum, whether at the state or federal level, children who have been separated from their parents, placed in foster care, and then placed into PRTFs must have advocates in the form of next friends. Authority figures, such as Commissioner Buckner, should not be allowed to hide behind the mantle of their office and allow foster youth with mental or behavioral health needs to languish.

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