



# The COFAR VOICE

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**MAKING THE CASE** – Plaintiffs seeking renewed federal court oversight of the Department of Mental Retardation tell their stories at a July 14 press conference at the Parker House Hotel in Boston. From left to right are: COFAR Board member and Fernald League President Diane Booher, Fernald League Buildings Representative Dorothy O’Rourke, Philip Corrigan, an original plaintiff in the case; COFAR Board member George Mavridis; COFAR Executive Director Colleen Lutkevich; and Beryl Cohen, attorney for a number of the plaintiffs.

## Plaintiffs allege worsening conditions at Fernald as they seek renewed court oversight

BOSTON— As they wait to hear whether a federal judge will resume oversight of the Department of Mental Retardation, plaintiffs in a suspended landmark federal court suit are alleging that budget cuts have resulted in declining care and living conditions at the Fernald Developmental Center.

“Tonight, you wouldn’t want to go there [Fernald] and put

your head down on a pillow and turn out the lights,” said Beryl Cohen, the attorney for the Fernald, Belchertown, and Monson plaintiffs in the Ricci v. Okin case that lasted from 1972 until 1993.

**(Please see Tauro on page 2)**

## Plaintiffs seek renewed oversight

(Tauro, from page 1)

Cohen made the statement during a press conference called on July 14 to announce the filing that morning of a motion to seek U.S. District Court Judge Joseph Tauro's renewed involvement in the case, 11 years after the federal judge had disengaged from it. In his motion, Cohen alleged several "systemic violations" of Tauro's 1993 disengagement order, including budget cuts and staffing reductions at Fernald and other state facilities that have brought about the return of conditions that led to the original 1972 lawsuits.

Lisa Goodheart, attorney for the remaining Wrentham and Dever plaintiffs in the Ricci v. Okin case, asserted in a July 29 statement filed with the court that those plaintiffs were prepared to continue to negotiate with DMR. The statement added, however, that there had been no resolution of their disputes with DMR over its alleged violations of the judge's 1993 order. Goodheart's statement added that if Tauro does agree to reopen the case, the Wrentham and Dever plaintiffs wanted their arguments heard by the judge as well.

DMR responded to Cohen's motion on August 16, arguing that Fernald has maintained an adequate level of services and staffing to keep the facility in compliance with federal requirements.

In his motion, Cohen contended that recent problems at Fernald include infestations of mice and other vermin in many of the buildings and cottages on the Center's grounds and staffing shortages so severe that residents have had to wait months in some cases for such essential items as diapers and padded helmets.

Diane Booher, whose two brothers have lived together at Fernald for 46 years, said during the news conference that the DMR improperly ignored her input earlier this year in the care plans for her brothers, including her recommendation that they continue to live together if they are transferred elsewhere. On a Placement Profile that she received from Fernald administrators, she said, there was no mention that her brothers are identical twins and that they have always lived together in the same room. "For Governor Romney, our family members are just impediments to grabbing the land," Booher said.

George Mavridis, a COFAR Board member, noted that Fernald advocates have repeatedly proposed plans to allow the appropriate development of much of the Fernald site while keeping a portion of the campus as a permanent home for the current residents.

In response to a statement by DMR Commissioner Gerald Morrissey that Tauro's motion was "premature," Cohen asked: "Is it premature to ask to get rid of the mice and to repair the buildings?...This [the plans to close Fernald] are a precursor

to having the families of retarded [facility] residents living out of suitcases."

COFAR Executive Director Colleen Lutkevich said that COFAR supports Cohen's motion to seek Tauro's renewed oversight. "The closure of Fernald will not make DMR's problems [in providing adequate care] go away," she said. "It will only make them worse."

Cohen filed the motion to reopen the lawsuit after first sending notice to DMR Commissioner Gerald Morrissey in April, alleging a series of violations of his 1993 disengagement order. Following negotiating sessions with DMR in May and early June, Cohen sent a letter on June 21 to Morrissey, rejecting a 13-point plan presented by DMR to close Fernald but to allow up to 97 of the facility's 266 existing residents to remain there (see July 2004 *COFAR Voice*). The plan had been presented orally in a final negotiating session between the plaintiffs' attorneys and DMR on June 8.

In his July 14 motion, Cohen alleged that the DMR had failed to comply with Tauro's 1993 disengagement order by:

- Failing to certify that residents transferred from Fernald would receive equal or better care in their new locations;
- Creating a process for the displacement of residents in all six remaining state facilities, which involves the use of an Individual Transition Planning team comprised only of Fernald administrators to plan for the transfer of each resident. The Individual Transition Planning team doesn't allow for the full participation of the residents' family, guardians, service coordinators and providers of supports;
- Editing and re-writing residents' Individual Support Plans (ISPs) "in the absence of family members, guardians, and team professionals, with the purpose of intentionally reducing costs, services, and supports to residents;"
- Failing to schedule any modification or transfer ISP sessions, effectively denying families and guardians the opportunity to timely participate in appeals of the residents' relocations;
- Cutting the state facilities account by \$5 million for FY 2005 (see story on facilities budget on page 3), which, in addition to recent prior budget cuts, "will create a situation which places class members at risk;"
- Failing to include any increase in funding to accommodate additional facilities, staff, or programs for the 267 Fernald residents intended to be transferred to other DMR-operated facilities;

(Please see Tauro on page 4)

## *DMR budget update*

# Additional facilities layoffs may be averted

Additional layoffs at the Fernald Developmental Center and other state facilities for the mentally retarded may be averted by an expected supplemental state budget, which would restore a portion of the \$5 million cut in the current fiscal year from the facilities.

Rep. James Fagan, D-Taunton, said he would file an amendment to the supplemental budget, restoring a portion of the funding, which had been cut in the Governor's Fiscal Year 2005 budget proposal.

While several DMR line items in the state's overall 2005 budget had been given modest boosts by the Legislature in the budget process this spring, the state facilities were not among them. Neither the House nor Senate voted to restore the facilities cut in the 2005 budget. The facilities cut, if allowed to stand, would cause further layoffs at the state facilities, which have already lost personnel over the past two years (see court suit story starting on page 1).

The House and Senate did override the Governor's veto of an Outside Section of the 2005 budget, which will return \$2.5 million to the DMR facilities through a federal intergovernmental transfer program. COFAR volunteers had called members of the House Ways and Means Committee in July, urging restoration of the facilities funding and an override of the veto of the intergovernmental transfer provision.

In a letter to Rep. John Rogers, the Chairman of the House Ways and Means Committee, Fagan asked that the upcoming supplemental budget include an additional \$2.5 million for the facilities in order to restore the total \$5 million cut.

It was unclear whether the expected supplemental budget will include additional funds for a regional DMR administration line item, which was cut by \$1 million in the Governor's budget proposal, placing the jobs of 20 service coordinators in jeopardy. The service coordinators serve nearly 1,000 mentally retarded persons. The Legislature restored only \$88,000 of that cut.

Meanwhile, the House and Senate easily overrode the Governor's veto in late June of \$20 million in the budget to fund a salary reserve to boost the salaries of direct care workers in the DMR community system and other human service fields.

"The Legislature has handed a major victory in the form of a cost-of-living increase to those who provide crucial direct-care services at grossly inadequate pay levels," said COFAR Executive Director Colleen Lutkevich. "If the Legislature now goes on to help the workers in the facilities and the service coordinators, it will have completed the job it needs to do this year."

The following is a list of other key budgetary actions this year relating to care of the mentally retarded:

- **Transportation:** The Legislature restored a \$4.3 million cut in the Governor's budget, which would have eliminated transportation to day services for 798 mentally retarded people. These persons are cared for at home or live on their own and receive no residential services from DMR. The House had approved funding for this account totaling \$4.8 million more than the governor's proposed budget, while the Senate added back \$4.28 million to the account. A House-Senate conference committee selected the higher House amount.
- **Day programming:** The Legislature fully restored a \$12.1 million cut in the Governor's budget, which would have eliminated day programming for these same 798 mentally retarded people. The House had restored \$11.5 million of the \$12.1 million cut in the Governor's budget, while the Senate restored the full \$12.1 million amount. The conference committee selected the higher Senate amount.
- **Clinical team services:** The Legislature restored \$847,000 in funding in this account to continue most clinical supports for 2,400 mentally retarded persons. The Governor had proposed a \$1.2 million cut in this account, which would have cut 50 percent of the clinical supports to these 2,400 persons. The House voted to restore \$997,000 of the cut. The Senate restored only \$847,000 to the account, and the conference committee selected the lower Senate figure.
- **Boulet settlement:** After the House had severely underfunded this annual settlement amount under a court suit filed on behalf of thousands of mentally retarded persons on waiting lists for care in the community, the conference committee opted for full funding. The Boulet settlement (Boulet v. Cellucci) requires a \$70 million payment this year, allowing 400 new community placements. The House approved only \$60 million of that amount, while the Senate approved the full \$70 million.
- **DMR administration:** Under this line item, the Legislature approved \$99,000 to hire a consultant to assist a Fernald Reuse Committee in developing a portion of the campus for new uses. Both houses had approved amendments requiring the Reuse Committee to plan for the development of new community residences for the current Fernald residents and study models for preserving care and services in a section of the Fernald property.
- **DPPC funding:** The Legislature opted for the Governor's proposal to provide \$132,419 in additional funding under this line item to enable the Massachusetts Disabled Persons Protection Commission to add three new oversight and investigations positions. Continuing budget cuts have severely hampered the agency's ability to investigate cases of abuse and neglect within the DMR system. The House had shot down the additional funding, but the Senate later did approve the additional funding, leaving the conference committee to make the choice.

## *Plaintiffs seek oversight*

(Tauro, continued from page 2)

- Cutting the DMR budget in recent years, resulting in 543 personnel reductions in state ICFs/MR.

Cohen's motion noted that budget cuts at the facilities have been so severe that the psychology staff-to-patient ratio at Fernald is now 1 to 54 and the social worker staff is 1 to 64, reflecting a 50 percent reduction in total staff over the past two years.

Cohen charged during the July press conference that the administration was engaging in a "land grab" in seeking to close Fernald, and Cohen's motion alleged that the DMR had established a process for the sale of the 163-acre site prior to developing a "humane plan" to provide alternative housing for the current residents.

In her affidavit in support of Cohen's motion to reopen the case, Booher stated that in addition to failing to note that her brothers, Randall and Ronald, are identical twins and have always lived together, the 2004 ISP document failed to note agreed upon recommendations for Randall's day program activities, annual eye exams, use of the Center's therapeutic pool, and private music therapy. Booher's affidavit added that the pool and music therapy provided safe opportunities to prevent Randall from agitated behaviors that included slapping his ears and banging his head. Use of the therapeutic pool for Randall, who is completely blind, was discontinued in 2001.

In a separate affidavit, Booher stated that because of the elimination of programs at Fernald, she has personally paid more than \$900 a month for a tutor to take her brothers to the Center's pool and for a therapist to provide private music therapy for them.

An affidavit filed by Dorothy O'Rourke, chair of the Fernald League Building Representatives Committee stated that there have been constant and repeated problems with mice, fleas and roaches in the buildings and cottages. The affidavit noted a number of other problems, including a wait of nearly eight months in one cottage for cloth diapers; no electricians on call on a Sunday night, forcing a nurse to use a flashlight to set up medicines due to a broken light; a failure for a year to replace a safety helmet for one resident; inadequate plowing and shoveling during snowstorms, impeding the delivery of meals for hours; and a shortage of staff to bring residents to the Activity Center for a Christmas concert and a Thanksgiving dinner.

O'Rourke's affidavit also stated that during a recent winter cold spell, residents were forced to wait for a full day with no heat before being evacuated to another building in the middle of the night due to an inadequate number of staff to move them. In addition, staff shortages have become so severe that half the residents in one cottage couldn't attend their day program.

Philip Corrigan, a principal plaintiff in the original lawsuit in 1974, filed an affidavit with Cohen's July 2004 motion

stating that he had determined that several issues presented to the Court 30 years ago remained "substantially the same today."

## *Fernald Center Statistics*

Age Group	Total number	Percentage of total population
0-29	0	0
30-39	97	36
50-69	131	49
70-99	42	16
<b>MR Level</b>		
Mild (IQ 55 to 70)	8	3
Moderate (IQ 40 to 55)	30	11
Severe (IQ 25 to 40)	51	19
Profound (IQ under 25)	181	67
<b>Vision</b>		
Normal	154	57
Impaired	60	22
Blind	49	18
Undetermined	7	3
<b>Hearing</b>		
Normal	191	71
Impaired	64	24
Deaf	6	2
Undetermined	7	3
<b>Mobility</b>		
Walks independently	113	42
Walks with assistance	39	14
Needs wheelchair	118	44
<b>Tube fed</b>		
	42	16
<b>On ventilators</b>		
	0	0

Source: Fernald administration

**Note:** Statistics on hearing levels are as of June 15, 2004, and are based on a total population of 268. All other statistics are as of May 18, 2004, and are based on a population of 270.

# Arc recruits providers in calling for Fernald closure

## *Provider salary conflict seen*

The Arc of Massachusetts, which is pressing for the closure of the Fernald Center and other state facilities for the mentally retarded, has recruited private service providers and organizations with ties to DMR in its latest facility closure campaign.

In a July 19 memo to its membership, Arc officials listed more than 60 organizations, which they said “agree with The Arc of Massachusetts that the closure of Fernald as proposed by Governor Romney is the right thing to do.”

An analysis by *The COFAR Voice* shows that few if any of the organizations listed appeared to be independent advocacy organizations that act on behalf of the severely and profoundly mentally retarded, who comprise the majority of the population at the state facilities (see Fernald statistics chart on page 4).

Of the 65 organizations listed in the Arc memo, 39—or 60 percent—were private, nonprofit or for-profit service providers that contract with the Department of Mental Retardation. In addition, two of the organizations listed were organizations that represent service providers; two were protection and advocacy attorney groups, which have long supported the closure of state facilities; one was a DMR-funded advocacy organization, and one was headed by an official with former ties to the DMR.

*The Voice* was unable to find listings for 10 of the organizations on the Arc list. The memo did not disclose that any of the organizations listed were providers or had ties to the DMR.

Colleen Lutkevich, COFAR executive director, maintained that the providers that have joined in the call for Fernald’s closure face a conflict of interest if they intend to provide community-based services to former Fernald residents. ““Many of them may well see dollar signs and further increases in their salaries in the closing of Fernald,” Lutkevich said. “The top officers of many of these providers are already making substantial salaries in the \$100,000 and \$200,000-per year range.”

Public records show that Vinfen, one of the providers that signed the Arc memo, employed five officers each of whom made more than \$100,000 in Fiscal Year 2001. Vinfen’s President was listed as having a salary of \$268,128 and benefits and other compensation totaling \$32,389 that year.

Toward Independent Living and Learning, Inc., another signer of the Arc memo, employed two officers who each made more than \$100,000 in Fiscal Year 2002.

“We feel this is unfortunate that so many of these

organizations signed on with the Arc without talking to Fernald families or discussing the severity of their medical and behavioral needs,” said Colleen Lutkevich, COFAR executive director.

Of the three organizations at the top of the Arc list, the first organization, Massachusetts Advocates Standing Strong, works on behalf of higher functioning mentally retarded persons, who tend to fare better in community settings than do more severely and profoundly retarded persons. The second organization listed, Massachusetts Families Organizing for Change, is at least partly funded by DMR.

The third organization on the Arc list was listed as the Center on Self-Determination and Health at the Boston University Medical Center’s Department of Family Medicine. *The Voice* called the Medical Center’s Family Medicine Department and was told by staff in the administrative office that the Center on Self-Determination and Health was connected with a grant program administered by Mary Cerreto, Director of Disabilities Studies in the Department of Family Medicine. Cerreto is a former DMR assistant commissioner. She didn’t return a phone call and an email from *The Voice* seeking information about the mission and staff of the Center on Self-Determination. The Center on Self-Determination was not listed among the several individual centers on the Boston University Medical Center’s website.

## *McTernan to head VOR*

Mary McTernan, a former president of COFAR, has been elected president of the Voice of the Retarded, a national organization that, like COFAR, advocates for the continuation of state care for the most severely and profoundly mentally retarded.

The 16-member VOR Board meets quarterly. McTernan, who is currently First Vice President of VOR, has also chaired the national organization’s government affairs and legislative committees for many years. She served as President of the COFAR Board from 1992 until 1994.



Mary McTernan

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***COMPREHENSIVE CARE***  
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