

A state is being sued for warehousing children with disabilities in foster care

Elisa Reiter & Daniel Pollack | February 13, 2023



Late last year, the Disability Rights North Carolina and the North Carolina chapter of the NAACP filed a [class action suit against North Carolina Department of Health and Human Services Secretary Kody Kinsley](#), seeking to end discrimination regarding children with disabilities who are placed in foster care (as wards of the state), and who are then unnecessarily segregated from their home communities.

As a result, they are often isolated in heavily restrictive and clinically inappropriate institutional placements called psychiatric residential treatment facilities (PRTFs). **This is not the first such class action.** Ad litem attorneys (and others standing as “next friends”) to children with disabilities relegated to PRTFs all over the country are seeking similar relief. As noted in the North Carolina complaint:

“PRTFs are designed to provide intensive, short-term, residential psychiatric treatment for temporary stabilization. They are generally unsuitable as a long-term ‘place to live,’ but that does not stop DHHS from allowing children to languish there for extended periods of time. Unsurprisingly, research shows that children with disabilities confined to PRTFs suffer much worse outcomes than non-institutionalized children. These outcomes include spending longer periods of time in child welfare custody without a permanent home; losing critical family connections with parents, siblings, and extended family due to their confinement; and experiencing higher rates of maltreatment while in child welfare custody.”

A PRTF is not a hospital facility. However, PRTFs offer inpatient services, funded by Medicaid, to individuals who are under the age of 21 and who have mental health issues. The services are to be provided and or supervised by a physician. The PRTF’s goal is to monitor, secure and enhance the child’s condition until mental health services are no longer necessary.

Through their attorneys, the North Carolina lawsuit alleges that the children who stand as named plaintiffs (using pseudonyms), are “receiving heavy cocktails of mind-altering psychotropic medications” while at North Carolina PRTFs.

Who are these children? The complaint describes them as:

- Timothy B., a 14-year-old disabled boy and member of the Lumbee Tribe of North Carolina who has been in a PRTF for over three years. His grandmother would welcome him into her home.
- Flora P., a 15-year-old, African American disabled girl whose diagnoses include post-traumatic stress disorder, disruptive mood dysregulation disorder, and

attention-deficit/hyperactivity disorder. She first entered the system at age 3, was later adopted, but came back into the system as a teen when her parents divorced and abandoned her.

- Isabella A., a 13-year-old girl who has spent five years in the North Carolina foster care system. She has endured 20 placements in 5 years, and a plethora of psychopharmacology.
- Steph C., a 15-year-old male who has been diagnosed with post-traumatic stress disorder, disruptive mood dysregulation disorder, and attention-deficit/hyperactivity disorder. He has endured 50 placements in eight years, including seven PTRFs.

The lawsuit outlines a litany of harms done to the children at these facilities:

Flora P., Isabella A. and Steph C. have allegedly endured physical restraints at PTRFs. Timothy B. has allegedly been bullied by PTRF employees. Isabella A. has allegedly been the target of bullying and sexual harassment. And Steph C., has allegedly been beaten by peers, and had two significant head injuries while in care; in one case he was allegedly rendered unconscious by a physical attack at a PTRF and airlifted to a hospital.

The plaintiffs in the North Carolina case assert that although the dangers inherent to placement in a PTRF are known, North Carolina DHHS sent at least 572 children in foster care to PTRFs in fiscal year 2020 to 2021.

The claims in the North Carolina lawsuit appear to be consistent with concerns lodged in other cases; to wit: there are more placements of brown and black children at PTRFs. Despite its awareness of the negative impacts of such placements on children, North Carolina continues to spend millions of dollars to place children with disabilities at PTRFs.

Other than the financial cost to the state of North Carolina, what are potential issues with placement of children with disabilities at PTRFs? The plaintiffs contend that the state's "unnecessary institutionalization" of children with disabilities is exactly the sort of unlawful discrimination prohibited by Title II of

the Americans with Disabilities Act under the Supreme Court's landmark **Olmstead decision**, as well as by Section 504 of the Rehabilitation Act of 1973.

The North Carolina plaintiffs argue that the state is legally obligated to “administer its services, programs, and activities to children with disabilities in the most integrated setting appropriate to their needs,” and is “prohibited from unjustifiably institutionalizing and segregating children in PRTFs.”

While the worst of the COVID pandemic may have passed, **many social workers** faced with a lack of appropriate facilities, choose to continue the longstanding practice of warehousing children in their offices or hotels, rather than pursuing other more appropriate placement alternatives.

These children are not mainstreamed with other children. They are typically denied the opportunity to be enrolled at regular schools and/or to have the ability to interact with children outside of institutional care.

While the complaint seeks relief on behalf of all people with disabilities in North Carolina, the North Carolina NAACP joined the case as a putative plaintiff, seeking to protect disabled children of color.

To justify its receipt of federal funds, North Carolina must provide services to children with disabilities pursuant to Title II of the ADA and Section 504. As the complaint notes:

“DHHS must take over the provision of child welfare services when its agents do not meet their obligations or fail to provide child welfare services in accordance with state law. N.C. Gen. Stat. § 108A-74(a3)-(c1), (c) & (h). DHHS has exercised this power as recently as May 2022.”

The ADA **recognizes** society's propensity to differentiate and treat those with disabilities differently. In implementing Title II of the ADA, Congress puts the **onus on public entities** to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with

disabilities.” How to define the “most integrated setting”? The **most integrated setting** is one “that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” Public entities such as DHHS are charged with a **duty** to “make reasonable modifications in [their] policies, practices, or procedures” in order to avoid being accused of engaging in disability-based discrimination.

Some PTRFs arguably take children who have already been traumatized and traumatize them further, by preventing them from interacting with peers outside of the system, by forcing them into on-campus schools, by failing to allow them privacy, and by subjecting them to inflexible rules, rather than creating plans geared to meeting the individual needs of each child. Some PTRFS use physical restraints, emotional blackmail, and psychopharmacological restraints on children with disabilities.

What can be done for these children? The lawsuit argues that DHHS at the state and local levels must be held accountable. While **safety of social workers** is an understandable concern, the welfare of children with disabilities is of paramount importance. Social workers deserve to feel safe in their work environments in the balance of equities. Children with disabilities should not be warehoused; every effort should be made to assure that children with disabilities have the benefit of a nurturing, integrated, safe living conditions.

Why does this matter? These issues are not isolated to North Carolina. These issues are present in every state. Hopefully, after reviewing Timothy B. et al vs. Kinsley, attorneys ad litem in other states will be inspired to file similar class action suits, seeking to rectify what has for too long been tolerated in regard to the warehousing of children in PTRFs nationwide.

Elisa Reiter is board certified in family law and in child welfare law by the Texas Board of Legal Specialization. She has served as an adjunct professor at Southern Methodist University and is a senior attorney with Underwood Perkins, P.C. in Dallas.

Daniel Pollack, who holds a master's in social work and a law degree, is a professor at Yeshiva University's School of Social Work in New York City. He was also a commissioner of Game Over: Commission to Protect Youth Athletes, an independent blue-ribbon commission created to examine the institutional responses to sexual grooming and abuse by former USA Gymnastics physician Larry Nassar.



Original link: <https://youthtoday.org/2023/02/a-state-is-being-sued-for-warehousing-children-with-disabilities-in-foster-care/>