

Press Release

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Fernald League to file federal lawsuit alleging discrimination against Fernald Center residents

Families and guardians of residents of the Fernald Developmental Center will file a new federal lawsuit, alleging that the Patrick administration is discriminating against residents by allowing dramatic declines in care and conditions at the facility in recent months.

"The administration is trying to run Fernald into the ground before they even get around to closing it," said Fernald League President Marilyn Meagher. "This is contrary to federal law."

The lawsuit will mark the second case brought in federal court by the Fernald families and guardians since the 1970s. The first case, *Ricci v. Patrick*, which was originally filed in 1974, came to an end earlier this week when the U.S. Supreme Court declined to consider an appeal to keep the facility open as an option to its current residents. Fernald is the first of four facilities for persons with mental retardation in Massachusetts that the Patrick administration has marked for closure.

Meagher contends that in its race to close Fernald by June 2010, the administration has cut staffing in the facility disproportionately in recent months. This has resulted in a decline in services and safety at the facility, and an increase in unexplained injuries and outside hospitalizations. These injuries include broken arms, hands, cuts, and unexplained bruises. These conditions violate Title XIX of the federal Social Security Act, which sets strict standards of care in Medicaid-eligible, Intermediate Care Facilities.

On March 25, The Fernald League sent a letter to Paul Jacobsen, acting regional director of the U.S. Department of Health and Human Services, seeking a federal investigation of the current conditions at Fernald.

Other signs of declining care at Fernald include the following:

- The Fernald clinical unit is no longer staffed with 24-hour nursing care. This past winter, several Fernald residents were hospitalized for pneumonia and other health issues. When they were returned to Fernald, they were not first admitted to the clinical unit for 24-hour observation, as had previously been the case. Instead, they were taken directly back to their residential units, without nursing supervision.
- The clinical unit has always been a safety net for Fernald residents. This service has now become almost nonexistent.
- A disproportionate number of layoffs of direct-care staff at Fernald in recent months has left staff-to-resident ratios at bare minimums. Residents are denied many recreational activities required by their Individual Service Plans.
- Supervision of staff has become a problem and staff have been required to float to different areas, resulting in a loss of sustained knowledge of needs of residents in their care. Many long-time staff have become so stressed due to their case overloads that they have begun seeking employment elsewhere.
- Since the announcement in December by Secretary of Health and Human Services JudyAnn Bigby that Fernald will close by June of 2010, families and guardians have been harassed by Fernald administrators into making hasty decisions to move their loved ones out. In addition, clinical teams have been ordered to make placement recommendations for residents without the input of guardians.

Despite the administration's efforts to run Fernald down and make life as difficult as possible for the residents and their families, the families remain committed to their legal battle to keep Fernald open. As was repeatedly pointed out during a State House news conference held on Tuesday by the Massachusetts Coalition of Families and Advocates (COFAR), the care and conditions at Fernald and the other remaining state facilities still remain superior overall to the conditions in the Department of Mental Retardation's community-based system.

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