UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Timothy B., et al., *Plaintiffs*, v. Kody Kinsley, *Defendant*.	Case No. 1:22-cv-1046

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States of America respectfully submits this Statement of Interest under 28 U.S.C. § 517 to provide its views regarding the legal standard for stating a claim under Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12131–12134, and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794.[1] Title II of the ADA and Section 504 both require public entities to administer their services, programs, and activities to people with disabilities in the most integrated setting appropriate to their needs. This requirement is known as the "integration mandate."[2]

[1] The Attorney General is authorized "to attend to the interests of the United States" in any case pending in federal court. 28 U.S.C. § 517.

[2] *See* 28 C.F.R. § 35.130(d); 28 C.F.R. § 41.51(d). The integration mandates of both statutes are analyzed together because they "impose the same integration requirements." *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013); *see also* 42 U.S.C. § 12134(b); 28 C.F.R. § 35.103. Although this Statement of Interest focuses on interpretation of the ADA, the analysis here applies equally to integration mandate claims under Section 504.

The amended complaint in this case alleges that children with disabilities who are in the custody of North Carolina's child welfare system are routinely and unnecessarily segregated, or placed at serious risk of segregation, in psychiatric residential treatment facilities ("PRTFs"), in violation of the integration mandate. The plaintiffs in this case are children with disabilities in child welfare custody ("Named Plaintiffs") and two advocacy organizations ("Associational Plaintiffs") (collectively, the "Plaintiffs"). Plaintiffs bring this action on behalf of a putative class of all children with disabilities in child welfare custody. The amended complaint alleges that children in foster care enter PRTFs when they could be served in the community, and languish in PRTFs for extended periods of time because community-based placements and services are unavailable. The amended complaint further alleges that these children could live in their communities in family-based placements with appropriate services, including mental and behavioral health services.

Defendant, Secretary of the North Carolina Department of Health and Human Services ("DHHS"), moved to dismiss the amended complaint on several grounds. Defendant argues that Plaintiffs' integration mandate claims should be dismissed because Named Plaintiffs have not alleged that the State's treatment professionals determined that community-based placements would be appropriate to their needs, and because Named Plaintiffs' parents, guardians, and/or custodians consented to their placement in PRTFs. Defendant also argues that Plaintiffs are collaterally estopped from bringing claims that foster children have been unnecessarily segregated in PRTFs in violation of the

integration mandate, because the children's placement in PRTFs has already been fully litigated in state court proceedings. Defendant further argues that the Named Plaintiffs lack standing because they cannot show that DHHS caused their alleged injuries or that the relief they seek would redress their injuries.

In this Statement of Interest, the United States highlights four principles of law relating to integration mandate claims. First, plaintiffs do not need to allege that state treatment professionals found that integrated settings are appropriate to their needs. Opinions from state treatment professionals are one way—but not the only way—for plaintiffs to demonstrate appropriateness. Here, Named Plaintiffs allege that they are eligible for the very services North Carolina already offers in the community, that they have previously been authorized to receive such services, and that they are just like other children with disabilities who are successfully receiving care in the community through the State's programs and services. These allegations are sufficient to state a claim that Named Plaintiffs are appropriate for community-based services.

Second, children in state custody need not allege that their custodian affirmatively chose community-based care to state an integration mandate claim. A state cannot abdicate its responsibility to provide community-based services to children in its custody simply by asserting that the state itself chose institutional placement for those children. Here, Named Plaintiffs—through their guardians ad litem—*do* affirmatively allege that they are seeking community-based care, which is enough to state a claim.

Third, state court proceedings to determine if a child needs treatment in a PRTF—that consider different evidence and apply a different legal standard—do not estop claims of unnecessary segregation under the integration mandate. And fourth, plaintiffs have standing to bring claims against a public entity that designs, operates, and funds service systems for people with disabilities to ensure that those systems comply with the integration mandate. Here, Named Plaintiffs allege a causal connection between DHHS's failures with respect to its community-based services system and their unnecessary segregation. Accordingly, an injunction requiring DHHS to modify its service system—so that community-based services are actually available to children who need them—would likely redress Plaintiffs' injuries.

INTEREST OF THE UNITED STATES

This litigation implicates the proper interpretation and application of Title II of the ADA. The United States Department of Justice implements and enforces Title II of the ADA.[3] 42 U.S.C. §§ 12133–12134; 28 C.F.R. Part 35 (delegating authority to the Department of Justice to promulgate regulations under Title II). The Department of Justice therefore has an interest in supporting proper and uniform application of the ADA, and in furthering Congress's intent to create "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities" and reserve a

[3] The Department of Justice is also charged with enforcing Section 504, 29 U.S.C. § 794(a), and with coordinating federal agencies' implementation and enforcement of Section 504, 28 C.F.R. Part 41; Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980); *see also* 28 C.F.R. § 0.51(b)(3).

"central role" for the federal government in enforcing the ADA's standards. *Id.* §§ 12101(b)(2)–(3).

PLAINTIFFS' FACTUAL ALLEGATIONS

Plaintiffs allege that DHHS is violating the integration mandate by failing to provide children with disabilities in foster care with community-based services and thereby causing them to enter institutions to receive care. Am. Compl. (D.E. 35) ¶¶ 25–140. Plaintiffs seek to represent a putative class of all children with disabilities in child welfare custody who are unnecessarily institutionalized in PRTFs or at serious risk of unnecessary institutionalization in PRTFs. Am. Compl. ¶ 155. All of the Named Plaintiffs state that they want to live in the community, instead of in PRTFs. Am. Compl. ¶¶ 58, 71, 88, 107, 125–26. Many of these children have previously lived and received services in the community. Am. Compl. ¶¶ 65, 86, 106.

Plaintiffs allege that children in the putative class are eligible and appropriate for an array of community-based services, including state-funded disability services and services offered through North Carolina's child welfare system and statewide Medicaid program. Am. Compl. ¶¶ 51–52, 68–69, 85–86, 103–104, 122–123, 174–76, 261–62, 271–72, 277, 279, 282, 299. All of these programs and services are overseen and operated by DHHS. Am. Compl. ¶ 144. Plaintiffs allege that North Carolina's community-based programs and services, if available, would allow children in the putative class to live in the community. *E.g.* Am. Compl. ¶¶ 253, 255. For example, DHHS offers an evidence-based program known as "wraparound" that coordinates

intensive services for children in family homes. Am. Compl. ¶¶ 253–55. Plaintiffs allege that wraparound services would help foster children with disabilities stay in family homes and prevent them from being institutionalized. Am. Compl. ¶ 253. Plaintiffs allege that the State's community-based services are appropriate for these children's needs, because other children with similar disabilities are living and receiving services in their homes and communities. Am. Compl. ¶¶ 279, 282, 299.

Plaintiffs state that children in the putative class can and want to receive services in the community, *e.g.* Am. Compl. ¶¶ 51, 68, 85, 103, 122, 271, 290, but DHHS fails to provide them with community-based options, Am. Compl. ¶ 14, 187–98. Plaintiffs allege that DHHS spends a disproportionate amount of the State's resources on institutional care settings instead of on community-based services. Am. Compl. ¶¶ 16, 197, 198, 232. As a result of DHHS's failure to provide community-based services needed to prevent institutionalization, children with disabilities cannot access those services due to long waitlists, provider shortages, and other significant barriers. Am. Compl. ¶¶ 13–14, 232, 264. According to the amended complaint, DHHS concedes that its services for children with disabilities in foster care are "a patchwork of uneven support across the state" and that these children "require DHHS's immediate attention through better coordination and increased resources for services." Am. Compl. ¶ 259 (internal quotation omitted).

Plaintiffs allege that DHHS could, but has failed to, expand its community-based services for children with disabilities in foster care. Am. Compl. ¶ 241. In their prayer for relief, Plaintiffs ask DHHS to modify its service system so that the State's

community-based services are available to children who need them. Am. Compl. at 76. Specifically, Plaintiffs ask that DHHS administer its programs to ensure a sufficient supply of community-based services, implement a system to transition foster children from PRTFs to community-based settings with services, and make other reasonable modifications that would allow foster children with disabilities to live and receive services in the community. Am. Compl. at 77.

LEGAL BACKGROUND

Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Congress found that "society has tended to isolate and segregate individuals with disabilities" and that "individuals with disabilities continually encounter various forms of discrimination, including . . . segregation." *Id*. §§ 12101(a)(2), (5). To address this longstanding history of segregation and isolation, the regulation implementing Title II of the ADA includes an integration mandate that requires public entities, including states and their departments, to "administer services, programs, and activities" to people with disabilities "in the most integrated setting appropriate to the[ir] needs." 28 C.F.R. § 35.130(d); *see also* 42 U.S.C. § 12131(1) (defining "public entity"). The "most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. pt. 35, app. B at 711. Public entities must reasonably modify their policies, practices, and procedures to avoid

discriminating on the basis of disability, unless such modifications would fundamentally alter the nature of a service, program, or activity. *Id*. § 35.130(b)(7)(i).

The Supreme Court has recognized that unnecessary segregation is discrimination on the basis of disability. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999). Under the integration mandate, a public entity must provide community-based services to individuals with disabilities when (1) community-based services are appropriate to the individuals' needs; (2) the individuals do not oppose community-based services; and (3) the public entity can reasonably accommodate community-based services, taking into account its available resources and the needs of other individuals with disabilities. *Id.* at 607. Public entities must comply with the integration mandate even if they license, contract with, or otherwise arrange for other entities to administer their services. 28 C.F.R. § 35.130(b)(3)(i).

DISCUSSION

A. Plaintiffs do not need to allege that state treatment professionals found that integrated settings are appropriate to their needs.

Defendant argues that Named Plaintiffs fail to state a claim under the integration mandate because they do not allege that state treatment professionals determined that community placement is appropriate for them. Mot. to Dismiss (D.E. 41) at 9–12. But federal district courts have "universally rejected" the argument that an assessment from a state treatment professional is required to state a claim under the integration mandate.

Z.S. v. Durham Cnty., No. 1:21-CV-663, 2022 WL 673649, at *4 (M.D.N.C. Mar. 7, 2022) (quoting *United States v. Georgia*, 461 F. Supp. 3d 1315, 1323 (N.D. Ga. 2020)).[4]

For example, in *M.J. v. District of Columbia*, the court held that plaintiffs need not allege that a state treatment professional found them appropriate for community-based services. 401 F. Supp. 3d 1, 12–13 (D.D.C. 2019). In that putative class action, the plaintiffs—who were children with mental health disabilities—alleged that the District violated the integration mandate by failing to provide community-based services and routinely admitting children to residential facilities even though the children were eligible for community-based treatment. *Id*. at 4–5. The District moved to dismiss, arguing in part that the plaintiffs had not alleged that they were appropriate for community-based services. *Id*. at 12–13. The court concluded that plaintiffs need not allege that a treatment provider has explicitly stated that community-based treatment is appropriate. Rather, the court held that plaintiffs' allegations that they would be able to live in their homes and communities, if the District provided the required treatment, was enough to demonstrate that community-based treatment was appropriate. *Id*. at 13.

Plaintiffs here allege that there are community-based placements and services that could meet the needs of Named Plaintiffs and the putative class. Am. Compl. ¶¶ 174–76,

[4] *See also, e.g.*, *Georgia Advoc. Off. v. Georgia*, 447 F. Supp. 3d 1311, 1323 (N.D. Ga. 2020) ("it would be illogical to make plaintiffs suing a state rely on an opinion from that state's professionals"); *Frederick L. v. Dep't of Pub. Welfare*, 157 F. Supp. 2d 509, 539–40 (E.D. Pa. 2001) (rejecting the argument that the integration mandate "require[s] a formal recommendation for community placement").

261–62, 271–72, 277, 279, 282, 299. Plaintiffs further allege that other children with the same diagnoses or similar needs are living and receiving services in integrated settings, Am. Compl. ¶¶ 279, 282, 299, and multiple Named Plaintiffs allege that they have previously lived in the community, Am. Compl. ¶¶ 65, 86, 106. These allegations are more than sufficient to demonstrate that integrated settings are appropriate for children in the putative class. *See Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 612–13 (7th Cir. 2004) (plaintiff's allegations that he had lived and received services at home for years demonstrated appropriateness); *Disability Advocs., Inc. v. Paterson*, 653 F. Supp. 2d 184, 245–46 (E.D.N.Y. 2009) ("*DAI II*") (evidence that individuals with similar disabilities were living and receiving services in integrated settings demonstrated appropriateness), *vacated on other grounds sub nom. Disability Advocs., Inc. v. New York Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012); *see also Z.S.*, 2022 WL 673649, at *4 (plaintiff's allegations that there were available options for placement in the community that could meet his needs demonstrated appropriateness).

B. Children in child welfare custody do not need to allege that their adult decisionmakers affirmatively chose community-based services.

Defendant argues that Plaintiffs' integration mandate claims should be dismissed because Plaintiffs do not allege that children's parents, guardians, or custodians affirmatively chose services in the community. Mot. to Dismiss at 12. In support of this argument, Defendant describes procedures that DHHS employs to obtain a parent or guardian's consent to place a foster child in a PRTF, to the extent a parent or guardian retains some decisionmaking authority. Mot. to Dismiss at 12–14. Defendant also

describes procedures that DHHS, through county DSS offices, uses to place foster children who are in its custody in PRTFs. Mot. to Dismiss at 13–14. Defendant argues that because parents or guardians—or DHHS, the custodian—consented to children's placement in PRTFs, PRTFs are the "preferred setting" for these children to receive services, Mot. to Dismiss at 13–14, and Plaintiffs thus cannot claim that these children were unnecessarily segregated. Defendant's argument misses the mark.

To start, the Named Plaintiffs—through their guardians ad litem in this action—*do* affirmatively allege that they want to live in the community in family homes, with appropriate services and supports. Am. Compl. ¶¶ 57–58, 71, 88, 107, 125. These allegations surpass the bar for stating a claim of unnecessary segregation, since the integration mandate merely requires plaintiffs to allege that they *do not oppose* receiving services in the community. *Olmstead*, 527 U.S. at 607.

To the extent any parent or guardian consented to a foster child's placement in a PRTF, that prior consent has no bearing on whether the parent or guardian opposes community-based treatment under the integration mandate. Whether a person consents to institutional treatment is an entirely different inquiry from whether the person would accept community-based services if those services were available. *See DAI II*, 653 F. Supp. 2d. at 262–63. Indeed, the Supreme Court in *Olmstead* held that the plaintiff was not opposed to community-based services even though she chose to remain in a psychiatric hospital instead of discharging to a homeless shelter. 527 U.S. at 593, 603. The fact that children's parents or guardians consented to their placement in PRTFs does

not prevent those children from stating a claim under the integration mandate.

A decision by DHHS or its agents to place a foster child in a PRTF also does not defeat an integration mandate claim. A state cannot abdicate its obligation to provide services in integrated settings to children in its custody simply by asserting that it chose institutional placement for those children. As explained above, courts routinely hold that it would be "illogical to make plaintiffs suing a state rely on an opinion from that state's professionals," *Georgia Advoc. Off.*, 447 F. Supp. 3d 1311 at 1323, and the same reasoning applies here. Allowing a public entity to defeat an integration mandate claim by arguing that it selected institutionalization for children in its custody would render the integration mandate meaningless for those children. *Cf. DAI II,* 653 F. Supp. 2d at 259 (requiring a determination from state-contracted treatment professionals would "eviscerate the integration mandate"). As a public entity, DHHS has an affirmative obligation to serve children with disabilities in the most integrated setting appropriate to their needs, and therefore cannot defeat Plaintiffs' claims by arguing that DHHS, through DSS employees and treatment professionals, chose to place children in the putative class in PRTFs. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d).

When a public entity has not made community-based services available to a person with a disability, the person's consent to enter or remain in an institution is not a choice to "oppose" community services under the integration mandate. Indeed, courts have acknowledged that "the *meaningful* exercise of a preference will be possible only *if* an adequate array of community services are available." *Kenneth R. ex rel. Tri-Cnty.*

CAP, Inc./GS v. Hassan, 293 F.R.D. 254, 270 (D.N.H. 2013) (emphasis in original). As just one example, in *Murphy by Murphy v. Minnesota Dep't of Hum. Servs*., the court held that the plaintiffs plausibly alleged integration mandate claims where they alleged that the defendant public entity failed to provide them with an informed choice of community-based alternatives to institutionalization. 260 F. Supp. 3d 1084, 1117 (D. Minn. 2017).

Here, Plaintiffs state that they can and want to receive services in the community. Am. Compl. ¶¶ 58, 71, 88, 107, 125–26. But they allege that DHHS has provided them with few, if any, alternatives to institutionalization. Am. Compl. ¶¶ 10, 14, 17, 66. Since DHHS has failed to provide sufficient community-based services, parents, guardians, and custodians cannot make a meaningful choice of where they want a child to receive services. Allegations that DHHS has failed to provide Plaintiffs—or their parents, guardians, or custodians—with a meaningful choice of community-based options are enough to demonstrate non-opposition under the integration mandate. *See DAI II*, 653 F. Supp. 2d. at 262–63 (finding that the fact that plaintiffs "entered [institutions] because they had nowhere else to go" was evidence that they would not oppose community-based services, if those services were available). Accordingly, relying on "consent" to institutionalization to defeat an integration mandate claim would be improper.

C. State court proceedings that consider different evidence and apply a different legal standard do not preclude claims of unnecessary segregation under the integration mandate.

Defendant incorrectly argues that certain state court hearings, known as Section 122c proceedings, preclude Plaintiffs' federal integration mandate claims under principles of res judicata and collateral estoppel. Mot. to Dismiss at 15–17. North Carolina state courts conduct Section 122c proceedings to review placements of foster children in PRTFs and determine whether the children should remain institutionalized. N.C.G.S. § 122c-224.3. Under North Carolina law, a presiding judge in a Section 122c proceeding must find that "lesser measures will be insufficient" before authorizing a child's continued stay in a PRTF. N.C.G.S. § 122c-224.3(f). Defendant contends that Section 122c proceedings give foster children a "full and fair opportunity" to litigate claims that they are unnecessarily segregated in PRTFs. Mot. to Dismiss at 17. But Section 122c proceedings consider different evidence and apply a different legal standard than the integration mandate requires, and so they have no preclusive effect on Plaintiffs' claims.

Since Federal Rule of Civil Procedure 12(b)(6) is "intended to address the legal adequacy of the complaint, and not to address the merits of any affirmative defenses," including collateral estoppel and res judicata,[5] courts considering motions to dismiss under Rule 12(b)(6) only consider collateral estoppel and res judicata arguments in

[5] *Richmond, Fredericksburg & Potomac R.R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993) (collateral estoppel and res judicata are affirmative defenses).

"limited circumstances." *Id*. Collateral estoppel, or issue preclusion, bars parties from re-litigating issues of fact or law that are identical to issues that were decided in a prior litigation in which the party to be estopped had a full and fair opportunity to litigate. *Virginia Hosp. Ass'n v. Baliles*, 830 F.2d 1308, 1311 (4th Cir. 1987). Res judicata, or claim preclusion, bars parties from relitigating claims that were decided by a prior final judgment on the merits, where the previous litigation involved identical parties (or parties in privity) and was based on the same cause of action. *Duckett v. Fuller*, 819 F.3d 740, 744 (4th Cir. 2016). Res judicata similarly prevents parties from "contesting matters that they have had a full and fair opportunity to litigate." *Id*.

State court proceedings that consider different facts and apply different legal standards than those required under the ADA are not preclusive. *Cf. Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 335 (4th Cir. 2022) (holding that the lower court should not have abstained from hearing integration mandate claims in deference to state-court proceedings, because the state court proceedings—unlike claims under the integration mandate—could only operate "within the existing parameters of the foster-care system" and could not "pause to ponder" the absence of integrated placements), *cert. denied sub nom. Justice v. Jonathan R.*, 143 S. Ct. 310 (2022). If a state court proceeding does not provide a claimant with a full and fair opportunity to litigate alleged violations of the integration mandate, then it cannot bar a subsequent federal court action under the doctrines of collateral estoppel and res judicata. Contrary to Defendant's argument, Section 122c proceedings do not present an opportunity for foster children to litigate

claims that they have been unnecessarily institutionalized in violation of the integration mandate.

Under the integration mandate, public entities must reasonably modify their community-based services to make those services available to people with disabilities who want and are eligible for them. *Olmstead*, 527 U.S. at 591; 28 C.F.R. §§ 35.130(b)(7), (d). When considering integration mandate claims, courts must therefore assess whether people with disabilities could be served in the community if appropriate services were available to them. *Olmstead*, 527 U.S. at 602.

By contrast, courts in Section 122c proceedings need only consider less restrictive alternatives that are actually available at the time of the proceeding. *In re M.B.*, 771 S.E.2d 615, 626 (N.C. App. 2015). In *M.B.*, a juvenile appealed his continued placement in a PRTF after a Section 122c proceeding, arguing that he should have been placed in a less restrictive setting as his treating professionals recommended. *Id*. The North Carolina Court of Appeals denied his appeal. The Court explained that the legislative intent behind Section 122c was to provide mental health services "within available resources" in "the least restrictive, therapeutically most appropriate setting *available*." *Id*. (emphasis in original). The Court affirmed the juvenile's placement in a PRTF because "there were no sufficient, less restrictive measures available for [his] continued treatment." *Id*. In short, courts presiding over Section 122c proceedings are not required to analyze—or even consider—whether community-based services could be made available through reasonable modifications. Section 122c proceedings therefore do

not give children an opportunity to argue that they have been unnecessarily segregated in violation of the ADA.

The Fourth Circuit recently considered a similar case and held that state court proceedings did not bar foster children from bringing claims under the integration mandate in federal court. *Jonathan R.*, 41 F.4th at 321–22. In *Jonathan R.*, a putative class of foster children alleged that West Virginia's administration of its child welfare services resulted in the children's unnecessary institutionalization. *Id*. The State argued that because state courts review and approve foster children's placements, the federal courts should abstain from considering the children's integration mandate claims in deference to the state court proceedings. *Id*. Although the *Jonathan R.* court considered whether plaintiffs' claims were barred under abstention doctrines, the court made factual findings that apply equally to the facts of this case. The court found that, like Plaintiffs here, the foster children had alleged "wide-reaching, intertwined, and systemic failures that [could] not be remedied through piecemeal orders" in state court proceedings. 41 F.4th at 336 (internal quotations omitted). The court commented that, as a practical matter, "[r]eforming foster care case-by-case would be like patching up holes in a sinking ship by tearing off the floorboards." *Id*. at 336. Since the State's "individual periodic hearings [did] not provide an appropriate forum for a multi-faceted class-action challenge," the court held that the foster children's integration mandate claims should be allowed to proceed in federal court. *Id.* at 339. The same reasoning applies here. Section 122c proceedings do not provide an opportunity to fully litigate integration

mandate claims because those proceedings are ill-suited to resolve the kinds of systemic, state-wide violations the ADA was designed to address and that Plaintiffs allege in this case. Plaintiffs' integration mandate claims should likewise be allowed to proceed.

D. A public entity that designs, operates, and funds a service system for people with disabilities must ensure that its system complies with the integration mandate.

Defendant argues that Named Plaintiffs lack standing to bring their integration claims because their unnecessary segregation lacks a causal connection to DHHS's actions and is unlikely to be redressed by the relief sought. Mot. to Dismiss at 19, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). Defendant argues that Named Plaintiffs' alleged injuries were caused by actions and decisions of county- and regional-level entities, not by any actions of DHHS. Mot. to Dismiss at 19–20. Defendant further argues that the systemic relief Plaintiffs seek—requiring DHHS to make community-based services available, and to transition children in foster care to community-based settings—would not necessarily redress Named Plaintiffs' injuries. These arguments are misplaced.

Public entities must ensure that all of their services, programs, and activities comply with Title II of the ADA. Third parties often play a key role in administering public services, but the public entity that operates, designs, and funds the service system remains responsible for ADA compliance. 28 C.F.R. § 35.130(b)(3)(i) (prohibiting public entities from discriminating against people with disabilities both directly and "through contractual, licensing, or other arrangements"). Even if a state arranges for

services to be administered by "a[nother] public entity that has its own title II obligations," the state "is still responsible for ensuring that the other public entity complies with title II in providing those services." 28 C.F.R. pt. 35, app. A.

Here, Plaintiffs allege that DHHS administers its service system for foster children with disabilities in a manner that results in the children's unnecessary segregation. As the agency that oversees and operates the service system, DHHS must ensure that its service system comports with the ADA, regardless of whether it has assigned certain responsibilities to third parties. Mot. to Dismiss at 4, 6 (admitting that DHHS oversees the service systems at issue); *e.g. Marks v. Colorado Dep't of Corr.*, 976 F.3d 1087, 1096 (10th Cir. 2020); *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013). Most publicly-funded service systems rely on private providers to deliver services, and courts consistently hold public entities liable under the integration mandate for their administration of services that are provided by private parties.[6]

In an analogous integration mandate case also involving Medicaid services, this Court recognized that since DHHS is the single state agency responsible for

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[6] *E.g. Pashby v. Delia*, 709 F.3d at 322–24 (affirming that plaintiffs were likely to succeed on the merits of their integration mandate claim against the state where private adult care homes provided the services at issue); *DAI II*, 653 F. Supp. 2d 184, 373–74 (holding state agencies liable under the integration mandate for their administration of the state's mental health service system, even though privately-run facilities provided the services at issue); *Radaszewski*, 383 F.3d at 614–15 (reversing judgment on the pleadings and holding that state agency's eligibility criteria for its waiver program that placed plaintiff at serious risk of entering a private long-term care facility could violate the integration mandate); *Fisher v. Oklahoma Health Care Auth.*, 335 F. 3d 1175, 1181–82 (10th Cir. 2003) (reversing summary judgment for state and holding that a state's cap on

administering and supervising North Carolina's Medicaid program, the Secretary of DHHS "cannot contract away his own duty to ensure compliance with federal law." *Clinton L. v. Delia*, No. 1:10-CV-123, 2012 WL 5381488, at *5 (M.D.N.C. Oct. 31, 2012) (the Secretary of DHHS must "'ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards,'" including Title II of the ADA and the Rehabilitation Act) (quoting N.C.G.S. § 122C-112.1(a)(6)).

Plaintiffs need not clear a high bar to plead a causal connection between a public entity's action or inaction and plaintiffs' resulting segregation. At the motion to dismiss stage, even "scant" allegations may be enough to show causation under the integration mandate. *Est. of Valentine by & through Grate v. South Carolina*, 611 F. Supp. 3d 99, 120 (D.S.C. 2019) (holding that plaintiff who brought an integration mandate claim had sufficiently pled causation to withstand a motion to dismiss). Courts consistently find that plaintiffs have standing where they allege that they are eligible for community-based services but the defendant public entity that oversees those services fails to ensure that the services are actually available. *E.g. M.G. v. New York State Off. of Mental Health*, 572 F. Supp. 3d 1, 12 (S.D.N.Y. 2021) (holding that plaintiffs had standing to bring claim

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prescriptions placing plaintiffs at serious risk of entering a privately-owned nursing facility could violate the integration mandate); *Townsend v. Quasim*, 328 F.3d 511, 513 (9th Cir. 2003) (reversing summary judgment for state and holding that the state's refusal to offer community-based in-home nursing services to some disabled persons may violate the integration mandate).

against a defendant state entity and had adequately pled causation despite the entity's argument that plaintiffs' injuries were "more directly caused by deficiencies on the part of the private or municipal organizations").[7] The bar for pleading redressability is similarly low. To satisfy the redressability element of standing, a plaintiff need only show that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Deal v. Mercer Cty. Bd. of Educ.*, 911 F.3d 183, 189–90 (4th Cir. 2018) (internal quotation omitted). Plaintiffs can successfully plead redressability by alleging that they "would benefit in a tangible way" from court intervention; they do not need to show that a favorable decision would relieve all of their injuries. *Id*.

Plaintiffs here allege that DHHS caused their unnecessary segregation or placed them at risk of unnecessary segregation through its administration of statewide programs and services. Am. Compl. ¶¶ 3, 14, 187–98. Plaintiffs allege that DHHS oversees all of the programs and services at issue, including Medicaid, the state child welfare program, and other state-funded programs. Am. Compl. ¶¶ 144, 168–83. Although DHHS assigns

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[7] *See also Murphy*, 260 F. Supp. 3d at 1102 (D. Minn. 2017) (there was "little question that Plaintiffs ha[d] adequately established causation" to support standing where plaintiffs alleged that the public entity that oversaw services failed to ensure that people with disabilities could actually receive those services) (internal quotation omitted); *Guggenberger v. Minnesota*, 198 F. Supp. 3d 973, 992 (D. Minn. 2016) (plaintiffs "established the requisite causal connection" to show standing by alleging that the agency charged with administering the State's Medicaid program had mismanaged the program, underspent on community-based services, and allowed plaintiffs to remain on waiting lists); *Parrales v. Dudek*, No. 15-CV-424, 2015 WL 13373978, at *4 (N.D. Fla. Dec. 24, 2015) (holding that plaintiffs had standing to bring claim against a defendant state entity and had satisfied the causation requirement despite the entity's argument that managed care organizations had caused plaintiffs' alleged injuries).

some tasks to county entities, Plaintiffs allege—and Defendant concedes—that the county entities are "agents of DHHS." Am. Compl. ¶¶ 17, 172 ("DHHS directs, controls, and is liable for the acts and omissions of county departments of social services, who act as DHHS's agents in the delivery of services to children in foster care"); Mot. to Dismiss at 6 ("the director of a county DSS [Department of Social Services] 'acts as agent of the . . . Department of Health and Human Services'") (quoting N.C.G.S. § 108A-14(a)(5)). Both Defendant and Plaintiffs agree that DHHS oversees the local and county entities, including the entities' administration of child welfare functions. Am. Compl. ¶¶ 144, 172; Mot. to Dismiss at 6–7. Plaintiffs further allege that DHHS, both directly and through its agents, is responsible for Named Plaintiffs' institutionalization or risk of institutionalization in PRTFs; for example, by failing to make community-based services available to children who need them to avoid institutionalization, and failing to identify appropriate long-term community-based placements for children instead of institutionalizing them. Am. Compl. ¶¶ 5, 13, 14, 46, 66, 79, 95, 116.

These allegations are enough to establish a causal connection between DHHS's actions and Named Plaintiffs' resulting segregation or risk of segregation. Plaintiffs have likewise cleared the low bar for pleading redressability, because an injunction requiring DHHS to modify its service system—so that community-based services are actually available to children who need them—would more than likely address Named Plaintiffs' injuries.

CONCLUSION

For the foregoing reasons, the United States requests that the Court consider this Statement of Interest in this litigation.

Respectfully submitted,

April 21, 2023

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CERTIFICATE OF SERVICE

I, Cassie L. Crawford, hereby certify that I caused a true and correct copy of the foregoing to be filed through the ECF system and served electronically on the registered participants as identified on the Notice of Electronic Filing.

April 21, 2023

CASSIE L. CRAWFORD

CERTIFICATE OF COMPLIANCE

Counsel for the United States of America hereby certifies that the foregoing Statement of Interest contains fewer than 7,650 words. Counsel relies upon the word count feature of word processing software in making this certification.

April 21, 2023

/s/ Cassie Crawford
CASSIE L. CRAWFORD