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**FAX TRANSMITTAL**

**Date: October 19, 2012**

**To: Illinois Health Facilities and Services Review Board**

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**Comments:**

**Attached for your consideration is Equip for Equality's Response to Staff Report of Health Facilities and Services Review Board Regarding:**

**Jacksonville Developmental Center  
Docket No. H-13  
Project No. 12-074**

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There will be 4 pages, including this cover page.  
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## Advancing the human and civil rights of people with disabilities

SELF-ADVOCACY ASSISTANCE ★ LEGAL SERVICES ★ DISABILITY RIGHTS EDUCATION ★ PUBLIC POLICY ADVOCACY ★ ABUSE INVESTIGATIONS

### Response to Staff Report of the Health Facilities and Services Review Board Regarding Jacksonville Developmental Center, Docket No. H-13, Project No. 12-074

Equip for Equality is an independent, not-for-profit organization designated by the Governor in 1985 to implement the federally mandated Protection and Advocacy (P&A) system for people with disabilities in Illinois. Equip for Equality's mission is to advance the human and civil rights of people with disabilities and is accomplished through self-advocacy technical assistance and training, legal services, public policy initiatives, and investigation of abuse and neglect. Equip for Equality submits the following comments in response to the findings of the staff report of the Health Facilities and Services Review Board (HFSRB).

More than 12 years ago, the U.S. Supreme Court ruled in *Olmstead v. L.C.* that the unnecessary segregation of people with disabilities in institutions is unlawful discrimination under the Americans with Disabilities Act of 1990 (ADA). Thirteen other states (Alabama, Arkansas, Hawaii, Indiana, Maine, Michigan, Minnesota, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont and West Virginia) and the District of Columbia have closed *all* of their state-run institutions and are now successfully serving former residents in the community. Many other states are headed in that same direction.

For decades, Illinois has lagged seriously behind the rest of the nation in providing community-based services for people with intellectual and developmental disabilities. In contrast to other states, our approach to community integration has been reactive, rather than proactive. To this point, we have closed state-run institutions for people with intellectual and developmental disabilities only when conditions became unsafe and unhealthy for the residents, and federal funding was threatened or discontinued, as in the cases of Lincoln and Howe Developmental Centers.

In November 2011, Governor Quinn announced a plan to rebalance Illinois' long term care system away from institutional care towards increased community-based care. The plan calls for the closure of up to four state-operated developmental centers over a 2 ½ year period. The first facility scheduled for closure under this plan is Jacksonville Developmental Center (JDC). The decision to close JDC constitutes affirmative action by the State to comply with the mandates of the ADA and the *Olmstead* decision that services must be provided in the most integrated setting appropriate to a person's needs. As such, it provides the state with a prime

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opportunity to enhance and expand the services and supports that are required for people with intellectual and developmental disabilities to live healthier, safer, and more fulfilling lives in the community.

The report of IIFSRB staff finds that the proposed closure of JDC does not appear to conform with the provisions of 77 Ill. Adm. Code 1125. However, the report fails to identify the provisions with which the proposal appears not to conform or in what manner the proposal appears not to conform, and is thus unsupported.

The report of HFSRB staff also finds that the closure of JDC does not appear to conform with the discontinuation criteria set forth in 77 Ill. Adm. Code 1110.30 because there is not another ICFDD operating under the targeted capacity that is located within 45 minutes of JDC. These criteria presume that institutional care will be replaced with institutional care. As such, they are contrary to *Olmstead* because they preclude the State from moving toward community care, with no corresponding benefit to the individual. The administrative rules governing HFSRB do not take precedence over federal law and the U.S. Supreme Court's interpretation of that law. The State of Illinois has a legal duty to comply with the community integration mandates of the ADA and the *Olmstead* decision.

Since the ADA was passed, the number of people with intellectual and developmental disabilities residing in state-run facilities has steadily declined across the U.S. As noted previously, numerous states have closed all of their institutions. Currently, Arizona, Colorado, Delaware, Idaho, Montana, Nevada, North Dakota, South Dakota, and Wyoming have 150 or fewer individuals statewide in state-run facilities (as compared to the number of individuals that resided at JDC *alone*).

The State has developed a comprehensive plan (Active Community Care Transition) to rebalance Illinois' long term care system to increase community-based services for people with disabilities. It is premised upon the principle of person-centered planning which is designed to meet the needs and preferences of the individual. This plan provides for enhanced services and funding to ensure that the needs and preferences of those now residing at JDC will be met in the community of their choice. A large percentage of the individuals being transitioned out of JDC will remain in the central part of the state. Additionally, the number of homes for people with disabilities in the community will be expanded. While the transition process may present challenges, the experience of 13 states and the District of Columbia that have *no* state institutions shows it can be done successfully.

The principle of community integration has proven successful in practice in neighborhoods throughout the country. Data shows that people with developmental disabilities are successful in community settings: behaviors viewed as negative in the institution decrease and people are healthier and happier. Studies have also shown that parents initially opposed to closure are happy with community living and believe their family members are happier, as well.

Another factor favors closure of this particular facility. JDC is an antiquated facility in need of extensive and costly repairs and renovation. These would be in addition to the costs of running the institution and providing care in that setting which, as set forth in the Department of Human Services' application, is significantly more costly than providing care to individuals with intellectual and developmental disabilities in the community. More importantly, the institutional model of care employed at JDC is outmoded and does not give individuals with intellectual and developmental disabilities the ability to make quality choices and exercise preferences that are consistent with their individual needs.

For the State to continue to make progress in its commitment and legal duty to provide services to people with intellectual and developmental disabilities in the most integrated setting possible, the closure of JDC must proceed. To keep JDC open because there is not another large congregate facility available nearby would defeat the very purpose of the state's rebalancing effort and defy the state's obligation under federal law.