

- SUBJECT:** Requiring admission of mentally retarded people to state schools
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 7 ayes — Capelo, Laubenberg, Truitt, Coleman, Dawson, Taylor, Zedler  
1 nay — Naishtat  
1 absent — McReynolds
- WITNESSES:** For — Herbert Appel, Jr., Greater Fort Bend Economic Development Council; Charles Ferguson, J.G. Garza, and Jim Miller, Texans Supporting State Schools; Mike Stephens, Parent Association for the Retarded of Texas; Ben Conner; Gladys Conner; Ruth Snyder  
Against — Dennis Borel, Coalition of Texans with Disabilities; Virginia Eernisse, ARC of the Gulf Coast; Colleen Horton, Texas Center for Disability Studies; Bob Kafka, ADAPT; Amy Mizcles, The ARC of Texas; Susan Murphree, Advocacy, Inc.; Ed Anderson; Ron Cranston
- BACKGROUND:** The Texas Department of Mental Health and Mental Retardation (MHMR) operates 13 state schools, campus-based residences for people with mental retardation. In 1999, the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581, decided that unjustified institutionalization constitutes discrimination under the federal Americans with Disabilities Act (ADA). In response, a state task force established the Promoting Independence Plan, published in January 2001, which described how the *Olmstead* decision might affect Texas and the steps the state could take to move toward full compliance with the ADA.
- DIGEST:** CSHB 2479 would require MHMR to admit any person with mental retardation for whom an application for voluntary admission was filed if the person were eligible for Medicaid, the state school had sufficient bed space, and the state school were the least restrictive suitable environment for that person.  
Each state school would have to maintain a wait list of people who desired placement but were denied placement for lack of bed space. MHMR could

adopt rules to facilitate the application process for voluntary admission to state schools. MHMR also would have to inform people seeking state services for a person with mental retardation of the rules adopted under this bill and the addresses and phone numbers for each state school.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2479 would ensure that people who need the services of a state school can receive them. Various factors, including the *Olmstead* decision, the state's Promoting Independence Plan, and an extremely tight budget, have converged to threaten the future of state schools. Mentally retarded people are among the state's most vulnerable citizens, and the state should ensure that they can receive the care they need.

The *Olmstead* decision and the Promoting Independence Plan are supposed to ensure that people live in the most appropriate setting, but they have had the opposite effect on state schools. As advocates promise that people with mental retardation can live in the community and as legislators realize that it costs less to serve people there, the future of state schools is threatened, even though they often are the most appropriate setting for residents.

State schools are being depopulated by refusing to admit new residents. As residents leave, the state has forced the schools to take away their space from the overall census because their funding moves with them. As a result, there is insufficient room when a new person applies for admission. This bill would ensure that people could be admitted if beds were available.

The state needs to put these protections into statute. A rider in the general appropriations bill is not sufficiently permanent to ensure that state schools remain available for people in the future.

**OPPONENTS  
SAY:**

CSHB 2479 would be a step backward. The *Olmstead* decision and the state Promoting Independence Plan made great strides toward ensuring that people live in the most appropriate setting. For decades, people with mental retardation were thought incapable of living in the community, and many parents still feel that way, even if some people with mental retardation are capable of living a rewarding and secure life in the community.

State schools are the most appropriate setting for some people, but CSHB 2479 would defer to subjective decisions on the part of the parents. The state's current admission criteria ensure that people who receive state school services truly need them, but this bill would open state schools to anyone with mental retardation, regardless of whether they could live in the community or not. Under current MHMR rules, children cannot be admitted voluntarily to a state school but must undergo a commitment process. Court oversight of this process makes sure that children are not institutionalized inappropriately. The bill would overturn those rules and protections.

CSHB 2479 could cost the state a significant amount of money, because people served by Medicaid could be admitted without meeting the current admission criteria. Care in a state school is significantly more expensive than in the community. Texas should pay for state school residence only when it is needed, as determined by the current eligibility criteria. Also, the stipulation that admission be granted if beds are available could put state schools in a tough position. The availability of a bed depends on a number of factors, including staff ratios, not only an empty bed. If the school had to accept a resident because there was an empty bed, the school might have to employ additional staff or mobilize other resources.

OTHER  
OPPONENTS  
SAY:

A better way to ensure that eligible residents were not turned away from a state school, if that is where they belong, would be to insert a rider in the general appropriations act. That way, MHMR and the state schools would understand the Legislature's intent, but the problematic specifics in this bill would not become part of the Health and Safety Code.

NOTES:

As filed, HB 2479 would have required MHMR to admit a person with mental retardation to a state school regardless of the recommendation of the interdisciplinary team.

The companion bill, SB 990 by Armbrister, was considered in a public hearing by the Senate Health and Human Services Committee on April 8 and left pending.