

Process rights of CHDC's residents under the Fourteenth Amendment, and Count III, alleging Defendants' violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-1482, at CHDC.

The United States voluntarily seeks dismissal without prejudice of Count II because the United States will imminently file a complaint alleging that the State of Arkansas' entire system of services for individuals with developmental disabilities violates the ADA ("Statewide ADA Complaint"). The United States intends to file this Statewide ADA Complaint in the United States District Court for the Eastern District of Arkansas. The Statewide ADA Complaint will address the State's systematic violations of the ADA in providing services to individuals with developmental disabilities across the entire State, and therefore, will subsume Count II's issues of law and fact concerning the ADA violations at CHDC. Defendants will not suffer any prejudice from the dismissal of Count II because the United States does not intend to duplicate its discovery efforts from this CRIPA case while pursuing the Statewide ADA Complaint. Indeed, judicial economy and Defendants' resources will be reserved by allowing all of the United States' ADA claims to proceed in a single statewide case.

I. FACTUAL BACKGROUND

The United States notified the State of its intent to investigate conditions at CHDC pursuant to CRIPA in November 2002. In April 2004, the United States issued a 50-page letter of findings regarding CHDC, which concluded that conditions

and care at CHDC suffered from significant and widespread deficiencies, in violation of the United States Constitution and other federal law. For several years the United States attempted to resolve the investigation of CHDC without litigation. When those efforts proved unsuccessful, the United States filed the CHDC Complaint on January 16, 2009. Discovery began in May 2009 and will end on June 8, 2010. Discovery efforts by both parties have generated voluminous document production, depositions, and experts' reports. The vast majority of discovery, however, has been focused on CHDC-specific staff and CHDC-specific issues. The United States has until May 5, 2010, to amend the pleadings in this case. [Dkt. 25.] The CRIPA trial is set for September 8, 2010. Id.

In December 2009, the United States notified the State of its intent to investigate conditions at the remaining five state-operated Human Development Centers ("HDCs"), pursuant to CRIPA and the ADA. Thus far, the United States has conducted on-site visits of two of the HDCs and plans to conduct similar visits of the remaining three HDCs. This initial investigation has caused the United States to conclude that the State is systemically violating on a statewide basis its ADA obligation to serve individuals with developmental disabilities in the most integrated setting appropriate to their needs. Because of the importance of serving individuals with developmental disabilities in the most integrated setting, and the associated harm caused by long term, unnecessary segregation, the United States cannot wait until the final adjudication of the CRIPA-based CHDC Complaint to file its

Statewide ADA Complaint. Because the Statewide ADA Complaint subsumes the ADA issues in the CRIPA-based CHDC Complaint, the most efficient course would be for this Court to dismiss the limited ADA issues from the CHDC Complaint, without prejudice, and allow the parties to litigate any ADA claims related to CHDC in their more natural place, the Statewide ADA action.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 41(a)(2) governs a party's request for a voluntary dismissal by court order, stating: "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice." The determination whether to grant a request for voluntary dismissal of a claim rests within the sound discretion of the court. Cahalan v. Rohan, 423 F.3d 815, 818 (8th Cir. 2005). "In exercising that discretion, a court should consider factors such as whether the party has presented a proper explanation for its desire to dismiss, whether a dismissal would result in a waste of judicial time and effort, and whether a dismissal will prejudice the defendants." Hamm v. Rhone-Poulenc Rorer Pharm., Inc., 187 F.3d 941, 950 (8th Cir. 1999). In the Eighth Circuit, district courts often consider the following:

- (1) the defendant's effort and the expense involved in preparing for trial,
- (2) excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action,
- (3) insufficient explanation of the need to take a dismissal, and
- (4) the fact that a motion for summary judgment has been filed by the defendant.

Paulucci v. City of Duluth, 826 F.2d 780, 783 (8th Cir. 1987). A party should not be granted a voluntary dismissal simply to avoid an adverse decision or seek a more favorable forum. Cahalan, 423 F.3d at 818 (citing Hamm, 187 F.3d at 950).

“Courts generally will grant dismissals where the only prejudice the defendant will suffer is that resulting from a subsequent lawsuit.” Paulucci, 826 F.2d at 782; see also Kern v. TXO Prod. Corp., 738 F.2d 968, 970-71 (8th Cir. 1984).

III. ARGUMENT

This Court should grant the voluntary dismissal of Count II because the most efficient course for the Court and the parties would be to litigate the CHDC ADA allegations in their most natural setting, as part of the United States’ larger Statewide ADA action. The Statewide ADA claim is a valid basis for the dismissal, and the United States diligently brought this motion as soon as it obtained credible evidence that the entire State developmental disability service system was violating the ADA. Because the larger Statewide ADA action is the natural setting to resolve the more limited CHDC specific ADA issues, the dismissal will minimize duplicative efforts, promote judicial economy, and not prejudice the Defendants.

The United States has a valid explanation for its request to voluntarily dismiss the discrete ADA issues from the CHDC CRIPA conditions Complaint. The United States intends to file a Statewide ADA Complaint imminently that challenges the entire Arkansas system of serving individuals with developmental

disabilities in the most integrated setting appropriate to their needs. Given the importance of these issues and the associated harm caused by long term, unnecessary segregation, the United States does not want to delay filing its Statewide ADA Complaint. The Statewide ADA action will naturally subsume the CHDC ADA issues stated in Count II, as part of its focus on the State's ADA system as whole. Because CHDC's compliance with the ADA involves some funding and systemic issues determined at the State-level, litigating the CHDC ADA allegations in this CHDC CRIPA action will necessarily require the Court and the parties to examine the Arkansas system at the State level. As these same State-level issues are the heart of the larger Statewide ADA action, the Court and the parties should address CHDC ADA issues as part of the Statewide ADA action.

A voluntary dismissal of Count II will not waste judicial time or effort, but rather will promote judicial economy by avoiding a duplication of efforts by the parties and the Court. See Ginter v. Whirlpool Corp., 671 F. Supp. 2d 1040, 1045 (S.D. Iowa 2009) (granting voluntary dismissal where expenditures in pursuing the action would be "duplicative and unnecessary" given a parallel action concerning the same claims). The United States has diligently pursued all of the claims of the CHDC Complaint since filing it in January 2009. The United States did not open the Statewide investigation of the five other Arkansas HDCs until December 2009, and did not begin on-site visits to those HDCs until late March 2010. When the

recent broader investigation yielded information sufficient for the United States to conclude that systemic ADA violations existed statewide, the United States determined that the prudent course of action was to bring the statewide ADA action without delay. The Court and the parties would save time and resources by litigating all the State's violations of the ADA at the same time as part of the United States' case that the State is systemically violating the ADA in the provision of services to individuals with developmental disabilities across the State.

The dismissal of Count II will not prejudice the Defendants. The dismissal will have no impact on the dates set out in the Court's Amended Final Scheduling Order. [Dkt. 25.] Trial will proceed in September 2010 on all remaining CRIPA claims related to CHDC. The Defendants have not filed a Motion for Summary Judgment and this Court has not ruled on the merits of the case. Because the United States intends to file the Statewide ADA Complaint in the Eastern District of Arkansas, forum shopping is not an issue.¹

The vast majority of discovery previously conducted in this case has been dedicated to the conditions at CHDC, which is relevant to the claims this Court will adjudicate at trial in September. To the extent that some of the parties' discovery efforts apply to the ADA claims associated with Count II, that discovery should be

¹ The United States approached the Defendants to request a stipulation to voluntary dismissal without prejudice. Counsel for the Defendants indicated that the Defendants object to this Motion.

available to the parties to the new Statewide ADA action, and the United States will make all efforts to avoid duplicative discovery in pursuing the Statewide ADA action. See Kern, 738 F.2d at 973 (asking the district court to take into consideration that “any discovery taken in the first action should be freely usable in the second”); Metropolitan Federal Bank of Iowa v. W.R. Grace & Co, 999 F.2d 1257, 1262 (8th Cir. 1993) (affirming grant of voluntary dismissal that included condition that all discovery be available for use in any subsequent action concerning the same claims). The only potential “prejudice” the Defendants will suffer from the dismissal is the subsequent lawsuit involving the Statewide ADA Complaint, and a subsequent lawsuit is not a justification for denying the United States’ Motion for Dismissal. Kern, 738 F.2d at 970; Paulucci, 826 F.2d at 782.

IV. CONCLUSION

Rather than as part of this CHDC specific CRIPA action, the Court and the parties would benefit from litigating the CHDC ADA allegations in their most natural setting, as part of the larger Statewide ADA action. For the foregoing reasons, the United States respectfully requests that this Court grant its Motion to Voluntarily Dismiss Count II of Complaint Without Prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 5, 2010, I served a true and correct copy of the Memorandum of Points and Authorities in Support of Motion to Voluntarily Dismiss Count II of Complaint Without Prejudice with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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