

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Diana M. Fortuna to Carol H. Rasco at 13:04:53.61. Subject: Here is the discipline memo. (2 pages)	05/19/1996	COPY 6087
002. email	Diana M. Fortuna to Jennifer Palmieri at 18:19:55.86. Subject: If you hear anything on the attached issue, let me know. (2 pages)	05/20/1996	P5 6088
003. email	William White to Diana Fortuna at 09:07:35.94. Subject: Evelyn. (partial) (2 pages)	05/23/1996	P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Disabilities])
OA/Box Number: 250000

FOLDER TITLE:

[05/15/1996 - 05/29/1996]

Adam Bergfeld
2007-0143-F
ab972

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

6087

CREATOR: Diana M. Fortuna (FORTUNA_D) (OPD)

CREATION DATE/TIME: 19-MAY-1996 13:04:53.61

COPY

SUBJECT: Here is the discipline memo

TO: Carol H. Rasco

(RASCO_C) (WHO)

READ: 22-MAY-1996 14:20:04.61

TEXT:

Sorry I didn't get this to you sooner. I tried to be very concise. It will just fit on one page without cc's, but I assume we need to cc Rahm and Hilley at least. Let me know what to add or drop. Thanks.

PRINTER FONT 12_POINT_ROMAN

DRAFT

May 20, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

SUBJECT: Discipline for Students with Disabilities by
Ceasing Services

I. ACTION

□

-FORCING EVENT: In reauthorizing the law governing special education (Individuals with Disabilities Education Act, or IDEA), Congress is now considering whether to let schools cease all services for disabled students under certain circumstances. The Department of Education wants to oppose this plan before a House markup later this week.

II. BACKGROUND/ANALYSIS: Under current law, schools may not stop services for students with disabilities under any circumstances. They may expel them, but must provide services at home or in some setting. There is no such Federal protection for students without disabilities. The Department's IDEA reauthorization proposal did not permit cessation.

The Senate Labor and Human Resources Committee voted to allow schools to cease services to disabled students who bring drugs or weapons to school. Senator Harkin, a long

□

-time disability champion, supported the bill in an effort to ward off tougher amendments. The House subcommittee added assault and battery to the Senate proposal.

Disability advocates strongly oppose cessation, while general education advocates are split. The two groups reached a consensus on every issue in the reauthorization except this one. The NEA and principals oppose cessation, while the AFT and the school boards support it.

Everyone, including the Department, supports other new measures to get tougher on disabled students by making it easier for schools to remove them from the classroom temporarily.

Disability advocates point to the long history of schools using discipline as an excuse to remove disabled students from class. Secretary Riley feels strongly that cessation is never a good idea, particularly for disabled children, who do worse when excluded from education than other children. Disability

COPY

advocates are very sensitive about efforts to weaken the IDEA's

20

☐

-year

☐

-old civil rights protections, would be very disappointed if we supported any form of cessation, and see us as strong supporters of IDEA.

We consulted the staffs of Senators Feinstein, Dorgan, Lieberman, and Harkin, but could not ascertain if they would support -- or not attack -- us if we continue to oppose cessation even for students who bring drugs or guns to school.

III. RECOMMENDATION: I recommend that you support Secretary Riley's plan.

IV. DECISION:

☐ Approve ☐ Approve as Amended ☐ Reject ☐ No Action

cc: Rahm Emanuel

John Hilley

(OMB, counsel?)

COPY

COPY

RECORD TYPE: PRESIDENTIAL (ALL-IN-1 MAIL)

6088

CREATOR: Diana M. Fortuna (FORTUNA_D) (OPD)

CREATION DATE/TIME: 20-MAY-1996 18:19:55.86

COPY

SUBJECT: If you hear anything on the attached issue, let me know

TO: Jennifer Palmieri (PALMIERI_J) (WHO)

READ: 20-MAY-1996 18:22:36.37

TEXT:

Education has been pushing to get this issue resolved, and I heard third

☐

-hand that Rahm might ask Leon about the issue. The attached memo was given to staff secretary earlier today.

PRINTER FONT 12_POINT_ROMAN

May 20, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

SUBJECT: Discipline for Students with Disabilities by
Ceasing Services

I. ACTION

☐

-FORCING EVENT: In reauthorizing the law governing special education (Individuals with Disabilities Education Act, or IDEA), Congress is now considering whether to let schools cease all services for disabled students under certain circumstances. The Department of Education wants to oppose this plan before a House markup later this week.

II. BACKGROUND/ANALYSIS: Under current law, schools may not stop services for students with disabilities under any circumstances. They may expel them, but must provide services at home or in some setting. There is no such Federal protection for students without disabilities. The Department's IDEA reauthorization proposal did not permit cessation.

The Senate Labor and Human Resources Committee voted to allow schools to cease services to disabled students who bring drugs or weapons to school. Senator Harkin, a long

☐

-time disability

champion, supported the bill in an effort to ward off tougher amendments. The House subcommittee added assault and battery to the Senate proposal.

Disability advocates strongly oppose cessation, while general education advocates are split. The two groups reached a consensus on every issue in the reauthorization except this one. The NEA and principals oppose cessation, while the AFT and the school boards support it.

Secretary Riley feels strongly that cessation is never a good idea, particularly for disabled children, who do worse when excluded from education than other children. He does support other new measures to strengthen discipline of disabled children, by making it easier for schools to remove them temporarily from the classroom.

The disability community points to the long history of schools using discipline as an excuse to remove disabled students from

COPY

class. Disability advocates are very sensitive about efforts to weaken the IDEA's 20

☐

-year

☐

-old civil rights protections. They would be very disappointed if we supported any form of cessation, and see us as strong supporters of IDEA.

We consulted the staffs of Senators Feinstein, Dorgan, Lieberman, and Harkin, but could not

ascertain if they would stand with us if we oppose cessation where drugs or guns are involved.

III. RECOMMENDATION: I recommend that you support Secretary Riley's plan to oppose any cessation of services for students with disabilities. This would allow schools to expel disabled students from a school as long as they get services in some other setting.

IV. DECISION:

☐ Approve ☐ Reject ☐ Further Discussion ☐ Approve with
Following Changes: _____

COPY

COPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Mark E. Miller to Christopher C. Jennings, Jeanne Lambrew, and Daniel N. Mendelson at 23:01:20.00. Subject: ADA/Medicaid Meeting with HHS and Justice - pls read. (3 pages)	03/14/1999	COPY 6589

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Disabilities])
OA/Box Number: 250000

FOLDER TITLE:

[03/14/1999 - 04/08/1999]

Adam Bergfeld
2007-0143-F
ab977

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

COPY

6089

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mark E. Miller (CN=Mark E. Miller/OU=OMB/O=EOP [OMB])

CREATION DATE/TIME:14-MAR-1999 23:01:20.00

COPY

SUBJECT: ADA/Medicaid Meeting with HHS and Justice -- pls read

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWNTO: Jeanne Lambrew (CN=Jeanne Lambrew/OU=OPD/O=EOP@EOP [OPD])
READ:UNKNOWNTO: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWNCC: Jeffrey A. Farkas (CN=Jeffrey A. Farkas/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWNCC: Anne E. Tumlinson (CN=Anne E. Tumlinson/OU=OMB/O=EOP@EOP [OMB])
READ:UNKNOWN

TEXT:

Over the weekend, Anne and Jeff reviewed the DOJ brief.

Recall that the brief is to be filed with the Supreme Court on Monday.

Also recall that in summary brief will say to the court:

--strike a balance between the rights of the disabled and the ability of states to control long-term care costs

--states should not have to "fundamentally alter" their programs

--fundamental alter refers to: a) create a new waiver; and b) experience significant costs. It is suggested that per capita, aggregate, and "woodwork" effects be considered in "significant costs."

HFB staff are ok with the vast majority of the brief.

There is one sentence (p. 24/2nd paragraph) that we would strike:

[after saying that states should not have to design community placement programs that incur unreasonable costs] "There is no reason to presume that states will not be up to the task."

We would strike this because we are advising the court to strike a balance between the disabled and the states, and likewise we believe that our brief should strike the same balance. With the exception of this one sentence, we believe the brief is largely balanced. We think this sentence adds nothing to the legal argument (although it will be well received by the disabled). We would expect it to engender criticism from the states.

Pls advise.

I have cc'ed Chris/Jeanne because they may have different views.

COPY

----- Forwarded by Mark E. Miller/OMB/EOP on 03/14/2099
10:53 PM -----

COPY

Anne E. Tumlinson
03/12/99 03:07:00 PM
Record Type: Record

To: Daniel N. Mendelson/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: ADA/Medicaid Meeting with HHS and Justice

This afternoon, Mark, Jeff and I attended a meeting with DPC, HHS and Justice to discuss the amicus brief Justice is filing in the Supreme Court case Olmstead v. L.C. & E.W. Justice is filing the brief on Monday (deadline for filing) and we expect to receive a draft for review soon. The following is a brief summary of the case and Justice's amicus brief.

Olmstead v. L.C. & E.W. Two patients in a Georgia state psychiatric hospital challenged the state's placement of them in an institutional setting rather than in a community-based treatment program. The eleventh circuit U.S. court of appeals ruled that placement in an institutional setting violated the ADA. According to the eleventh circuit, the ADA regulations call for the provision of public services in the "most integrated setting." As a result, the district court ordered Georgia to place and maintain the patients in a residential community setting. The court of appeals also specified that the ADA requires states to make additional expenditures in order to provide care in the most integrated setting unless these expenditure would be so unreasonable that they would fundamentally alter the program. The state petitioned the Supreme Court for a writ of certiorari. The Supreme Court agreed to hear the case in April.

Justice's Amicus Brief. We have not seen DOJ's amicus brief but we should receive a draft soon. The DOJ brief will be filed on behalf of the plaintiffs (mental institution patients). In large part, DOJ's brief will be defending its regulatory interpretation of the ADA as requiring that services be provided in the most integrated setting. However, the brief will also address what DOJ and HHS would consider to be a fundamental alteration of a state's Medicaid program as specified by the 11th circuit court of appeals. In summary, DOJ and HHS' definition of fundamental alteration attempts to strike a middle ground between the disability groups desire to provide home care to everyone in an institution and the state's desire to limit their home care costs.

Definition of Fundamental Alteration. 1) New Waiver. DOJ's brief would consider a Medicaid program to be fundamentally altered if a state implemented a new home and community-based waiver (HCBW). In other words, according to Justice, the ADA does not require a state to implement a new waiver because doing so would constitute a fundamental alteration of its existing Medicaid program. 2) Old Waiver. DOJ would not necessarily consider a Medicaid program to be fundamentally altered if a state expanded enrollment into an existing waiver services (states are allowed currently to limit enrollment in home and community-based waivers). In other words, the ADA may require a state to expand enrollment into an existing waiver. However, DOJ proposes in its brief that courts should take into consideration the costs inherent in expanding an existing waiver and may decide that an expansion of the existing waiver could be a

COPY

fundamental alteration of a state's Medicaid program. HHS has assured us that courts may consider individual costs, aggregate costs, and costs associated with induced demand.

COPY

Reaction of States and Disability Community to DOJ Brief. States would prefer that DOJ not file a brief but will probably be happy to see that DOJ is recommending that courts consider costs. The disability community would prefer that states be required to expand services regardless of costs. Therefore, it is possible that neither states nor the disability community will be very happy or very disappointed.

HD Staff Reaction. In general, we do not have a problem with the direction of DOJ's brief. We will review it carefully when we receive it. However, we would alert you to the possibility that if DOJ's definition of fundamental alteration is accepted by the Supreme Court, some states who were planning to implement new waivers might not as a result of this definition. We believe states might choose to be cautious and avoid the risk that a court would require them to expand enrollment beyond the limit the state would otherwise set.

Message Copied

To: _____

Barry T. Clendenin/OMB/EOP@EOP

Mark E. Miller/OMB/EOP@EOP

Jeffrey A. Farkas/OMB/EOP@EOP

Cynthia M. Smith/OMB/EOP@EOP

Gina C. Mooers/OMB/EOP@EOP

COPY