



Department of Justice ***Olmstead* Enforcement**

Advisory Committee on Increasing
Competitive Integrated Employment of
Individuals with Disabilities (ACICIEID)
January 23, 2015

Olmstead is a top priority for DOJ's Civil Rights Division

- “Year of Community Living”
 - “The *Olmstead* ruling . . . articulat[ed] one of the most fundamental rights of Americans with disabilities: Having the choice to live independently. [T]his initiative reaffirms my Administration’s commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation.” President Obama June 22, 2009
- DOJ *Olmstead* enforcement efforts
 - 40+ matters in 25 states

Title II of the ADA

- Prohibits discrimination by public entities in services, programs and activities
- Integration regulation requires administration of services, programs and activities **in the most integrated setting** appropriate
- Most integrated setting is one that enables people with disabilities to **interact with people without disabilities to the fullest extent possible**

Olmstead v. L.C.: Unjustified segregation is discrimination

- Supreme Court held that Title II prohibits unjustified segregation of people with disabilities
- Set out “two evident judgments” about institutional placement:
 1. “perpetuates **unwarranted assumptions** that persons so isolated are incapable or unworthy of participating in community life”
 2. “**severely diminishes the everyday life activities of individuals,**” including family, work, education and social contacts

***Olmstead v. L.C.* (cont'd)**

- Held public entities are required to provide community-based services when:
 - Such services are appropriate; and
 - Affected persons do not oppose community-based treatment; and
 - Community-based treatment can be reasonably accommodated, taking into account the resources available to the entity and the needs of others receiving disability services

When is the ADA's Integration Mandate Implicated?

- Not limited to state-run facilities/programs
- Applies when government programs result in unjustified segregation by:
 - Operating facilities/programs that segregate people with disabilities
 - Financing the segregation of people with disabilities in private placements
 - Promoting segregation through planning, service design, funding choices, or practices.

Who Does the Integration Mandate Cover?

- ADA and *Olmstead* are not limited to individuals already in institutions or other segregated settings
- They also extend to people **at serious risk of institutionalization or segregation**
 - Example: people with urgent needs on waitlists for services or people subject to cuts in community services leading to the person's unnecessary institutionalization.

Important Lessons

- Not just about moving people out of institutional settings; focus on creating integrated, quality community alternatives
- Ensure that people have opportunities for integration in all aspects of their lives – where they live and how they spend their days
- Engagement of a range of stakeholders – consumers, families, advocates, providers – is essential to successful outcomes

Important Lessons (cont'd)

- Access to a range of quality community services, integrated housing, and integrated employment and day activities are critical to success of *Olmstead* efforts
 - Cross-agency collaboration with DOJ, HUD and HHS regarding community services and housing
 - Cross-agency collaboration with DOJ, HHS, DOL, and DoEd regarding employment and integrated day activities

Segregated Days

- Lane v. Kitzhaber/U.S. v. Oregon:
 - Court decision on motion to dismiss found that ADA and *Olmstead* applies to all government services, programs and activities, including employment. Rejected argument that only applies to residential services and programs.
- **Settlements in VA, DE, NC and GA**– Include an expansion of supported employment & integrated day activities as part of system wide relief.

U.S. v. Rhode Island - Landmark Settlement Agreement

- Relief for 3,250 individuals with intellectual and developmental disabilities.
- Opportunities for real employment in the community at competitive wages, and integrated day activities for non-work hours.

U.S. v. Rhode Island – DOJ Findings

- State of Rhode Island violated the ADA and *Olmstead* by failing to serve individuals with I/DD in the most integrated day activity service setting appropriate for their needs, and by placing transition-age youth at serious risk of segregation.

U.S. v. Rhode Island – DOJ Findings

- 80 percent of the people with I/DD receiving state services, about 2,700 individuals, are placed in segregated sheltered workshops or facility-based day programs.
- Only about 12 percent, or approximately 385 individuals, participate in individualized, integrated employment.
- Investigation found that the state has over-relied on segregated service settings to the exclusion of integrated alternatives.

U.S. v. Rhode Island – DOJ Findings

- Placement in segregated settings is frequently permanent: nearly half (46.2 percent) of the individuals in sheltered workshops have been in that setting for ten years or more, and over one-third (34.2 percent) have been there for fifteen years or more.
- Individuals with I/DD in sheltered workshops in Rhode Island reportedly earn an average of only about \$2.21 per hour.

U.S. v. Rhode Island – DOJ Findings

- According to state data, among youth with I/DD who transitioned out of Rhode Island secondary schools between 2010 and 2012, only about five percent transitioned into jobs in integrated settings, even though many more of these youth are able to work in integrated employment and are not opposed to doing so.

U.S. v. Rhode Island Consent Decree

- Transitions 2,000 people with intellectual and developmental disabilities now in sheltered workshops or facility-based day programs, or who have recently left high school, to real jobs in the community over 10 years.
- Provides 1,250 youth with access to high-quality transition services over 10 years.

U.S. v. Rhode Island Consent Decree

Integrated Employment means:

- Individualized, typical jobs in the community.
- Earning at least minimum wage.
- Working among peers without disabilities for the maximum hours consistent with a person's abilities and preferences.
- Average of at least 20 hours of employment per week across the target population.

U.S. v. Rhode Island – DOJ Findings

- Requires Rhode Island Department of Education (RIDE) to adopt an employment first policy, making work in integrated employment settings a priority service option for youth.
- Youth in transition will receive integrated vocational and situational assessments, trial work experiences, and an array of other services to ensure that they have meaningful opportunities to work in the community after they exit school.

U.S. v. Rhode Island Consent Decree

- All persons receiving supported employment placements will also be provided with integrated non-work services.
- Integrated day services allow persons with I/DD to engage in self-directed activities in the community (e.g., mainstream community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities).

U.S. v. Rhode Island Consent Decree

Sustained Commitment to Funding

- Over ten years.
- Redirect, redistribute, and reallocate funds currently used primarily to support segregated services to instead fund integrated alternatives.

U.S. v. Rhode Island Consent Decree

Outreach, Education and Support:

- Requires state to develop an outreach, in-reach and education program explaining benefits of supported employment and addressing families' concerns about participating in supported employment.
- To ensure informed choice, individuals with I/DD may remain in segregated programs if they request a variance after they have received a vocational assessment, a trial work experience, outreach information and benefits counseling.

U.S. v. Rhode Island Consent Decree

Provider Capacity:

- Requires state to establish a sheltered workshop conversion institute to assist qualified providers to convert their employment programs to supported employment services.
- Requires state to establish a sheltered workshop conversion trust fund of \$800,000 to assist with upfront start-up costs to providers to convert their services from primarily sheltered employment to primarily supported employment services.

CROSS-AGENCY WORK

- **“Curb Cuts to the Middle Class” Initiative**
 - Federal agency partners working to mobilize and coordinate federal efforts to increase integrated competitive employment for people with disabilities and to support the integration of agency efforts to break down barriers to middle class employment of people with disabilities
- **Community Employment Working Group**
 - DOJ, HHS, SSA, DOL, DoEd, EEOC collaboration to improve employment outcomes for people with disabilities

Guidance and Website

- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (June 22, 2011)
- Website: www.ada.gov/olmstead
 - All settlement agreements, findings letters, briefs, guidance, testimony, speeches, etc.
- Faces of *Olmstead*: People affected by DOJ's *Olmstead* enforcement work

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