

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

DISABILITY RIGHTS FLORIDA, INC.,
a Florida non-profit corporation,

Plaintiff,

v.

CASE NO. 4:18cv342-RH/CAS

BARBARA PALMER in her official
capacity as Director of the Florida Agency
for Persons with Disabilities,

Defendant.

**ORDER DISMISSING THE COMPLAINT
AND GRANTING LEAVE TO AMEND**

The plaintiff asserts claims for declaratory and injunctive relief on behalf of individuals with disabilities. The claims focus on alleged deficiencies in Florida's funding of necessary services. The defendant is the Director of the Florida Agency for Persons with Disabilities. She has moved to dismiss. This order grants the motion and gives the plaintiff leave to file an amended complaint.

A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This complaint

includes 229 numbered paragraphs spanning 50 pages. Each of the complaint's three counts incorporates by reference the first 201 paragraphs with no attempt to sort out the allegations that do or do not apply to a specific count. The complaint includes extensive allegations about a closed facility and practices that are no longer followed. And the complaint includes speculation about whether the state will discontinue general-revenue funding that is now being provided—funding that is unobjectionable.

The plaintiff may properly pursue claims for forward-looking relief against the Director. *Compare Ex parte Young*, 209 U.S. 123 (1908) (allowing prospective relief against a state official to prevent a violation of federal law) *with Edelman v. Jordan*, 415 U.S. 651 (1974) (holding that Eleventh Amendment immunity bars retrospective relief payable from a state treasury unless the immunity has been waived or validly abrogated by Congress). But a claim for forward-looking relief must address practices that are reasonably likely to affect the plaintiff in the future. *See, e.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 111 (1983) (holding that a person who had been subjected to a chokehold in the past had no standing to seek injunctive relief against the city's practice of using chokeholds because there was not a "sufficient likelihood that he will again be wronged in a similar way"); *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1346 (11th Cir. 1999).

If the complaint asserted only forward-looking claims addressing practices likely to affect the plaintiff (or those whose rights the plaintiff may assert), and if the complaint consisted of a “short and plain statement,” a motion to dismiss would be denied. But this complaint seems to assert other claims. The complaint rails against past practices that have been abandoned and are not likely to recur. And the complaint apparently seeks a declaration or injunction to redress possibilities that, at least at this point, are entirely speculative. In response to the motion to dismiss, the plaintiff says any offending allegations should be struck and the remainder of the complaint should go forward. But fidelity to the rules requires, and clarity will be better promoted by, dismissing the complaint.

For these reasons,

IT IS ORDERED:

1. The motion to dismiss, ECF No. 11, is granted.
2. The complaint is dismissed. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b).
3. The plaintiff may file an amended complaint by December 28, 2018.
4. This order does not stay discovery or affect ongoing proceedings.

SO ORDERED on December 5, 2018.

s/Robert L. Hinkle
United States District Judge