

Rep. Aftyn Behn, LMSW

STATE REPRESENTATIVE
51ST LEGISLATIVE
DISTRICT DAVIDSON
COUNTY

rep.aftyn.behn@capitol.tn.gov
Cordell Hull Building
425 John Lewis Way, Ste.
574 Nashville, TN 37243
(615) 741-3229



**House of Representatives
State of Tennessee**

114TH GENERAL ASSEMBLY
NASHVILLE, TENNESSEE

MEMBER

Agriculture and Natural
Resources Committee

Transportation Committee

Transportation
Sub-Committee

Naming and Designating
Committee

The Honorable Pam Bondi

Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Stanley E. Woodward Jr.

Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Todd W. Blanche

Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Harmeet K. Dhillon

Assistant Attorney General, Civil Rights
Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Brett Shumate

Assistant Attorney General, Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

February 24th, 2026

**Re: Urgent Request for Federal Civil Rights Review and Accountability Regarding
Systemic Harm and Negligence by the Tennessee Department of Children's Services**

I write to request that the Civil Rights Division initiate a pattern-or-practice investigation into the Tennessee Department of Children's Services ("DCS") based on substantial evidence indicating systemic violations of children's constitutional and statutory civil rights. These concerns include potential violations of Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), and the integration mandate articulated in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

A review of public records, federal oversight findings, budgetary materials, and pending litigation raises serious concerns that Tennessee's child welfare system is failing to protect children in state custody and that its current financing and service-delivery structures perpetuate

unnecessary segregation of children with disabilities. Available evidence suggests that children with disabilities are disproportionately placed in restrictive, non-family settings; denied services in the most integrated setting appropriate to their needs; and subjected to repeated placement instability and prolonged time in state custody—despite clear federal law, policy direction, and prior notice of nonconformity findings under federal oversight.

Federal Nonconformity Findings and Prior Notice

On September 12, 2024, the Departmental Appeals Board of the U.S. Department of Health and Human Services issued *Tennessee Department of Children's Services*, DAB No. 3150 (2024). The Board upheld findings by the Administration for Children and Families that Tennessee failed to achieve substantial conformity with federal child welfare requirements, including Permanency Outcome 1 (Placement Stability), and that Tennessee was subject to withholding of \$770,550 in federal Title IV-B and Title IV-E funds.

The Board sustained determinations that Tennessee continued to experience systemic instability in foster care placements, including repeated placement disruptions and failure to achieve required permanency outcomes within federally established benchmarks. These findings establish a federally validated record that Tennessee has not met core permanency and stability requirements under federal child welfare law.

Placement instability disproportionately harms children with disabilities—particularly children with behavioral health needs, autism spectrum disorder, intellectual and developmental disabilities, and trauma-related conditions—who are more likely to experience repeated disruptions, escalated placement trajectories, and extended periods in restrictive environments. Despite these findings and clear federal notice, available evidence indicates that the underlying structural deficiencies in Tennessee's system persist.

Litigation and Systemic Concerns Affecting Children with Disabilities

Recent federal litigation filed on behalf of children in Tennessee's custody alleges that children with disabilities are more likely than their nondisabled peers to be placed in restrictive, non-family settings; to remain in state custody for prolonged periods; and to lack access to individualized, community-based alternatives. Allegations also include unsafe conditions and inadequate rehabilitative and behavioral health services.

These allegations raise serious concerns under Title II of the ADA, Section 504 of the Rehabilitation Act, and the integration mandate established in *Olmstead*. Under *Olmstead*, public entities must administer services in the most integrated setting appropriate to an individual's needs. Unnecessary segregation constitutes discrimination regardless of whether it results from explicit policy choices or systemic practices.

Children in state custody are wholly dependent on the state for placement decisions and access to services. A system that consistently routes children with disabilities into more restrictive settings, or fails to provide reasonable modifications that would enable family-based placements and community-integrated services, raises substantial integration-mandate concerns.

Expansion of State-Operated Placement Capacity and Risk of Increased Segregation

Despite federal findings documenting placement instability and systemic permanency failures—particularly affecting children with disabilities—Tennessee appears to be expanding state-operated placement capacity rather than structurally realigning its system toward integrated, family-based alternatives.

Public budget materials and state capital initiatives reflect investment in multi-youth placement infrastructure, including facilities described as “Welcome Places,” “Wellness Places,” and Youth Development Campuses. Regardless of terminology, these initiatives increase the state’s capacity to place children in non-family settings.

At a time when federal disability rights law and federal child welfare policy emphasize family-based placements and integrated services, investment in permanent institutional infrastructure predictably increases reliance on restrictive placements, prolongs children’s time in state custody, and heightens the risk of unlawful segregation of children with disabilities. This direction warrants federal review to determine whether Tennessee is expanding placement models that are inconsistent with the ADA, Section 504, and *Olmstead*.

Structural Financing Incentives and Disability Segregation

Federal child welfare financing structures play a significant role in shaping placement and service-delivery decisions. While Titles IV-E and IV-B support child welfare services, many states—including Tennessee—also rely substantially on other federal funding streams such as Medicaid, Temporary Assistance for Needy Families (TANF), and the Social Services Block Grant.

Where systems depend heavily on reimbursement-based funding streams, placement and service models that are more readily reimbursable may be favored over individualized, integrated alternatives. Children with disabilities—particularly those with behavioral health or developmental needs—are especially affected by these dynamics.

Federal disability law is clear that administrative convenience, budgetary pressures, or existing funding arrangements do not justify unnecessary segregation. Where financing structures predictably steer children with disabilities into restrictive settings, or prolong their time in custody despite available integrated alternatives with reasonable modifications, those structures may constitute systemic violations of Title II of the ADA and Section 504 of the Rehabilitation Act.

Constitutional and Civil Rights Concerns

In addition to disability-based concerns, DCS’s conduct raises broader constitutional issues. Children in state custody possess substantive due process rights under the Fourteenth Amendment to a reasonable degree of safety and freedom from harm.

Repeated placement instability, unsafe conditions, and failures to provide appropriate services may implicate those protections. As a public entity covered by Title II of the ADA and a recipient of federal funds, DCS is obligated to operate its programs in compliance with federal civil rights law.

Pattern-or-Practice Indicators

Taken together, the following factors raise substantial concerns of a pattern or practice of civil rights violations:

- Federally validated findings of placement instability and permanency failures (DAB No. 3150);
- Pending federal litigation alleging systemic harm to children with disabilities;
- Apparent systemic reliance on restrictive, non-family placements for children with disabilities;
- Expansion of state-operated placement capacity despite federal direction favoring integrated, family-based alternatives;
- Financing structures that predictably steer children with disabilities into segregated settings; and
- Continued operation of the system without meaningful structural realignment toward integration, stability, and permanency.

These conditions suggest systemic disability-based segregation and failure to provide reasonable modifications required under the ADA, Section 504, and *Olmstead*.

Request for Action

Based on the foregoing, I respectfully request that the Civil Rights Division:

1. Initiate a pattern-or-practice investigation into the Tennessee Department of Children's Services;
2. Review placement, permanency, and service-utilization data disaggregated by disability status;
3. Evaluate compliance with the ADA's integration mandate under *Olmstead*;
4. Examine the relationship between financing structures and placement outcomes for children with disabilities;
5. Assess whether children in state custody are being deprived of constitutional protections; and
6. Coordinate with HHS oversight entities to ensure a comprehensive federal response.

Broader National Implications

The continued use of restrictive placements for children with disabilities, despite federal policy directing states toward family-based alternatives, raises broader national concerns under the ADA and *Olmstead*. The Department of Justice has long enforced disability rights protections against unnecessary segregation. The child welfare context warrants the same scrutiny. Children with disabilities are entitled to integration, stability, and permanency. Federal civil rights protections cannot be subordinated to the convenience of financing or to legacy service models. Given prior federal findings and ongoing systemic concerns, an independent investigation by the Department of Justice is warranted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Aftyn Behn', with a long horizontal line extending to the right.

Representative Aftyn Behn, LMSW
Tennessee House District 51