IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY DISABLED, *et al*.

Plaintiffs,

vs.

ILLINOIS DEPARTMENT OF HUMAN SERVICES, **MICHELLE R.B. SADDLER,** *in her official capacity as Secretary of the Illinois Department of Human Services,* **KEVIN CASEY**, *in his official capacity as Director of Developmental Disabilities of the Illinois Department of Human Resources*, and **COMMUNITY RESOURCE ALLIANCE,**

***Defendants*.**

Case No. 13 C 01300

Hon. Marvin E. Aspen

DEFENDANTS' PROPOSED FINDINGS OF FACT

LISA MADIGAN
Attorney General of Illinois

Thomas Ioppolo
Laura M. Rawski
Sunil S. Bhave
Marni M. Malowitz
Assistant Attorneys General
Office of the Illinois Attorney General
100 W. Randolph St., 13th Flr.
Chicago, Illinois 60601

Defendants Illinois Department of Human Services ("DHS"), Kevin Casey, and Michelle R.B. Saddler, by their attorney Lisa Madigan, Attorney General of Illinois, submit the following proposed findings of fact.

I. BACKGROUND: HISTORY OF SODC CLOSURES, THE STATE'S EFFORTS TO REBALANCE THE SYSTEM, AND THE BENEFITS OF COMMUNITY INTEGRATED LIVING

1. Murray Developmental Center is a facility for the developmentally disabled in Centralia, Illinois. It is operated by the Illinois Department of Human Services (DHS). Uncontested Facts, Doc. 348, ¶¶8, 9.

2. Murray is one of seven state operated centers for the developmentally disabled ("SODCs") in Illinois. Besides Murray, the others are Ludeman Developmental Center; Kiley Developmental Center; Shapiro Developmental Center; Fox Developmental Center; Choate Developmental Center; and Mabley Developmental Center. Tr. 1/9/14, a.m., at 37-38. SODCs are classified as Intermediate Care Facilities for the Developmentally Disabled ("ICF/DDs"). Casey decl., Doc. 246-1 at ¶8. There are approximately 300 private ICF/DDs in Illinois. *Id.* ICF/DDs tend to be larger facilities like nursing homes, although smaller facilities can also be ICF/DDs. *Id.* Howe Developmental Center closed in 2010 and Lincoln Developmental Center closed in 2003. *Id.* at ¶7.

3. Jacksonville Developmental Center closed in 2012. Jacksonville residents moved to a variety of settings: 108 moved to waiver-based services; of these 107 moved to a community integrated living arrangement ("CILA"). Of the remainder who declined community placements, 18 were placed in private ICF/DDs, 53 were placed in SODCs, and one was placed in a state operated mental health center. Casey decl., Doc. 246-1, ¶32.

4. The closure of Murray is part of the State's Rebalancing Initiative designed to decrease

the State's reliance on institutional placements and congregate settings for the developmentally disabled. *Id.* at ¶9. The State plans to increase the amount of resources devoted to serving the developmentally disabled in community settings. *Id.* at ¶37.

5. The closing of larger congregate facilities for the developmentally disabled is part of a national trend. Casey decl., Doc. 246-1, ¶7. Many such facilities have closed around the country consistently with the nationwide trend, and the overwhelming weight of the professional research indicates that community placements can better serve the disabled. Tr. 1/8/14, p.m. 11-20. Accordingly, at least ten states and the District of Columbia no longer have any SODCs. Casey decl., Doc. 246-1, ¶7. A 2012 study showed that on a per capita basis, Illinois serves more people in residential settings of 7-15 persons and settings of more than 16 persons than the national average. *Id.* at ¶9. Illinois has historically lagged behind the rest of the country in applying the ADA's mandate to consider community care more seriously. Tr. 1/8/14, p.m., at 9-10.

6. The State's total census at all SODCs is approximately 1,800. Casey decl., Doc. 246-1, ¶7. Murray's current census is 225, which represents a steady decline over the past 35 years. Tr. 1/8/14, p.m., at 59, 117. The State has imposed census reduction goals on all SODCs. Tr. 1/9/14, a.m. at 37. For all SODCs, there has been at least a 500 person reduction since 2009. *Id.* There is no current plan to close any other SODCs in Illinois. Casey decl., Doc. 246-1, ¶27; Tr. 1/8/14, p.m. at 69-70.

7. In addition to those served in public and private ICF/DDs, the DHS Division of Developmental Disabilities serves approximately 22,000 individuals in community-based settings through a Medicaid Home and Community Based Waiver Program. Casey decl., Doc. 246-1, at ¶8. Of this number, Illinois serves approximately 9,900 persons in CILAs. *Id.* A CILA is typically a house or apartment in a residential setting that is more integrated into the

community than a congregate or institutional setting. *Id.* CILAs can house as many as 8 persons. *Id.* DHS favors 2-4 bed homes as providing the most options for fully integrated community living. *Id.* at ¶12. CILAs are managed by state licensed community service providers. *Id.*, ¶29. About 23,000 people with developmental disabilities in Illinois are on a waiting list and presently not receiving services, and about 6,000 are considered to be in emergency situations. Tr. 1/8/14, p.m., at 29. The State has decided to close Murray in part to afford more opportunities for the developmentally disabled, who have been screened by the State's treatment professionals, to live in more integrated, community settings, assuming they or their guardians choose to do so. Casey decl., Doc. 246-1, ¶10.

8. Community placement is the nationwide "best practice standard" in caring for the developmentally disabled. Tr. 1/8/14., p.m., at 11. The consensus of experts in the field is that developmentally disabled individuals make greater progress when they can live in more integrated settings in the community. Tr. 1/8/14, p.m., at 12; Casey decl., Doc. 246-1, ¶11. When living in a larger congregate setting such as an SODC, individuals have a more difficult time interacting with people in the community and engaging in activities that are afforded to non-disabled citizens. *Id.* at ¶12. In a CILA, a person often has a more home-like atmosphere, including: his or her own bedroom, a living room, a kitchen, and an enhanced quality of life. *Id.* Living in a CILA also enhances opportunities for community integration, social interaction, and participation in various community activities. *Id.* The CILAs are tastefully decorated to suit the preferences of the resident. *See* Harris decl., Doc. 362-2 (photos attached to declaration); Equip for Equality Report, DX 205 (subject to ruling on admissibility).

9. Dr. Karen Kelly's opinion that Murray residents will never be appropriate candidates for community living is unsupported by the record. Community programs have been in place for

over 50 years, and they are not simply a fad or trend as Dr. Kelly opined. Tr. 1/8/14 p.m., at 18. Further, this opinion was asserted without reference to any professional opinion or literature. *See generally* Tr. 1/7/14, at 202-261. The Defendants' expert, Kevin Casey (who has over 40 years of experience in providing services to the developmentally disabled) Casey decl., Doc. 246-1, ¶3, credibly testified that no research indicates that those with severe developmental disabilities cannot be treated in the community, Tr. 1/8/14, p.m., at 17. Dr. Kelly provided no scientific basis as to why the ACCT process is ineffective either in theory or in practice. *See generally* Tr. 1/7/14, at 202-261. Her opinions are contrary to the overwhelming weight of professional research, which indicates that nearly all individuals who are disabled can safely reside in the community as long as the proper supports are in place. Tr. 1/8/14, p.m. at 16-17. The weight of the professional research also establishes that those with severe developmental disabilities, including individuals with PICA, autism, and disabilities requiring extensive psychotropic medications can also live safely in the community. *Id*. at 17-18; Casey decl., Doc. 246-1, ¶11. In short, Dr. Kelly's opinions about community living are not supported by any credible professional studies within the field. Tr. 1/8/14, p.m., at 19.

10. Dr. Kelly simply is not a credible expert. She is a registered nurse whose doctorate is in education. Tr. 1/7/14 a.m. at 202. She is not a certified psychiatric nurse, *id.* at 244-45, and besides one article on her son, she has not published specifically on developmental disabilities, *id*. at 259.

II. MURRAY DEVELOPMENTAL CENTER: PHYSICAL SETTING, PROGRAMS, AND RESIDENTIAL DEMOGRAPHICS

11. Murray has sixteen buildings on its 120-acre site. Casey decl., Doc. 246-1, ¶7. There are five residential buildings in use, each certified for up to 60 residents. Uncontested

Facts, Doc. 348, ¶11. Each wing of the living unit has a nurse's station and day area. Tr. 1/8/14 p.m., at 121-122. Most bedrooms are shared by two, three, or four residents. *Id.* at 118. Approximately 51 of the 225 residents have single rooms. *Id.* at 117-118. Beds have privacy curtains on ceiling tracks similar to what is seen in hospitals. *Id.* at 121. Meals are prepared at a central kitchen and distributed to the living units. *Id.* at 122.

12. Murray residents participate in three day programs: one is operated by Kaskaskia Workshop (an off-campus program in which about 119 Murray residents participate) and the other two are on-campus day programs operated at Murray. *Id.* at 123.

13. The average age of Murray residents is 47. Uncontested Facts, Doc. 348, ¶10. About 84% of Murray residents are classified as having severe or profound levels of mental retardation. *Id.* About 68% have a behavior intervention plan which often requires higher levels of staff supervision. *Id.* About 51% of Murray residents take psychotropic medications. *Id.* Additionally, there currently are only 20 Murray residents who have 1 to 1 staffing requirements, i.e., one staff member devoted solely to attending to one resident. Tr. 1/8/14, p.m. at 117.

III. THE ACTIVE COMMUNITY CARE TRANSITION (ACCT) PROCESS

14. DHS engages in a process of "person-centered planning" in evaluating SODC residents for transition to the community. Casey decl., Doc. 246-1, ¶19. DHS calls this process Active Community Care Transition ("ACCT"). *Id.* For the closure of Murray, DHS used the same consultant that it retained to assist in the closure of Jacksonville, Community Resource Associates ("CR Associates" or "CRA"), who used the ACCT process for Jacksonville as well. Dufresne amended decl. Doc. 275-1, ¶1. DHS hired an outside contractor because Murray staff would not have the time to perform their regular duties in addition to preparing transition plans for the entire Murray population. Casey decl., Doc. 246-1, ¶18.

15. CRA's work with the State is limited to assessing Plaintiffs for transition into CILAs—this is due solely to CRA's contractual relationship with DHS. Tr. 1/9/14 p.m., at 26. CRA is doing assessments at a number of SODCs besides Murray. Amended Dufresne decl., doc. 275-1, ¶9. CRA does not make placement decisions; instead, it conducts assessments of residents to determine the level of supports necessary for the resident to successfully live in a CILA. *Id.* CRA's function is to make recommendations which the guardian can consider in making his or her ultimate choice. *Id.* CRA's person-centered planning thus focuses individual attention on the needs of the developmentally disabled person to determine what that person needs to be successful in the community. Casey decl., Doc. 246-1, ¶19; Tr. 1/8/14, p.m., at 19-20. An individualized array of services is tailored to the person's specific needs, such as medications, varying levels of supervision, ramps for wheelchair access, iPads with communications applications, etc. Casey decl. Doc. 246-1, ¶19; Amended Dufresne decl., Doc. 275-1, ¶8. The assessment and plan are built around the person, rather than merely finding a placement for the person in a preexisting place or program. Tr. 1/8/14, p.m., at 23-24.

16. CRA utilizes a team of professionally credentialed persons. These professionals range in expertise, and bring forth their knowledge and experience in the fields of psychiatric nursing, behavior, speech therapy, occupational therapy, nursing, vocational needs, and psychology. Mayer decl., Doc. 246-2, ¶11-13; Tr. 1/9/14, a.m., at 72, 76. Virtually all the services available at an SODC can be individually tailored and provided in a community setting. Mayer decl., Doc. 246-2, ¶10; Casey decl., Doc. 246-1, ¶13. The function of the ACCT process is to determine what services are needed to design an individual service plan for the resident. Mayer decl., Doc.246-2, ¶9.

17. The assessment process begins with a records review by Sue Gabriel, the Assistant

Clinical Director and a nurse practitioner, using the Health Risk Screening Tool (HRST), which covers standardized need categories for each resident. Mayer decl., Doc. 246-2, at ¶15. Ms. Gabriel then meets with the resident if possible and identifies other areas where further evaluations may be needed, such as occupational therapy or a psychological evaluation. *Id.* Other ACCT professionals in varying specialties attempt to meet with the individual and review the current treatment protocols being utilized. *Id.* The ACCT team then determines if further follow up is necessary, such as, for example, a swallow study if the person has trouble swallowing foods or liquids. *Id.*

18. A careful evaluation of the resident is done across 15 Functional Life Assessment Domains: Medical; Dental; Nursing; Physical Therapy; Occupational Therapy; Psychiatric/Psychological; Community Risk/Monitoring; Behavioral Support; Communication; Activities of Daily Living (essential self-care and self-preservation skills such as bathing, grooming, toileting, cooking, eating, and dressing); Sensory; Mobility; Adaptive and Assistive Technologies and Home and Vehicle modifications; Vocational/ Meaningful Life and Community Integration; Person-Centered Plan specific. *Id.* at ¶17, and Ex. 1 to the declaration. For each area, there are as many as three levels of review: initial screening; if the screening identifies a particular issue, a more in-depth review will be undertaken by ACCT professionals; if the second level review reveals more study is required, the team will seek an external evaluation. CRA will go beyond the information in the resident's Murray file (the Murray Individualized Service Plan ("ISP")) and seek these additional studies if necessary. *Id* at ¶ 17. The plans developed by CRA do not merely repeat information already in the ISP, but do use Murray ISPs as a resource. Tr. 1/8/14, p.m., at 21-22.

19. Contemporaneously with the clinical assessment, the person-centered plan is

developed. Mayer decl., Doc. 246-2, ¶16. Two or three ACCT professionals host a meeting with the resident, guardian, and family members. *Id.* Murray staff who know the resident also ideally attend these sessions, as will the Pre-Admission Screening ("PAS") agent. *Id.* The meeting is memorialized on paper by one of the ACCT professionals, who have been trained to graphically represent the person-centered planning meeting through pictures and words or phrases. *Id.* The meeting facilitator graphically represents various aspects of the individual's wants, needs, desires, and fears to further promote his or her involvement in the meeting, as many cannot actively participate in oral or written form. *Id.* The graphic is one of many planning documents generated as part of the assessment process. *See* Mayer decl., Doc. 247-2, ¶16, and Ex. 2 to the declaration for examples of person-centered plans including graphics.

20. An individual support and budget report then is prepared by compiling all this information, and a budget is developed regarding the cost of the services needed for the person to live in the community with the appropriate supports. Mayer decl., Doc. 246-2, ¶18. Of the budgets that have been completed for individuals at Murray, over half have resulted in plans requiring 24-hour 1 to 1 staffing, and have rates exceeding $100,000 per year. *Id.*

21. As part of the ACCT process, CRA uses the guardian's desires, the information from the person centered plans, and the geographic preferences of the resident and his or her guardian to recommend a residential transition into the community. Amended Dufresne decl., doc. 275-1, ¶14. Through the ACCT process, potential CILA providers are identified and the guardian has the right to choose from appropriate providers willing to implement the plan. Amended Dufresne decl., Doc. 275-1, ¶15. The guardian then can have his or her ward participate in pre-transition visits to determine whether the CILA provider is the right fit for the ward. *Id.* at ¶17.

22. The PAS agent also is part of the placement process. Casey decl., Doc. 246-1, ¶22. There are 18 PAS agencies in Illinois; the PAS agency for the Centralia region and Murray is Southern Illinois Case Management, Inc. *Id.* The PAS agency is an independent agency under contract with DHS that is responsible for plan-development, case management, and monitoring of individuals, including routine in-person visits for those receiving community based DD (developmental disability) services. *Id.*

23. Contemporaneously with the preparation of the budget, the guardian and Murray resident participate in pre-transition meetings led by the PAS agent. Amended Dufresne decl., doc. 275-1, ¶17. A CRA representative also attends that meeting. *Id.* The PAS agent screens the potential CILA provider to make sure the CILA is able to provide the individual with the prescribed supports within the budget. *Id.* Payment rates will be determined based on the recommended services and supports as determined through the ACCT process, and the final rate will be negotiated between DHS and the provider. Casey decl., Doc. 246-1, ¶22.

24. The resident then has the opportunity to visit and stay at the CILA for a period of time on a pre-transition visit. Amended Dufresne decl., doc. 275-1, ¶17. If the resident and guardian approve the placement after the pre-transition visit, then the resident can be formally discharged from the SODC. *Id.*

25. The ACCT process looks at every resident's situation individually to determine what services the resident needs to live successfully in the community. Tr. 1/8/14, p.m., at 23-24. The Plaintiff's expert witness, Greg Shaver, conceded that each resident needs an individualized assessment and that he is involved with person-centered planning as a living. Tr. 1/8/14, a.m., at 52. Of the transitions from Jacksonville, and Murray thus far, there is no evidence to contradict that the vast majority are succeeding in the community and that ACCT assessments have been

beneficial in placing individuals appropriately, despite the fact that not every community placement has been successful. Casey decl., Doc. 246-1, ¶32. There is no evidence to suggest that the ACCT process is deliberately minimizing the severity of residents' needs to effectuate community placements or that DHS and CRA are not exercising appropriate professional judgment. The ACCT assessment process neither imposes some pre-ordained criteria in disregard of the resident's actual needs, nor engages in a harmful presumption toward community placement jeopardizing the resident's safety. Tr. 1/8/14, p.m., at 23-24. That CRA bases its reports, in part, on material already contained in Murray records, Tr. 1/7/14, at 224, is neither inappropriate nor an indication of some departure from standards of care, Tr. 1/8/14, p.m., at 21-22.

26. Moreover, the services provided Murray residents can be duplicated in the community, Casey decl., Doc. 246-1, ¶13, and indeed many Murray residents are away from the facility daily in day programs, which demonstrate they do not require institutionalization, Tr. 1/8/14, p.m., at 123. Plaintiffs did not adduce evidence of any waiver-eligible services provided at Murray that could not be provided in the community. Nor is there an arbitrary cut-off point regarding the severity of disability, i.e., there is no level of disability "test," that would dictate a particular resident can *never* be placed in the community, regardless of the level of supports that could be provided. *Id.* at 16-17.

27. It is illogical to suggest that because a Murray resident has been previously unsuccessful in a community placement, or has tried unsuccessfully to find a placement, *see* Tr. 1/7/14 at 214, 222, the person should not be reevaluated in light of the person's current needs and the community system's current capabilities. A person should not be consigned to institutional placement forever because of his or her past history.

IV. OVERSIGHT OF CILAS

28. There is no budget cap for providing the supports that are necessary (as determined by the state's treatment professionals, including professionals with CRA) for a Murray resident to thrive in a community setting. Casey decl., Doc. 246-1, ¶21.

29. All community providers are licensed by the DHS Bureau of Accreditation, Licensing and Certification and are inspected by this Bureau every three years. *Id.* at ¶29. All community providers are required to undergo criminal background checks on all potential employees. *Id.* All employees of community providers are required to have 40 hours of classroom instruction and 80 hours of on-the-job training. *Id.* Unless the guardian or the resident without a guardian (there are very few Murray residents without guardians) makes a different decision, residents moving to the community will be transitioned to licensed providers. *Id.* Providers keep detailed records on CILA residents. *See generally* Harris decl., Doc. 361-2. Furthermore, anyone who observes signs of abuse and neglect are required to report them to DHS, which will investigate. Casey decl., Doc. 246-1, ¶29. If a serious issue is discovered, a community provider will be required to institute a plan of correction. *Id.*

30. Any potential house which is to become a CILA must undergo a detailed, formal home and fire inspection by licensed inspectors before occupancy, so that any problems identified are corrected before any resident moves in. Amended Dufresne decl., doc. 275-1, ¶21.

31. Every resident placed in a CILA is assigned a case manager from a PAS agency. The case manager is required to see the person at least four times per year. *Id.* at ¶¶20, 23. As part of the ACCT process, there is an enhanced level of monitoring, for the case manager will visit the resident in the CILA weekly for the first eight weeks after the transition, and monthly for the next ten months. *Id.* at ¶ 23; Yaunches decl., Doc. 361-1, ¶11-12. CRA also will keep in regular

contact with the case manager to monitor the person's transition. Amended Dufresne decl., doc. 275-1, ¶ 23. The DHS Bureau of Quality Management will visit community facilities on a random basis to evaluate programs. Casey decl., Doc. 246-1, ¶29; Spesard decl., Doc. 361-3, ¶ 9. And guardians always are free to visit the resident as often as they like. Casey decl., Doc. 246-1, ¶29.

32. Although the record contains evidence of various individual incidents such as altercations or medication errors that have occurred in CILAs, there is no basis in the record to suggest living in a CILA is more likely to lead to accidents, medication errors, incidents of peer-to-peer altercations, or incidents of abuse or neglect when compared to the rates of such events at Murray, which also has similar incidents. Murray has had 62 peer-to-peer incidents in the last 12 months, including two involving fractures. Tr. 1/8/14, p.m., at 46; *See also* Ex. 9 to Casey decl., Doc. 247-1 (showing summaries of Murray injury reports). Plaintiffs did not produce any evidence that the risks of a community placement would be greater than what residents already face at Murray.

33. There is no evidence the supervision at Murray results in fewer injuries than in community settings. Only 20 residents at Murray currently have 1 to 1 staffing requirements. Tr. 1/8/14, p.m., at 117. Yet a much higher percentage, about half, of those screened for community placement receive 1 to 1 staffing 24 hours per day. Mayer decl., Doc. 246-2, at ¶18. Community placement thus provides more supervision.

34. Stewart Freeman, the Guardian ad Litem-appointed by the state court in Clinton County for the Office of State Guardian ("OSG") wards at Murray-has not taken any action to move any Murray resident, who is now living in a CILA pending final discharge from Murray, back to Murray on the grounds that the resident is in imminent danger. Tr. 1/7/14, at 143.

Concerns that residents in CILAs will be subject to future dangers thus are speculative. Moreover, Mr. Freeman is a Public Defender, whose expertise is in criminal law and not in caring for the developmentally disabled. Tr. 1/7/14, at 138. He had little experience with the developmentally disabled and was unfamiliar with the ADA and the *Olmstead* decision prior to his appointment as Guardian ad Litem. *Id*. at 139. Mr. Freeman lacks the qualifications necessary to determine whether the community placements are in the best interests of Murray residents.

35. Mr. Freeman conceded that some of the CILAs in the Centralia area consist of nice homes in nice neighborhoods. *Id.* at 140, 144. Many former Murray residents are living happily in their CILAs, including Mark S. and Terry H (two residents in the Greenview CILA who in May 2013 had one minor physical altercation). *Id.* at 145; Casey decl. Doc. 246-1, ¶¶33, 36.

36. The most serious incident to occur in a CILA involved one resident suffering a seizure because medication had not been provided for two days. Casey decl., Doc. 246-1 ¶34. This problem, however, was immediately rectified. *Id.* Medication errors occur at Murray as well, and some are so severe as requiring staff counseling or resignations. *Id.*

37. Plaintiffs presented evidence concerning problems occurring at Community Alternative Illinois ("CAIL")-operated CILAs such as lack of supervision and an overworked, untrained staff; however this evidence is unreliable and deserves no weight. Specifically, Rhonda Gibson admitted misstatements in her affidavit with respect to her level of pay and training, Tr. 1/7/14, p.m., at 75-77, and the witnesses exaggerated injuries to a CILA resident, *id.* at 78-80, 101-03.

V. GUARDIAN AND RESIDENT CHOICE OF PLACEMENT

38. The ACCT process does not force any particular placement on Murray residents or coerce them into a community placement. Casey decl., Doc. 246-1, ¶¶23, 24; Tr. 1/8/14 p.m., at

22, 24-25. The closure of Murray necessarily means residents will be compelled to leave Murray, but guardians retain the right of choice over their loved one's next placement. *Id.* at ¶23-24; Tr. 1/9/14, p.m., at 26 (guardian makes choice "in every case"). Consultation with guardians and family members about placement options is an essential part of the ACCT process. Amended Dufresne decl., Doc. 275-1, ¶¶10-11. But guardians can choose not to participate in the ACCT process or opt out of it at any time. Tr. 1/8/14 p.m., at 25; Tr. 1/9/14, p.m., at 24-25. The ACCT process is one avenue guardians can choose if they want to pursue community placement; other options are available for guardians who do not want community placement. *Id.* at 24; Amended Dufresne decl., Doc. 275-1, ¶9. Guardians choosing placement in a private ICD/DD can work with the Murray social workers or the PAS agent, Yaunches decl., Doc. 361-1, ¶7, or those electing to place their loved one in another SODC can work with Murray staff, as SODC-to-SODC transfers do not go through the PAS agent, Tr. 1/8/14, p.m., at 87; Yaunches decl, Doc. 361-1, ¶¶6, 9.

39. No former Murray residents currently living in a CILA have been placed there against their guardians' will, and written guardian approval is required before a CILA placement can occur. Tr. 1/7/14, at 149; Tr. 1/7/14, at 247-48 (Dr. Kelly acknowledging her son could not go to CILA without her consent); Amended Dufresne decl., doc. 275-1, ¶10; Casey decl., Doc. 246-1, ¶22, 23; Mayer decl., Doc. 246-2, ¶10; Tr. 1/8/14, p.m., at 22-23, 119; Yaunches decl., Doc. 361-1, ¶6-7; Ex. 5 to Casey decl., Doc. 247-1 (sample consent form also referred to as a "DDPAS 10 form"). In fact, guardian consent has been obtained in every instance prior to a Murray resident transitioning to a CILA. Pl. Ex. 8 (group exhibit of forms documenting guardian consent—DDPAS 10 forms).

40. There is no credible evidence that Plaintiffs were told by any of the Defendants that

they were being forced into a CILA unwillingly. Nor is there any credible evidence that any residents would be forced to find a placement on their own if they refused a CILA placement. As a matter of professional judgment, DHS recommends community placement as the best option, but it will work with guardians on finding another SODC or a private ICF/DD placement. Casey decl. Doc. 246-1, ¶24; Tr. 1/8/14, p.m., at 22-23; DX 102, at 85. In addition, the State's blueprint document, attached to Plaintiffs' Complaint, DX 101 (Doc. 14-1, p.9 of 36), makes it clear that CRA anticipated from the beginning that not every guardian would consent to a CILA, and therefore it had contingency plans ready to find other willing residents at other SODCs to transition to the community in the event a Murray resident chose another SODC, Tr. 1/9/14, a.m., at 25, 37.

41. Evidence that guardian choice is honored also is found from the fact that 53 residents from Jacksonville were placed in other SODCs and 18 in private ICF/DDs. Casey decl. Doc. 246-1, ¶32. There is no evidence that guardian choice was not honored in the Jacksonville closure.

42. Guardians of Murray residents have exercised their choice to place their wards one in an SODC since the Murray closure process began. Tr. 1/8/14, p.m., at 119; Tr. 1/7/14, a.m., at 135-136. In addition, guardians have exercised their choice to place Murray residents into private ICF/DDs. Tr. 1/8/14, a.m., at 36.

43. Although the PAS manual states that the criteria for new admissions to SODCs is quite restrictive–only for a temporary basis until "maladaptive behaviors" are resolved, at which point the PAS agent "link[s] the individual to appropriate community services"–DHS will permit SODC-to-SODC transfers for Murray residents as an exception to this criteria. DX 129 at 3-4 (excerpt of PAS manual); Tr. 1/8/14, p.m., at 88; Tr. 1/9/14, a.m., at 35-36. DHS is actively

attempting to free up space in other SODCs around the State in the event that Murray guardians choose placement in another SODC. Tr. 1/9/14, a.m., at 25, 37.

44. The fact that the PAS agent, applying the manual criteria, checked "no" to SODC availability for OSG wards already choosing community placements does not suggest denial of choice of SODC placement. Yaunches decl., Doc. 361-1, ¶5. DHS has committed to make every effort to honor, subject to available space, guardians' choice of another SODC despite their temporary nature. Tr. 1/8/14, p.m., at 24; DX. 102, at p. 85; DX. 103). But Plaintiffs have refused to even engage in any dialogue with DHS about placement outside of Murray and, therefore, they cannot contend that they have been denied valid choices. Casey decl., Doc. 246-1, ¶¶23, 25; DX 114; DX 126 (forms signed by Mrs. Winkeler and Dr. Kelly purporting to deny consent to assessments).

45. Guardians can also choose to place their wards in a private ICF/DD facility and need not participate in the ACCT process if they so choose. Yaunches decl., Doc. 361-1, ¶¶7-9. Guardians may utilize the assistance of Murray's two full-time social workers to locate available facilities, and also work with the PAS agent, who will provide information about available options and arrange visits to various private ICF/DDs. *Id.* at ¶9; Tr. 1/8/14, p.m., at 25. DHS's Bureau of Transition Services is available to assist families in finding placements, regardless of their choice. Tr. 1/8/14, p.m., at 25.

46. On May 17, 2012, Mrs. Winkeler in an email described another meeting she had with Mr. Doyle in Springfield: "Right before I left I asked him if after we met with the transition team and we decided an SODC would be best for our loved ones would there one be available...he said yes, as they are not closing all of them." DX 103. And at the September 9, 2012, public meeting of the Murray Parents Association at which Kevin Casey spoke, Casey repeatedly told Plaintiffs

that federal law requires guardian choice, that SODC placement was an option, that while he recommended CILA placement as the best option, it was not the only option, and that he encouraged families to work with DHS and CRA in the placement process. DX 102. Among his numerous statements on that occasion were these: "We are not going to force you into the four-bed group home." *Id.* at 22. "And you do, under Federal law, have a right to a choice between an intermediate care facility, either private or public, or a community program, okay?" *Id.* at 14. "We'll talk to you about that at that time, but yes, [SODC placement] is an option." *Id.* at 85.

47. Guardian choice has been explained to Murray guardians time and again. *See* Tr. 1/7/14, at 23-37; DX 102, throughout (the transcript of the MPA meeting); DX 100; DX 109. At a meeting on January 15, 2013, Mark Doyle met with Rita Winkeler, Karen Kelly, and Marsha Holzhauer and told them that private ICF/DD placements were an option. DX 100; 104. Following the meeting, Mr. Doyle emailed Mrs. Winkeler, stating, "At the meeting I encouraged you to contact the Murray Center social worker and begin sooner than later the process of seeking out a private ICF/DD which you indicated you thought would be an appropriate level of care for your son." DX 100. After the same meeting, Mrs. Winkeler sent correspondence in which she quoted Doyle as saying "Although you did say it was possible for residents to be moved to larger facilities at this time, 'the emphasis is on 2-4 bed homes[.]'" DX 104.

VI. PLAINTIFFS THEMSLEVES ARE DENYING THEIR WARDS APPROPRIATE CHOICES

48. Greg Shaver is the Executive Director of Kaskaskia Workshop and also the manager of an ICF/DD in Centralia, Bryan Manor. Tr. 1/8/14, a.m., at 4, 38. Shaver also operates CILAs in Centralia. *Id.* at 5. DHS has expressed interested in having community providers, such as Mr.

Shaver, develop new housing options in Centralia. *Id.* at 28-29, 66-67. Rita Winkeler, the President of the Murray Parents Association, encouraged Shaver to "hold off" building new housing options in Centralia. *Id.* at 66-69.

49. Plaintiffs refuse to cooperate in permitting a comprehensive assessment of the resident's medical, physical, and psychological condition which would be beneficial to the guardian regardless of ultimate placement because it gives the guardian important information about their ward. Tr. 1/8/14, p.m., at 25-26; Tr. 1/9/14, p.m., at 25-26; Casey decl., Doc. 246-1, ¶¶23, 25; DX 114; DX 126.

VII. MURRAY STAFF BIAS AND HINDERING OF COMMUNITY TRANSITIONS

50. DHS Standard Operating Procedure ("SOPP") 181 concerns the procedures to be applied in transitioning Murray residents into the community, but it is not intended to be used during a closure process. See Doc. 241-10, Ex. C. SOPP 181 explicitly contemplates that Murray residents can be placed in less restrictive settings such as CILAs, refuting the idea that Murray residents collectively are too seriously disabled to be placed in CILAs. Doc. 241-10, Ex. C., at 1-2.

51. The ACCT process is not flawed, nor is it harmful to the residents as alleged by Murray staff. Murray staff members who have criticized the process have not read the person-centered plans that are at the heart of the ACCT process or attended meetings with CRA. Tr. 1/7/14, at 175-77, 188-89, 191. Some Murray staff have actively attempted to obstruct the ACCT process by refusing to provide CRA with needed documentation to complete assessments, coming to planning meetings but refusing to participate, and turning their backs to CRA professionals at the meetings. Tr. 1/9/14, a.m., at 76.

52. One of the social workers responsible for the transfer process, William Henson, has

an additional conflict because he is a member of the Murray Parents Association, his sister is a resident of Murray, and he wants his sister to remain at Murray (which obviously could not happen if the facility closes). Tr. 1/7/14 at 53. And like all employees, he has an economic interest in favor of hindering the closure. *See id.* at 54, 182-83, 193. His Facebook posts opposing the OSG wards from leaving Murray and his expressions of support for the MPA's efforts to keep Murray open demonstrate an obvious bias and conflict of interest which could interfere with his duty to make independent judgments about other Murray residents and their suitability for community placements. *See* Tr. 1/7/14, at 54-61; DX 115, 116, 117, 118, 119.

53. Evidence in the record also shows that the Murray staff has not dealt in a consistent fashion with the assessment process of Mark Winkeler, the son of Rita Winkeler. *See* Tr. 1/7/14 at 61-65. In 2011, before the closure of Murray was announced and before this lawsuit began, a Murray social worker, Sharon Lowery, noted in Mark Winkeler's ISP, that Mark would "do well" in a CILA. Mr. Henson, the social worker succeeding Lowery, repeated the same recommendation in the 2012 ISP. Then, after the closure was announced and after this suit was filed, Henson changed the 2012 ISP to say that Mark would "not" do well in a CILA. *Compare* DX 110, 111, 112 (see "Transition Planning" section on each report).

VIII. COST CONSIDERATIONS AND FISCAL IMPACTS OF CLOSING MURRAY

54. The average cost per year to house a developmentally disabled person at Murray is approximately $239,000 per year, at the federal claiming rate, which includes Murray's operating budget of approximately $39 million as well as additional costs such as pharmaceuticals, day program costs and staff benefits which Medicaid permits to be included in the claiming rate. Casey decl. Doc. 246-1, ¶14.

55. To receive Medicaid waiver funds, the average cost for community-based services

cannot exceed the statewide average of $223,448. Casey decl., Doc. 246-1, ¶14. The vast majority of community placements fall well under this amount—the average cost of a CILA-supported Murray resident is $130,000-$135,000, and the average cost of a CILA-supported resident from Jacksonville is approximately $120,000, Tr. 1/8/14, p.m., at 28, so it is expected that community placements will on the whole lead to cost savings for the State, even if some persons with high needs generate individual budgets in excess of $223,000. Casey decl., Doc. 246-1, ¶14.

56. States have additional incentives for community placements through the federal program Money Follows the Person ("MFP"). Casey decl., Doc. 246-1, ¶16. The MFP program is a joint federal-state program in which the federal government grants additional federal Medicaid reimbursement for the first year after the person leaves the institution for a qualified community setting, in an effort to foster development of CILAs serving 4 or fewer individuals. *Id.* After the first year in the community, although the increased Medicaid reimbursement from the federal government will no longer be available to the State, this will not result in a reduction in the level or cost of services and supports for the individual. *Id*; Tr. 1/8/14, p.m., at 31-32.

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

s/Thomas A. Ioppolo
THOMAS A. IOPPOLO
SUNIL BHAVE
LAURA M. RAWSKI
MARNI M. MALOWITZ
Assistant Attorneys General
100 W. Randolph Street, 13th Floor
Chicago, Illinois 60601
(312) 814-7198

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the aforementioned document was filed on March 27, 2014 through the Court's CM/ECF system. Parties of record may obtain a copy of the paper through the Court's CM/ECF system.

/s/ Thomas Ioppolo