

MEMO

To: Office of Management & Budget
From: Brian J. Hartman, on behalf of the following organizations:

Disabilities Law Program
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens
State Council for Persons with Disabilities

Subject: Division of Developmental Disabilities Services FY 14 Budget
Date: November 13, 2012

Please consider this memo a summary of the oral presentation of Brian J. Hartman, Esq. on behalf of the Disabilities Law Program ("DLP"), Developmental Disabilities Council ("DDC"), Governor's Advisory Council for Exceptional Citizens ("GACEC"), and the State Council for Persons with Disabilities ("SCPD"). We are addressing one (1) component of the DDDS budget, i.e., vocational programs for transitioning special education students, a/k/a "special school grads".

VOCATIONAL PROGRAMS FOR TRANSITIONING SPECIAL EDUCATION STUDENTS

Historically, the State has provided funding for vocational, day habilitation, and employment-related services for students with intellectual disabilities "aging out" of the special education system. Services are subsidized by Medicaid funds for many of the students. In FY 14, the Division projects that approximately one hundred and seventy-five (175) special education graduates will be eligible for such services. We fully support the Department's request for inclusion of funds in the Governor's proposed budget [\$1.4 million for part-year (9-month) funding] to serve these individuals.¹

However, we also strongly encourage the timely development of a targeted strategic plan to promote the availability of meaningful vocational opportunities for these incoming DDDS clients. According to a national report published five months ago, the percentage of Delaware DDDS clients employed in integrated settings has declined from 35% to 21% since 1999.² Statistics submitted to the Joint Finance Committee earlier this year are generally corroborative, i.e., only 23% of DDDS clients are in supported employment.³ The balance are predominantly served in non-integrated pre-vocational and day habilitation settings. Id.

¹The Division's request for \$475,000 to fully fund (on a 12-month basis) vocational programs for the FY13 "graduates" also merits endorsement.

²University of Massachusetts, "State Data: The National Report on Employment Services and Outcomes, 2011 (June, 2012) at p. 111 [Attachment "A"].

³DDDS Presentation to JFC on FY13 Budget (February 22, 2012), slide 21 [Attachment "B"].

November 13, 2012

The initial employment setting for transitioning youth is critical to long-term employability. Three months ago, the National Council on Disability published a report on supported employment which included multiple “key findings”:

- once an individual enters a sheltered workshop, only 5% ever leave to take a job in the community; and
- younger workers have a higher expectation of employment than older workers, underscoring the importance of offering supported employment to individuals exiting the special education system.⁴

Since the Division changed its eligibility standards in 2008, it has begun to serve more individuals who are prime candidates for competitive employment. For example, in FY09-11, the Division added fifty-eight (58) new clients with Asperger’s who are eligible for DDDS services without intellectual limitations.⁵

Delaware is uniquely positioned to expand meaningful employment opportunities for incoming DDDS clients. First, with enactment of the highly publicized “Employment First” legislation this summer, public agencies have an exciting new mandate to promote community-based employment options.⁶ Second, Governor Markell has identified employment for individuals with disabilities as his signature initiative within the National Governor’s Association.⁷ Third, Delaware enjoys progressive leaders within the Department of Social Services who are committed to offering its constituents viable opportunities to become part of mainstream America. In her testimony presented to a U.S. Senate Committee this summer, Secretary Landgraf stressed the importance of infusing the value of inclusion across all programs:

I do not believe it is enough for us to be in mere compliance with the Americans with Disabilities Act and the Olmstead ruling, but we, as state leaders, must embrace the intent of the law beyond compliance, and embed inclusion and the benefits of diversity as a core value.⁸

⁴National Council on Disability, “Report on Subminimum Wage and Supported Employment” (August 23, 2012) at pp. 7 and 16 [Attachment “C”]

⁵D DDS FY09-11 statistics are included as Attachment “D”.

⁶The anticipated impact of the legislation is highlighted in the July 17, 2012 News Journal article appended as Attachment “E”.

⁷The Governor supports a national “campaign” to implement best practices in employment of individuals with disabilities. [Attachment “F”]

⁸Secretary Landgraf’s remarks are compiled in the accompanying article [Attachment “G”]. More recently, the Secretary issued a conforming October 24, 2012 memo fostering expansion of employment opportunities for DDDS clients [Attachment “H”].

Fourth, the internationally prominent Specialisterne, Longwood, and Welfare Foundations are partnering to promote innovative, integrated employment opportunities focusing on individuals with Asperger's in Delaware.⁹ At the kick-off this summer, the Specialisterne director set high expectations:

I think what we can do here in Delaware is set the example for the U.S., North America and the world on how stakeholders work together...If we can have a good showcase in a state of [less than] 1 million, there's no limit. The people on the autism spectrum are there, and they want to have meaningful and productive lives.

Finally, the U.S. Department of Justice has affirmatively notified other states that the systemic lack of integrated employment options for individuals with disabilities is inconsistent with federal law and policy.¹⁰ Indeed, the DOJ has specifically stressed the importance of having a formal plan "with clearly defined benchmarks for transitioning students into supported employment." *Id.*, at p. 17. Delaware has the current opportunity to avert similar intervention by ensuring that the 175 "graduates" are offered viable, integrated, vocational options.

In conclusion, we recommend honoring the Department's request for \$1.4 million to fund vocational services for the 175 "graduates". Concomitantly, we recommend the prompt development of a practical plan to ensure that these incoming clients can be offered community-based vocational alternatives.

Thank you for your consideration.

Attachments

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⁹A copy of the June 15, 2012 article highlighting this initiative is appended as Attachment "I".

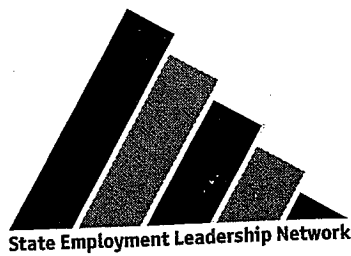
¹⁰A copy of the U.S. DOJ's June 29, 2012 critical findings on Oregon's system is appended as Attachment "J".

STATEDATA: THE NATIONAL REPORT ON EMPLOYMENT SERVICES AND OUTCOMES

JOHN BUTTERWORTH
FRANK A. SMITH
ALLISON COHEN HALL
ALBERTO MIGLIORE
JEAN WINSOR
DARIA DOMIN
JAIMIE CIULLA TIMMONS

INSTITUTE FOR COMMUNITY INCLUSION (UCEDD)
UNIVERSITY OF MASSACHUSETTS BOSTON

Winter 2012.

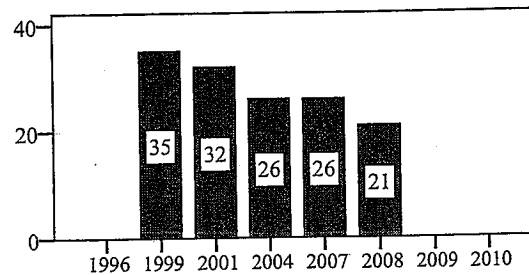


The StateData employment report is a product of Access to Integrated Employment, a project of the Institute for Community Inclusion (ICI) at the University of Massachusetts Boston, supported in part by the Administration on Developmental Disabilities, U.S. Department of Health and Human Services, under cooperative agreement #90DN0216. The opinions contained in this report are those of the grantee and do not necessarily reflect those of the funders.



Health and Social Services Division of Developmental Disabilities Services

Figure 2: Percentage of People Served in Integrated Employment



Source: The National Survey of State Intellectual and Developmental Disability Agencies' Day and Employment Services

Table 5: Intellectual and Developmental Disability (IDD) Agency Outcomes by Employment Settings

	1996	1999	2001	2004	2007	2008	2009	2010
Total number of people served	-	1,197	1,237	1,379	1,546	1,913	-	-
Number of people served in integrated employment	275	422	402	360	400	403	-	-
Percentage of people served in integrated employment	%	35%	32%	26%	26%	21%	%	%
People served in integrated employment per 100K state population	37.1	54.5	50.5	43.4	46.4	46.2	-	-
Number of people served in facility-based work	-	332	521	522	613	1,072	-	-
Number of people served in facility-based non-work	-	416	227	434	444	377	-	-
Number of people served in community-based non-work*	-	0	0	-	20	0	-	-
Number of people served in facility-based and non-work settings**	800	775	748	1,019	-	1,449	-	-
Number on waiting list for day and employment services	-	-	0	0	0	-	-	-

Source: The National Survey of State Intellectual and Developmental Disability Agencies' Day and Employment Services

*Not formally collected until FY 1996.

**May be used by agency if they do not have categorical breakdown for facility-based work and non-work and community-based non-work. Duplicated counts for individuals served in non-work settings may result in figures that are not equal to the sum of all non-work categories.

Delaware Health and Social Services

Trends

- Census Growth
- Pre-18 request for out-of-home placement
- Aging impact on residential and day services
- Complexity/intensity of support needs

Delaware Health and Social Services

Delaware Health and Social Services

Trends

Families providing more/extended support

RESPITE STATISTICS FY05 TO FY11

Fiscal Year	Number of Individuals Served
FY05	441
FY06	415
FY07	424
FY08	433
FY09	437
FY10	447
FY11	476

Delaware Health and Social Services

Delaware Health and Social Services

Employment First Initiative

Employment as a primary goal of day services

Category	Count	Percentage
Supported Employment	398	23%
Day Habilitation	758	43%
Pre-Vocational	599	34%

Delaware Health and Social Services

Delaware Health and Social Services

FY 2013 Governor's Recommended Budget

- \$335.9 for 1% Day and Residential Provider Increase
- Purchase of Service: Special School Graduates

FY 2012 Placements Annualized in FY 2013	FY 2013 Pro-Rated
\$377.3	\$1,418.5
3 Months Annualized Funding for 140 Grads in FY 2012	9 Months Pro-rated Funding for 170 Grads in FY 2013

Delaware Health and Social Services

Delaware Health and Social Services

FY 2013 Governor's Recommended Budget

Purchase of Care: Residential Placements

FY 2012 Placements Annualized in FY 2013	FY 2013 Pro-Rated
\$2,520.0	\$2,520.0
6 Months Annualized Funding for 75 Emergency/Urgent Placements	6 Months Pro-rated Funding for 75 New Residential Placements from the Urgent and High Risk Categories of the DDDS Registry

Delaware Health and Social Services

Delaware Health and Social Services

Thank You

Delaware Health and Social Services



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

LETTER OF TRANSMITTAL

August 23, 2012

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit NCD's report, *Subminimum Wage and Supported Employment*.

Section 14(c) of the Fair Labor Standards Act allows employers certified by the United States Department of Labor to compensate persons with disabilities for work at a rate less than the minimum wage – a wage set by Congress for all other workers in the United States. Many disability advocates argue that 14(c) should be abolished because it discriminates against people with disabilities and is thus inconsistent with our national disability policy goals enshrined in the Americans with Disabilities Act (ADA). Others argue that the subminimum wage certification program still has an important role among a range of employment options because it provides opportunities to people with disabilities who are unable to obtain competitive employment jobs. Debates among advocates and policy-makers about the future of Section 14(c) have often been divisive, and consensus has been elusive.

NCD recognized it had a unique opportunity to develop a constructive path forward on subminimum wage policy. Following discussion at a December 2011 meeting of the Council, I appointed Council Member Clyde Terry as Chair of a Subminimum Wage Committee to examine the issue and bring forward recommendations to the full Council.

The recommendations contained in this report reflect the considered judgment and analysis of NCD. As part of our exploration we engaged in a series of site visits around the country to learn from the ground up about how policies are actually working in the lives of people with disabilities. Our report is not empirical in its approach, but we have tried to capture the essence of all of the voices and perspectives we heard. Our comprehensive recommendations seek to be responsive to all of the opportunities and concerns identified.

The central theme of our recommendations is that the 14(c) program should be phased-out gradually as part of a systems change effort that enhances existing resources and creates new mechanisms for supporting individuals in obtaining integrated employment

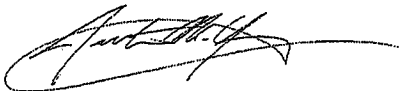
1331 F Street, NW ■ Suite 850 ■ Washington, DC 20004
202-272-2004 Voice ■ 202-272-2074 TTY ■ 202-272-2022 Fax ■ www.ncd.gov

and other non-work services. The comprehensive system of supports we propose is designed to improve opportunities for persons with disabilities. NCD recommends a phase-out of the 14(c) program rather than immediate repeal because those who have been in the program for many years need time to transition to a supported employment environment. Our comprehensive approach includes formal requirements of mandatory information-sharing to workers, as well as informal systems of peer support and incentives to states and providers to expand supported employment services in integrated settings.

NCD further recommends that the United States Department of Education should improve K-12 education and expand opportunities for higher education and postsecondary training for persons with disabilities. As with all of our disability policies and programs, our transition programs and supportive employment programs should strive for maximum self-sufficiency. The end result will be greater opportunities and a stronger, more inclusive workforce for American businesses.

NCD recognizes that a report such as this is a starting point rather than the final word on overhauling a longstanding policy and program. NCD stands ready to assist you in taking the next steps to expand opportunities for people with disabilities to achieve economic independence and self-sufficiency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Young', with a long horizontal flourish extending to the right.

Jonathan Young, Ph.D., J.D.
Chairman

In addition to its site visits, the Committee also reviewed the broad scope of research literature and policy information surrounding supported employment, sheltered workshops and the outcomes and cost-effectiveness of each. Key findings include:

- Sheltered workshops are ineffective at transitioning individuals with disabilities to integrated employment. According to the 2001 investigation by the Government Accountability Office into the 14(c) program, only approximately 5% of sheltered workshops employees left to take a job in the community.²
- According to the Centers for Medicare and Medicaid Services, Medicaid-financed pre-vocational services to sheltered workshops are, "not an end point, but a time limited (although no specific limit is given) service for the purpose of helping someone obtain competitive employment."³
- Individuals in supported employment who had previously been served in sheltered workshop settings do not show a higher rate of employment as compared to those who had gone straight to supported employment without ever being in a sheltered workshop.⁴ However, research indicates that those who had previously been in sheltered workshops had higher support costs and lower wages than comparable individuals who had never been in sheltered workshop settings.⁵
- The 14(c) sub-minimum wage program is utilized primarily by non-profit or state-operated social services providers – specifically, sheltered workshops – rather than private, for-profit businesses. According to the GAO, 95% of all workers with disabilities being paid less than minimum wage under the 14(c) program were employed by sheltered workshops.⁶
- Research indicates that employees receiving supported employment services generate lower cumulative costs than employees receiving sheltered workshop services and that whereas the cost-trend of supported employees shifts downward over time, the opposite is the case for individuals receiving sheltered workshop services.⁷

memorandum of agreement indicating means of collaboration between a consortium of relevant state entities, including at minimum the state vocational rehabilitation agency, the state ID/DD service-provision agency and the State Education Authority.

- Enhance the Administration on Developmental and Intellectual Disabilities (AIDD) budget for Projects of National Significance, specifically targeting initiatives relating to enhancing integrated employment outcomes.

Transformation of the 14(c) Program

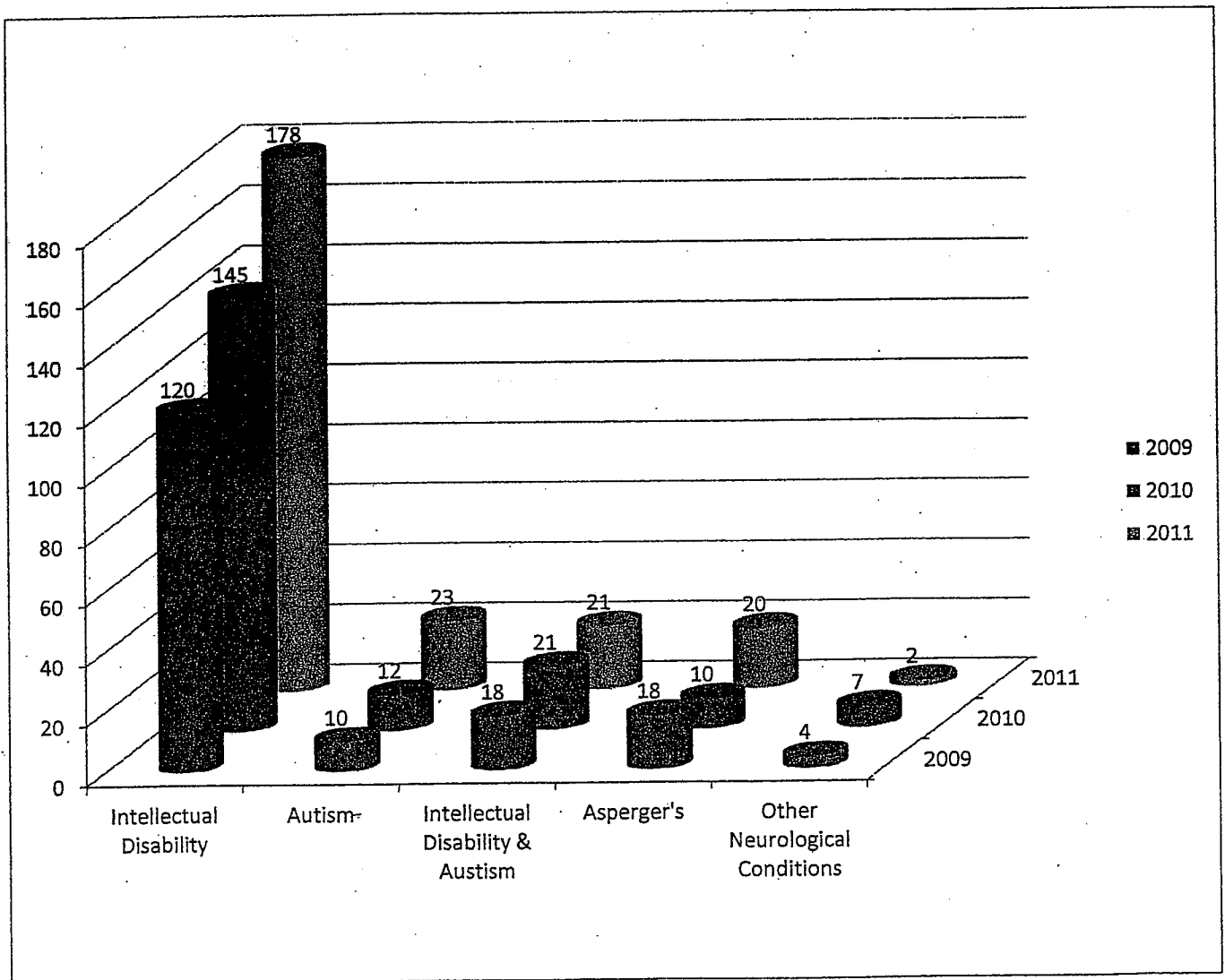
The Committee recommends that the Section 14(c) program should be phased out gradually to provide adequate time for transition to new alternatives. The Committee recognized early on in this project that any statement of public policy or recommendation to the U.S. Department of Labor or the Congress to simply eliminate all Section 14(c) certificates would jeopardize the security of many individuals who are currently involved with the program. The committee realized what is needed is a conversion or transformation strategy and phase-out of a relic in policy left over from the 1930's. To that end, this report offers a systems change approach to focus on a comprehensive system of support that will result in greater opportunities for persons with developmental or intellectual disabilities. This approach includes formal requirements of mandatory information sharing to workers, to informal systems of peer support as well as incentives to states and providers to expand supported employment services in integrated settings.

The Committee realizes that change will come slowly and the facts on the ground require a phased in approach to support people who currently receive subminimum wage be given the chance to earn at least minimum wage or greater. In addition, the Committee learned that younger workers have a higher expectation of employment than older workers and there is a real need to prevent those graduating from high school from entering the workshop environment. This was best demonstrated by a man from Baton Rouge, Louisiana, whose family had this insight early. Eighteen years ago, his family realized his potential and rather than let him stay in a workshop, worked with a

**DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
OFFICE OF APPLICANT SERVICES**

Applications Completed/Processed & Determined Eligible

Fiscal Year	Intellectual Disability	Autism	Intellectual Disability & Autism	Asperger's	Other Neurological Conditions
2009	120	10	18	18	4
2010	145	12	21	10	7
2011	178	23	21	20	2
2012 to date	59	18	10	5	1



7-17-12
NJ

New law supports jobs for disabled

By Beth Miller
The News Journal

Gov. Jack Markell got a rock star's welcome Monday from employees of Bank of America's Support Services unit, where he signed the Employment First bill into law.

The new law, championed by Rep. Debra Heffernan, D-Brandywine Hundred South, makes competitive employment a top priority for state agencies as they offer services for people with disabilities. That means no one should be steered by default into isolated programs or "sheltered" workshops, but all should have more opportunity for meaningful work in the community.



State Rep. Debra Heffernan

The signing was hosted by Bank of America, which - after acquiring MBNA Bank in 2006 - retained its Support Services unit. The unit was created under the leadership of retired CEO Charles Cawley, who saw the potential that employees with disabilities brought to customer service, mail services, order fulfillment and other bank endeavors.

"This changes the whole world that kids are coming up in," said Pat Maichle, executive director of the Developmental Disabilities Council, whose daughter, Tara, has worked in the unit for more than 13 years.

The law means school districts will have to consider real employment options for students, she said, instead of shuttling them to lesser options. Maichle said she was told her daughter would never work, would always be dependent on the state and would live her life in a group home. Tara instead is

See WORK, Page B3

Work: Additional options essential

Continued from Page B1

making a good living, with a 401(k), health benefits and no need for Medicaid or group home facilities, her mother said.

A commission of advocates and others will develop accountability measures. It is unclear what "teeth" the law will have in practice.

"We hope the teeth will come," said Mary Ann Nolan, whose daughter Elizabeth has worked for years in a doctor's office, "but the attitude starts from the top. To have the governor's support is a very big thing. It's a baby step - but in a very big way."

Markell has made employment opportunities for people with disabilities the focus of his term as chairman of the National Governors' Association. He called out Micki Edelsohn, who sat beside her son, Robert, a Support Services employee, as the one who first introduced him to the unit at the bank and the power of such employment opportunities.



Micki Edelsohn

Brenda Petke, who was among the unit's first employees 22 years ago, said she loves the

independence provided by her profession.

Mark Feinour, the unit executive, said the bank doesn't give employment details but "has used the number 300" when asked how many people work in Support Services.

"Our goal is to provide meaningful work for our associates so they reach their potential each and every day," he said. "And they deliver greater efficiency and better quality than we would get with outside suppliers."

Contact Beth Miller at 324-2784 or bmill@delawareonline.com.

NATIONAL GOVERNORS ASSOCIATION

Markell takes top post

Tenure will focus on jobs for disabled Americans

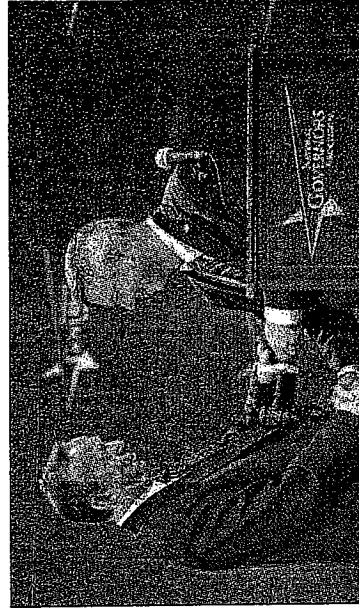
By Jonathan Starkey
The News Journal

Delaware Gov. Jack Markell became chairman of the National Governors Association on Sunday, at the end of a meeting of the nation's governors in Williamsburg, Va., saying he'll focus his one-year term on improving employment opportunities for Americans with disabilities.

"The bottom line is that there are so many people with disabilities who have the time, talent and desire to make meaningful contributions to interested employers," Markell said in a statement.

For the past year, Markell has served as vice chairman of the group and takes over the chair-

See **MARKELL, Page A7**



Delaware Gov. Jack Markell, the new chairman of the National Governors Association, takes the gavel Sunday from Nebraska Gov. Dave Heineman. NATIONAL GOVERNORS ASSOCIATION

Markell: Bill signed today will push hiring efforts

Continued from Page A1

manship from Nebraska's Republican governor, Dave Heineman. Oklahoma Gov. Mary Fallin, a Republican, will serve as vice chairman over the next year.

The governors convened their annual summer meeting in Williamsburg on Friday, and spent much of the weekend discussing an expansion of Medicaid envisioned under the federal health care reform law adopted in 2010. In a recent 5-4 decision upholding the Affordable Care Act, the U.S. Supreme Court made the expansion of eligibility on the state level optional.

But Markell says Delaware will likely participate, calling the mostly federally funded plan a "good deal for Delaware taxpayers."

Markell's new effort could help draw attention to the economic plight of Americans with disabilities, who participate in the labor force at an unusually low level and often face difficulties finding jobs.

According to federal labor data, only 20.5 percent of people with disabilities are looking for

work, compared with 70 percent of those without disabilities. The unemployment rate among those with disabilities was 13.2 percent in June, compared with 8.2 percent for the overall job-seeking population.

Markell's national effort will create a "blueprint" for states and businesses to help find jobs for people with cognitive and intellectual disabilities, and launch a campaign to help implement best practices, according to materials distributed by the National Governors Association on Sunday.

Markell, a Democrat, said he was inspired to work on the issue after meeting a 25-year-old worker with a disability at Bank of America's support services center, where the worker helped produce T-shirts.

"I asked him what he did before he got that job. He told me he had sat at home for six years watching TV with his parents," Markell said. "A light bulb went off in my head about the incredible improvement in his quality of life, not only from getting a paycheck, which is significant, but from having the ability to go some-

place to be part of a team, to be contributing, to be part of something bigger than him."

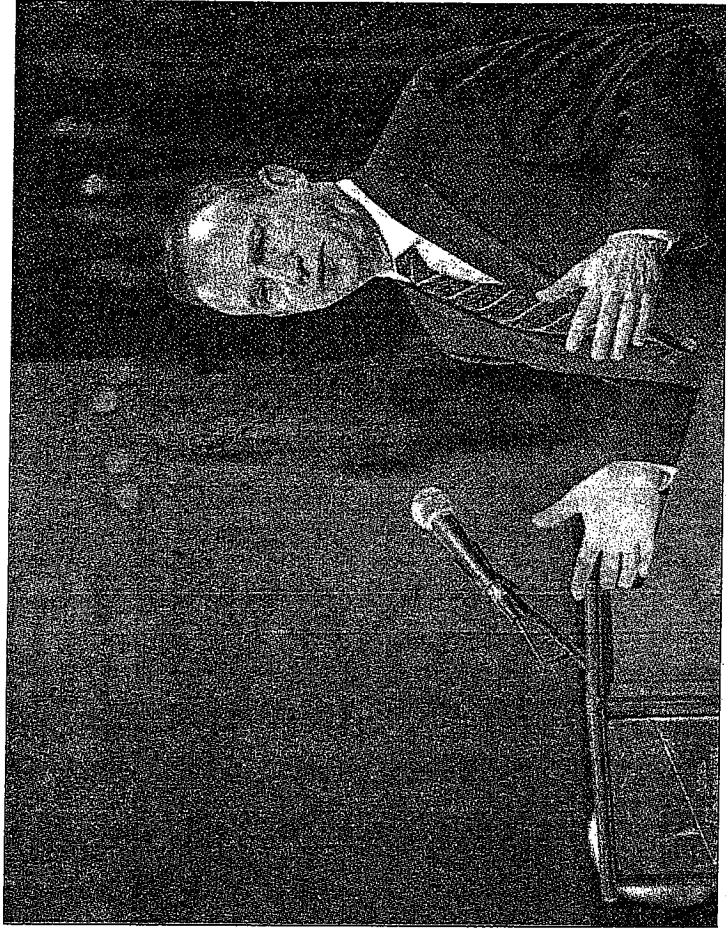
More than 200 workers with cognitive and behavioral disabilities work at Bank of America's support services center in Wilmington. They perform warehousing and fulfillment functions as well as produce graphical materials, such as banners and signs, used at company events.

"We treat our employees like any other employee," Mark Feinour, the Bank of America executive who leads the support services group, said of the key goal.

"We hold our employees accountable like anyone else," he said. "We focus on what their abilities are."

The program was initiated by the Delaware credit card bank MBNA, which was acquired by Bank of America in 2005. Markell will join some of those workers at 2 p.m. today in Newark to sign legislation that encourages state agencies to hire workers with disabilities.

Susannah Eaton-Ryan, director of employment and outreach at The Arc of Delaware, said she welcomes the effort.



Delaware's Jack Markell addresses his fellow governors. NATIONAL GOVERNORS ASSOCIATION

In the course of her work, Eaton-Ryan arranges resume training for individuals with disabilities and performs mock interviews. She is working with 160 Delawareans with disabilities, and 47 are still looking for work, she said.

Eaton-Ryan said some businesses are more willing than others to hire

workers with disabilities, adding that "it's not always a smooth path putting someone with a disability into a job, getting them training."

She suggested steps government at all levels could take to improve employment opportunities, including requiring businesses that accept job creation incentives from

the state to recruit workers with disabilities.

"We have a huge number of people in this state with disabilities," Eaton-Ryan said. "I think that's pretty important to represent them in these agreements."

Contact Jonathan Starkey at 983-6756, on Twitter @jwstarkey or at jstarkey@delawareonline.com

We should listen to individuals with disabilities

Thirteen years ago, the U.S. Supreme Court ruled in *Olmstead v. LC* that states must eliminate unnecessary segregation of individuals with disabilities, ensuring that those individuals receive services in the most integrated setting appropriate to their needs. On Thursday,

the U.S. Senate Committee on Delaware Health, Education, Labor, and Pensions held a hearing on the progress that

states are making on advancing community inclusion. Rita Landgraf, secretary of the Delaware Department of Health and Social Services, testified at that hearing. These are excerpts from her testimony.

I do not believe it is enough for us to be in mere compliance with the Americans with Disabilities Act and the Olmstead ruling, but we, as state leaders, must embrace the intent of the law beyond the compliance, and embed in-

clusion and the benefits of diversity as a core value.

For decades in Delaware, the state has had an overreliance on facility-based care and options within the community that have been limited to mid- to small-group living homes.

Far too many individuals were placed in institutions and remained there for extended periods. Since 2009, we have focused on shifting our resources and our delivery strategy to a community-first focus.

It begins with a simple, but powerful expectation: Individuals with disabilities can live in their own home, have meaningful employment and be ordinary Delawareans. They may require some level of support, but those supports need to be provided that effectively foster independence and fully engage participation in society.

A pivotal benchmark for Delaware to excel in our commitment to meaningful reform

is the July 6, 2011, a settlement agreement between the state and the U.S. Department of Justice which resolved a three-year investigation of the Delaware Psychiatric Center. More importantly, the agreement became the blueprint for how Delaware would provide mental health services to individuals with severe and persistent mental illness.

In order to comply with the agreement, the state must prevent unnecessary institutionalization by offering agreed-upon community-based services. We want to make this state a leader in mental health services, and the USDOJ shares that vision.

Given the fiscal challenges, the need for smarter budgeting, smarter spending, and smarter management must take center stage if we are to achieve meaningful integration. DHSS is focused on the development of a quality assurance program that incentivizes based on outcomes as they relate to the promises of Olm-

stead/ADA and not funds for volume.

The underlying support for full community participation must be a focus on financial capability and advancing "economic self-sufficiency." The Olmstead Community Integration Mandate compels us to attack poverty and financial instability through financial coaching as part of an individual's Medicaid support plan.

I believe we need ADA/Olmstead ambassadors throughout the states to promote the premise behind the civil rights movement and institute a broad education campaign. States must incorporate this awareness throughout the delivery system and in all areas of the cabinet to fully support the civil rights of individuals with disabilities as a core value.

In closing, permit me to share with you my early lesson on inclusion:

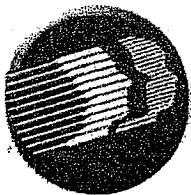
My path here today began when I was 12 years old, when a young neighbor Mike who

had an intellectual disability, ventured out into our community to befriend us. What Mike wanted was to be included with his peers and be a part of our group. What he encountered was ridicule at his expense.

The memory still weighs heavy on my mind and my heart. I didn't tease Mike, but I did nothing to stop the others. That haunting look on Mike's face changed my life forever, and I committed myself to working toward a system that educates and promotes diversity and inclusion. Mike on the red bike taught me my first lesson on the value of inclusion.

I saw Mike a few years back and he told me that he now drives a car, works at a farmer's market and is married. He is an ordinary Delawarean, a full participating community member and was smiling broadly. I told him that he was also a great teacher.

Individuals with disabilities are our greatest teachers. We need to listen.



**Delaware Health
and Social Services**

Office of the Secretary

1901 N. DUPONT HIGHWAY, NEW CASTLE, DE 19720 * TELEPHONE: 302-255-9040 FAX: 302-255-4429

MEMORANDUM

TO: Families and Stakeholders
FROM: Rita M. Landgraf, DHSS Secretary *HSS for RHL*
DATE: October 24, 2012

As Cabinet Secretary for the Department of Health and Social Services, I welcome you to this listening tour coordinated by our Division of Developmental Disabilities Services. This ongoing dialogue will provide my DHSS leadership team with valuable input to enhance the state's system and the Delawareans we serve. We greatly value and appreciate feedback from our clients, their families, providers, advocates and other stakeholders.

I am not looking to diminish services or to close either group homes or sheltered workshops. My goal is to expand the options and choices that are available within the state's home and community-based waiver.

Some of the options that I have been interested in exploring are:

- Career planning and placement
- Self-employment or entrepreneurship
- Group employment
- Expansion of supported employment
- Financial coaching and empowerment

I view these as an expansion of choices that can provide a wide range of services through the waiver to meet the needs of the people we serve. These options will not replace the current services, but would expand the choices available within our waiver. I have also instructed my leadership to think about how could expand family support services.

The give-and-take that you will provide this evening will be part of an ongoing dialogue with my leadership team at DHSS. Above everything else, we want to ensure that your feedback is heard and that the individuals and families we serve have options and choices.

"TO IMPROVE THE QUALITY OF LIFE FOR DELAWARE'S CITIZENS BY PROMOTING HEALTH AND WELL-BEING,
FOSTERING SELF-SUFFICIENCY, AND PROTECTING VULNERABLE POPULATIONS."

Our Mission - To provide leadership for a service system that is responsive to the needs of the people we support by creating opportunities and promoting possibilities for meeting those needs

Gov. Markell Welcomes the Specialisterne Foundation to Delaware

WILMINGTON (June 15, 2012) – Gov. Jack Markell welcomed the Specialisterne Foundation to Delaware during a special announcement Friday, June 15, about funding to facilitate the employment of Delawareans with high-functioning Autism Spectrum Disorder.

Markell joined Thorkil Sonne, founder and president of The Specialisterne Foundation, and Thère du Pont, president of the Longwood Foundation, at the announcement in the Community Service Building in Wilmington, where the Specialisterne Foundation will be headquartered among other nonprofit organizations.

Two Delaware-based foundations, the Longwood Foundation and the Welfare Foundation, will provide financial support for Specialisterne in Delaware, and is inviting other stakeholders to join in the support of Specialisterne to create jobs and career opportunities for people with ASD and similar challenges.

The Longwood Foundation announced that Specialisterne Delaware has received a \$200,000 grant and up to \$400,000 in matching funds. Details on the Welfare Foundation grant were not immediately available.

Markell praised Specialisterne's commitment to establishing jobs for individuals with high-functioning Autism Spectrum Disorder and for working with businesses to match people's skills with the appropriate positions. The governor said Specialisterne's passion and ambition for employing individuals is similar to his for the people of Delaware. "I am working to create jobs for all Delawareans, including people with a range of disabilities."

Specialisterne ("The Specialists" in Danish) is an innovative social business concept founded in Denmark in 2004. The employees are primarily high-functioning individuals with Autism Spectrum Disorder (ASD), primarily Aspergers Syndrome, but many may also have ADHD, for instance. Specialisterne provides valuable services for the corporate sector on market terms, and also provides assessment, training and education services.

Specialisterne has an excellent reputation in the management and provision of software and services testing, mobile device testing, quality control and data conversion for leading companies. It invests upfront in assessing and training people to fulfill the requirements of business sectors such as IT, telecoms, healthcare, financial services and pharmaceuticals, which need people with a passion for detail, focus and perseverance.

Sonne, who was accompanied by his wife, Annette, and son Lars, thanked the stakeholders of Delaware for their positive response. The Sonnes are moving from Denmark to live in Delaware.

"I think what we can do here in Delaware is set the example for the U.S., North America and the world on how stakeholders work together," Sonne said. "If we can have a good showcase in a state of [less than] 1 million, there's no limit. The people on the autism spectrum are there, and they want to have meaningful and productive lives."

Specialisterne will provide sustainable employment and career opportunities for individuals who typically are kept out of the job market primarily because of their disability, despite a high functionality level. The goal of the Specialist People Foundation, the nonprofit organization that drives the Specialisterne model globally, is to enable 1 million jobs across the world for people diagnosed with ASD and similar challenges.

The Specialisterne Foundation will drive and support the adoption of the Specialisterne model across the United States. In addition to Delaware, the Specialisterne Foundation is currently working with local stakeholders in Minnesota, North Dakota, New York, Colorado, Virginia, Pennsylvania, Maryland, California and Washington to raise the needed funding to start further local operations. Sonne said he hopes to raise \$1.3 million in Delaware. More states will be added in the coming years, subject to interest and local support.

Beside its origin in Denmark, Specialisterne is today present in Scotland, Iceland, Switzerland and Norway. The Specialist People Foundation is also working with England, Ireland, Poland, Germany, Austria, Spain, Turkey and Canada.

The primary focus for Specialisterne presently is ASD, a complex pervasive developmental disorder that affects a person's communication and interaction with others. Autism is defined by a certain set of behaviors and is a "spectrum disorder" that affects individuals differently and to varying degrees. There is no known single cause of ASD.

The number of individuals with autism continues to grow at a rapid rate and the latest published prevalence rate from the U.S. Centers for Disease Control and Prevention is now 1 in 88.

Photos of the event are available at: <http://www.flickr.com/photos/delawaregovernor/sets/72157630134481714/>

For more information about Specialisterne, go to www.specialistpeople.com, www.specialisterne.com, or contact Thorkil Sonne at thso@specialistpeople.com



U.S. Department of Justice

Civil Rights Division

*Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530*

June 29, 2012

The Honorable John Kroger
Attorney General for the State of Oregon
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Re: United States' Investigation of Employment and Vocational Services for Persons with Intellectual and Developmental Disabilities in Oregon Pursuant to the Americans with Disabilities Act

Dear Attorney General Kroger:

We write to report the findings of the Civil Rights Division's investigation of the State of Oregon's ("the State" or "Oregon") system of providing employment and vocational services to persons with intellectual and developmental disabilities and, in particular, the State's alleged unnecessary provision of such services in segregated sheltered workshops. We have assessed the State's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 (2006), as interpreted by Olmstead v. L.C., 527 U.S. 581 (1999), which requires that services, programs, and activities provided by public entities, including States, be delivered in the most integrated setting appropriate to the needs of persons with disabilities. The Department of Justice is authorized to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133.

Consistent with legal requirements set forth in the ADA and in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, we write to provide you with notice of the State's failure to comply with the ADA and of the minimum steps that Oregon must take to meet its obligations under the law.

Before proceeding with our findings, we would like to thank the State for the assistance and cooperation extended to us in this investigation. We would also like to acknowledge the courtesy and professionalism of Director Kelley-Siel, Ms. Fay, Mr. Maley, and all of the other State officials and counsel with the Oregon Department of Justice who have been involved in this matter to date. We appreciate the helpful and relevant information the State has provided us in response to our inquiries. We hope that, moving forward, we may work toward an amicable resolution to this matter.

I. INTRODUCTION

Title II of the ADA prohibits discrimination in all “services, programs, and activities” of a public entity. 42 U.S.C. § 12132. Title II is part of the ADA’s clear and comprehensive national mandate to end the segregation of persons with disabilities in virtually all aspects of American life, including employment, public accommodations, and transportation. See, e.g., 42 U.S.C. §§ 12101(a)(2), 12101(b)(1). “Quite simply, the ADA’s broad language brings within its scope anything a public entity does.” Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001) (internal quotations omitted).

Title II’s integration mandate requires that the “services, programs, and activities” of a public entity be provided “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). Such a setting is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” 28 C.F.R. Pt. 35, App. B at 673. Based on Title II and its integration mandate, the United States Supreme Court held that the “unjustified isolation” of persons with disabilities by States constitutes discrimination under Title II. Olmstead v. L.C., 527 U.S. 581, 600 (1999). Accordingly, the civil rights of persons with disabilities are violated by unnecessary segregation in a wide variety of settings including in segregated, non-residential employment and vocational programs.

Oregon is a leader in providing services to individuals with intellectual and developmental disabilities in community residential settings. It is one of a handful of states that no longer has any state-operated institutions for people with intellectual and developmental disabilities, and is one of an even smaller number of states with no state-funded, privately-operated institutions for this population.¹ Oregon has set an example for other states by demonstrating its express commitment to the benefits of transitioning individuals with intellectual and developmental disabilities into integrated, community residential settings. But Title II of the ADA and Olmstead mandate that individuals be given the opportunity to be integrated into the community more than just by their mere transition into integrated residential settings. Rather, individuals with disabilities have the right to live *integrated lives*, by participating in all aspects of community life.

In Oregon, in spite of the State’s significant leadership and commitment to ensuring that people can live in integrated settings, thousands of individuals still spend the majority of their day-time hours receiving employment services in segregated sheltered workshops, even though they are capable of, and want to receive employment services in the community. Such

¹ See Or. Council on Developmental Disabilities, Overview of Accomplishments 1 (January 2011) (“Oregon has closed all of its state institutions The last institution in Oregon was closed in 2010.”). See also K. Charlie Lakin et al., Residential Services for Persons with Disabilities: Status and Trends Through 2009, at iii (“By June 30, 2009, nine states had closed all state operated residential facilities with 16 or more residents with intellectual and developmental disabilities (Alaska, District of Columbia, Hawaii, Maine, New Hampshire, New Mexico, Rhode Island, Vermont and West Virginia.)”) and United Cerebral Palsy, The Case for Inclusion app. 1, at 1 (2012).

unjustified segregation makes many of the benefits of community life elusive for people with disabilities, even though they are residing in the community. In this way, "work options" are frequently an important gateway to the other "everyday life activities" that the Supreme Court recognized in Olmstead to be severely diminished by unnecessary segregation, including "family relations, social contacts...economic independence, educational advancement, and cultural enrichment." Olmstead, 527 U.S. at 600-01. It is axiomatic that when "work options" in the community are severely diminished because of unnecessary segregation, so too are most other important everyday life activities, regardless of where one resides.

Work is undoubtedly at the core of how most Americans spend their time, contribute as taxpayers, relate to society, and, importantly, access the full benefits of citizenship, including economic self-sufficiency, independence, personal growth, and self-esteem.

Many individuals with disabilities in Oregon who can and want to receive employment services in the community are able members of our society, who will bring diversity and value to the community workplace, and who will gain economic independence and freedom by receiving services that will help them to access community jobs. Many of these individuals have similar potential to one Oregonian that we met with significant and multiple disabilities, who uses a power wheelchair and ably delivers same-day mail on a 23 mile route in his supported employment position. Many are people similar to another Oregonian that we met, who has disabilities similar to many people who have been told that they are "too severely disabled to benefit from employment," even though she now works in a supported employment position at a transportation center as a transit host, capably assisting other people with disabilities to access mainline transportation. While sheltered workshops may be permissible placements for some individuals who choose them, we believe that Oregon over-relies on sheltered workshops and places people in such segregated settings unnecessarily when they would prefer community placement with support services.

Accordingly, the unnecessary segregation of individuals with disabilities in segregated, non-residential employment and vocational programs violates Title II of the ADA and Olmstead. The civil rights of people who can and want to receive employment services in the community are violated when they are unnecessarily segregated in sheltered workshops.

II. SUMMARY OF FINDINGS

We have concluded that the State is failing to provide employment and vocational services to persons with intellectual and developmental disabilities in the most integrated setting appropriate to their needs, in violation of the ADA. The State plans, structures, and administers its system of providing employment and vocational services in a manner that delivers such services primarily in segregated sheltered workshops, rather than in integrated community employment. Sheltered workshops segregate individuals from the community and provide little or no opportunity to interact with persons without disabilities, other than paid staff. Many persons with intellectual or developmental disabilities in, or at risk of entering, sheltered workshops in Oregon are capable of, and not opposed to, receiving such services in the community, where they would have the opportunity to access individual jobs that pay minimum wage or higher. Indeed, our investigation found that Oregon provides such integrated services to some persons with intellectual and developmental disabilities, including persons with significant support needs. These services have succeeded in allowing such persons to work in jobs in the

community alongside non-disabled workers. Nevertheless, most persons with intellectual and developmental disabilities receiving employment and vocational services from the state remain unnecessarily – and often indefinitely – confined to segregated sheltered workshops. In addition, people with intellectual and developmental disabilities newly entering, or about to enter, the workforce, as well as those currently receiving integrated employment services, are at risk of entering segregated sheltered workshops. These individuals are in, or at risk of entering, sheltered workshops due to systemic State actions and policies, which include:

- The State’s failure to develop a sufficient quantity of community-based employment and vocational services and supports for individuals with intellectual and developmental disabilities who are unnecessarily confined to sheltered workshops;
- The State’s direction of available resources to segregated sheltered workshops rather than to community-based services; and
- The State’s use of systemic criteria and methods of administration that unnecessarily require persons with intellectual and developmental disabilities to attend sheltered workshops in order to access and receive employment and vocational services.

These findings are consistent with a 2010 report commissioned by the State, which found that, in 2008, “71% of Oregonians with disabilities were in facility-based programs, supporting the claim that a majority of working age adults with significant disabilities are supported today in programs that offer segregation and long-term dependency regardless of cost.”² This reliance on segregated employment is contrary to the desires of participants. The report found that “[i]ntegrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes.”³ Additionally, in 2005, a report issued by the Oregon Council on Developmental Disabilities noted a “renewed interest in, and demand for, supported employment services,” and found that “[t]o respond to this demand, the state must reestablish expectations and capacity for supported employment for persons with developmental disabilities.”⁴

We agree with these conclusions and observations. As a result of Oregon’s actions and policies thousands of people with intellectual and developmental disabilities are denied the opportunity to “move proudly into the economic mainstream of American life,” one of the primary purposes of the ADA.⁵ Oregon has long recognized that “meaningful employment” for

² Washington Initiative for Supported Employment, Community Leadership for Employment First in Oregon: A Call to Action 6 (2010), available at: http://www.dhs.state.or.us/dd/supp_emp/docs/wise.pdf.

³ Id. at 7.

⁴ Janet Stevely, Supported Employment for Oregonians with Developmental Disabilities: Recommendations for Action 2 (Nov. 2005), available at: http://www.oregon.gov/DHS/vr/eep/se_dd_stevely.doc.

⁵ See Remarks of President George H.W. Bush at the Signing of the Americans with Disabilities Act (Jul. 26, 1990), available at: http://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html.

persons with disabilities is a necessary and important state objective,⁶ and that “[a]ll persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible.”⁷ Oregon has recognized that employment is “the key to full citizenship” and that “all people with intellectual and developmental disabilities should be provided the opportunity to work ... and to not live in the shadow as marginalized citizens, but to be fully embraced by their community.”⁸

Despite these policy statements, thousands of individuals with intellectual and developmental disabilities are unnecessarily placed in sheltered workshops. While many in sheltered workshops can and want to work in the community, the State has denied or failed to provide such persons with services and supports that would enable them to engage in meaningful employment in the community. The State has dedicated significantly more resources to sheltered workshops than it has to supported employment services and supports in the community. As the experience of Oregon and other states has demonstrated, persons with intellectual and developmental disabilities can be accommodated in integrated employment. As long as these discriminatory policies and practices remain, the interests, talents, skills and contributions of such persons remain largely invisible to and untapped by the job market, and the greater community is deprived of their potential contributions.

III. INVESTIGATION

On October 11, 2011, we notified the State that we were opening an investigation into whether the State’s reliance on sheltered workshops violated Title II of the ADA. As part of this investigation, we participated in two in-person meetings with State officials: one on October 27, 2011 and one on December 5, 2011. In the second meeting, we met with Erin Kelley-Siel, Director of the Oregon Department of Human Services (DHS), Mary Lee Fay, Administrator of the Oregon Office of Developmental Disabilities Services (ODDS), and Mike Maley, Director of Community Services for ODDS. At this meeting, Ms. Fay and Mr. Maley presented information and data to us concerning the State’s provision of employment services and answered all of our questions.⁹ Thereafter, on January 23, 2012, we requested documents and data from the State,

⁶ Or. Rev. Stat. §§ 410.010, 410.020(9) (2011); see also Community Leadership for Employment First in Oregon: A Call to Action at 31, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals (“Meaningful work can be accomplished regardless of disability.”).

⁷ Or. Rev. Stat. § 410.710(1).

⁸ Community Leadership for Employment First in Oregon: A Call to Action at 9.

⁹ The State requested, and the United States agreed, that any communications made during this meeting would be treated as inadmissible pursuant to Federal Rule of Evidence 408. Accordingly, the United States will not seek to admit any statements made or documents obtained during this meeting in any proceeding. Nevertheless, in conducting our investigation and reaching our conclusions, we carefully considered the information provided by Director Kelley-Siel, Ms. Fay, and Mr. Maley. The information provided during this meeting also assisted us in requesting additional information, documents, and data from the State and other sources.

which we received in March and April 2012. These documents included the State's Employment Outcomes System database, which the State has used to track the placement and other employment data for persons with intellectual and developmental disabilities on the State's Medicaid Comprehensive Waiver.

In April 2012, our staff, along with a consulting expert, conducted on-site visits to employment services providers in Oregon, including sheltered workshops, group employment programs, and supported employment programs. The programs we toured were geographically and demographically diverse. During these visits, we interviewed staff, toured programs, and spoke with participants. We also met with and interviewed other providers, stakeholders and other knowledgeable individuals concerning Oregon's employment services system for persons with intellectual and developmental disabilities.

IV. BACKGROUND

DHS oversees the delivery and administration of programs and services for individuals with intellectual and developmental disabilities.¹⁰ DHS has two sub-agencies that are responsible for the provision of employment and vocational services: the Office of Vocational Rehabilitation Services (OVRS) and the Office of Developmental Disability Services (ODDS) within the Seniors and People with Disabilities (SPD) Division.¹¹ Oregon's employment and vocational services system for individuals with intellectual and developmental disabilities begins, for most individuals, with an initial system of employment programs and services provided by OVRS and continues via ODDS.

Vocational rehabilitation services are focused on initial job readiness and placement services and are time-limited to a maximum of eighteen months.¹² To be eligible for OVRS services, individuals must have a physical or mental impairment that "constitutes or results in a substantial impediment to employment," and a qualified vocational rehabilitation counselor must determine that an individual requires vocational rehabilitation services to obtain or maintain a job.¹³ A vocational assessment determines eligibility for services and is used to formulate an Individual Plan of Employment (IPE) with identified goals for an individual's vocational and employment services. Under Oregon regulations, eligibility determinations must be made within sixty days.¹⁴ If a person is determined eligible for OVRS services, an IPE must be developed and signed within 180 days.¹⁵

After the expiration of eighteen months, individuals may continue to receive vocational and employment services through ODDS via one of the two Medicaid Home and Community Based Services waiver programs, which serve persons with intellectual and developmental

¹⁰ Or. Rev. Stat. § 409.010(2)(d)(3).

¹¹ Or. Rev. Stat. §§ 410.010, 410.020(1), (2), (9), 410.060(2); 410.070.

¹² 34 C.F.R. § 363.6(c)(2)(iv)(iii) (2011); Or. Admin. R. § 582-001-0010(45)(a) (2012).

¹³ Or. Admin. R. § 582-050-0020.

¹⁴ Or. Admin. R. § 582-050-0000(5).

¹⁵ Or. Admin. R. § 582-050-0000(7).

disabilities who would meet an institutional level of care. The Comprehensive Waiver provides both residential and non-residential services and support. For the Comprehensive Waiver, DHS delegates eligibility determinations and development of Individual Support Plans (ISP) to counties, who assign “service coordinators” to each participant. The Support Services Waiver provides day services only. ODDS administers service coordination for this waiver program by contracting with regional “brokerages” that assign a “personal agent” for each participant. Both waiver programs provide employment and vocational services.

Under these programs, Oregon provides employment and vocational services to persons with disabilities in three types of settings: “sheltered” or “facility-based” employment, “group supported employment” or “supported employment – crew/enclave,” and “individual supported employment.” Oregon has defined “sheltered employment” as follows:

Supports typically take place in settings such as sheltered workshops in which there is **little or no contact with other workers without disabilities**. Individuals are paid a wage in exchange for their production-related activities. Sheltered employment includes crews or enclaves with 9 or more workers with disabilities on any one shift.¹⁶

Supported employment, by contrast, is defined as follows:

Paid employment in a setting providing opportunities to work with and around persons without disabilities. Includes 1:1 intermittent monitoring, coaching and/or intervention at a public or private sector worksite, using and enhancing natural business and co-worker supports where possible. Provides or arranges for personal care as needed.¹⁷

Finally, “group supported employment” or “crew/enclave” supported employment is defined as “[a] small group of 2 to 8 individuals with developmental disabilities working in the community under the supervision of a provider agency.”¹⁸

V. FINDINGS

We conclude that the State fails to provide employment and vocational services to persons with intellectual and developmental disabilities in the most integrated setting appropriate to their needs. Under Title II of the ADA, 42 U.S.C. § 12132, a public entity must “administer services, programs, and activities in the most integrated setting appropriate to the needs of

¹⁶ See DHS/DOJ_001713 (emphasis in original).

¹⁷ Service Definitions, Employment and Community Inclusion Services (Mar. 29, 2012) (DOJ Bates No. OR05321). Regulations governing federally-assisted vocational services similarly distinguish between integrated and segregated employment settings. See 34 CFR § 361.5(b)(16) & (19) (defining “employment outcome” as “entering or retaining full-time or, if appropriate, part-time competitive employment ... in the integrated labor market, supported employment, or any other type of employment in an integrated setting” and “extended employment” as, *inter alia*, “work in a non-integrated or sheltered setting”).

¹⁸ See DHS/DOJ_001713.

qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).¹⁹ The “most integrated setting” is one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible[.]” *Id.* App. A. at 572. As shown below, and as recognized by the State, sheltered workshops fail to provide this required level of integration and interaction between persons with and without disabilities.

Congress enacted the ADA to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” 42 U.S.C. § 12101(b)(1), including, specifically, “segregation” and actions that prevent persons with disabilities from “fully participat[ing] in all aspects of society.” *Id.* §§ 12101(a)(1), (5). Furthermore, Congress found that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” *Id.* § 12101(a)(7).

Title II of the Americans with Disabilities Act states as follows:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. Title II is part of the ADA’s clear and comprehensive national mandate to end the segregation of persons with disabilities in virtually all aspects of American life. As Congress found, “[i]ntegration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status.” *See* H.R. Rep. No. 485, at 26 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 449; *see also* 28 C.F.R. Pt. 35, App. B (same). *See also* *Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995) (“The ADA is intended to insure that qualified individuals receive services in a manner consistent with basic human dignity rather than a manner which shunts them aside, hides, and ignores them.”).

In *Olmstead*, 527 U.S. at 587, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment, and (c) community services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. *Id.* at 607. In so holding, the Court explained that “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” *Id.* at 600. It also recognized the harm caused by unnecessary segregation: “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.” *Id.* at 601.

The *Olmstead* analysis applies to segregated employment programs such as sheltered workshops. In *Lane v. Kitzhaber*, persons with intellectual or developmental disabilities who are in, or who have been referred to, Oregon sheltered workshops sued under Title II of the ADA

¹⁹ Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), contains a similar requirement. *See* 28 C.F.R. § 41.51(d).

and Olmstead and alleged that the State had failed to provide them with employment and vocational services in the most integrated setting appropriate to their needs, namely supported employment. The Court found that the “broad language and remedial purposes of the ADA” support the conclusion that the integration mandate applies to employment services.²⁰ The court additionally declined to find that the application of the Supreme Court’s holding in Olmstead was limited to residential settings and “conclude[d] that the risk of institutionalization addressed in ... Olmstead ... includes segregation in the employment setting.”²¹

A. Sheltered Workshops are Segregated Settings

Sheltered workshops do not provide persons with disabilities the opportunity to interact with non-disabled persons to “the fullest extent possible.” See 28 C.F.R. § 35.130(d), App. A. at 572. The State’s own documents define sheltered workshops as providing “little or no contact with other workers without disabilities.”²² Other State data indicate this lack of integration: in September 2009, the State reported that over 85% of persons in sheltered workshops had fewer than five persons without disabilities in their immediate environment, with 41% reporting no one without a disability. By contrast, over 90% of persons in integrated employment had persons without disabilities in their immediate environment, with over 46% reporting six or more such individuals.²³

Our observations of sheltered workshops throughout the State as part of this investigation confirmed this conclusion. While staff and management of these facilities were clearly caring

²⁰ Lane v. Kitzhaber, No. 3:12-cv-00138-ST, 2012 U.S. Dist. LEXIS 69218, *20 (D. Or. May 17, 2012).

²¹ Id. at 11-12. See also “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.” 3 (June 22, 2011) (emphasis added), available at: www.ada.gov/olmstead/q&a_olmstead.htm. The Centers for Medicare and Medicaid Services (CMS), which oversees Medicaid, has also recognized Olmstead’s application to non-residential employment and vocational services provided under Medicaid. CMS has stated that States “have obligations pursuant to ... the Supreme Court’s Olmstead decision” requiring that “an individual’s plan of care regarding employment services should be constructed in a manner that ... ensures provision of services in the most integrated setting appropriate.” CMCS Informational Bulletin 5 (Sept. 16, 2011) (emphasis added), available at: www.cms.gov/CMCSBulletins/download/CIB-9-16-11.pdf. In addition, since January 22, 2001, the Rehabilitative Services Administration has prohibited federal rehabilitation funds from being used for long-term placement of persons with disabilities in “extended employment,” meaning sheltered workshops and other segregated settings. See 66 Fed. Reg. 7249; see also 29 U.S.C. § 720(a)(1), (3)(C) (Title I of the Rehabilitation Act) (“Congress finds that-- ... Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.”); Rehabilitation Services Administration, Technical Assistance Circular, 06-01 (November 21, 2005), available at: www2.ed.gov/policy/speced/guid/rsa/tac-06-01.doc.

²² See DHS/DOJ_001713.

²³ Semi-Annual Employment Outcomes System Evaluation Report, Sept. 2009, at 19 (DHS/DOJ_001770).

and professional, the workshops we observed nevertheless were structured and functioned much like other institutions, in that they delivered employment and vocational services in a manner that did not allow persons served to interact with non-disabled persons other than staff. Cf. Benjamin v. Dep't of Pub. Welfare, 768 F. Supp. 2d 747, 750 (M.D. Pa. 2011) (adopting plaintiffs' finding of fact that they are segregated because, *inter alia*, they 'do not have as much opportunity to interact with a wide range of people. . . .'). See also Disability Advocates Inc. (DAI) v. Paterson, 653 F. Supp. 2d 184, 200-07 (E.D.N.Y. 2009) *vacated on other grounds sub nom. DAI v. New York Coalition for Quality Assisted Living*, 2012 WL 1143588 (2d Cir. April 6, 2012) (describing characteristics of institutions to include, *inter alia*, large numbers of individuals with disabilities congregated together with few opportunities to interact with individuals outside of the institution).

Persons in many sheltered workshops perform highly repetitive, manual tasks, such as folding, sorting, and bagging, in shared spaces occupied only by other persons with disabilities. Workshop participants often perform their tasks on a uniform, fixed shift schedule with designated breaks. Typically, the same disabled individuals who perform tasks on a given shift also break together—whether by eating, talking, or sleeping—in areas just off to the side of the appointed work space, without ever leaving the workshop floor or the facility itself. DAI, 653 F.Supp.2d at 199-201 (institutional characteristics include, *inter alia*, inflexible routines and regimented daily activities with little autonomy or being subject to an “extensive and significant set of rules” limiting individuals' freedom to make choices about how they spend their time.).

Individuals' limited choice or autonomy over the tasks that they perform also increases the likelihood of their continued segregation. Workshop tasks are often required to be performed irrespective of a particular individuals' preference, dexterity, skill, or acumen for the process, as all participants typically rotate across the workshop floor to all of a workshop's various work stations. During our investigation, we observed one workshop participant with multiple disabilities whose limited dexterity and muscular control made him appear to struggle for an extended length of time to tie a single loop in a nylon cord, the task that the participants at his station were required to perform over and over. While this person may have excelled at other jobs in which his physical limitations were not relevant, he was likely rendered “less productive” solely due to his physical inability to perform the task assigned to him at the same level as a nondisabled person.

Indeed, the State's own data makes clear that sheltered workshops by and large do not provide short-term training to prepare persons with intellectual or developmental disabilities for integrated employment; rather, for most participants, they represent a permanent employment placement. According to the State's documents, the average duration of a sheltered workshop placement in September 2009 was 11.72 years.²⁴ A number of sheltered workshop providers told us that some individuals have been in their workshops for as long as thirty years.

Our expert consultant also noted a pattern of “segregation within segregation” in some workshops, in which less productive persons were grouped together and separated from more productive persons. Less-productive persons were either not working or were performing more menial tasks that required less supervision and training. In one example, we saw a group of workers who appeared to have greater physical needs sorting trash at a recycling facility. Workers who were more productive, by contrast, tended to perform different and sometimes

²⁴ Id. at 11.

more complex tasks in other sections of the workshop. Likewise, in the few workshops we saw that also employed non-disabled workers, these workers tended to work on different tasks, and were, therefore, often apart from persons with disabilities who were less productive or had more severe disabilities.²⁵

The physical features of many sheltered workshops were also institutional in nature. Many workshops, like other institutional facilities, contain separate office space, conference rooms, lunch rooms and restrooms for management and staff, apart from the workshop space. In many workshops, individuals with disabilities sit at long cafeteria-style tables in large industrial facilities, with little natural light. While some competitive jobs may also have work environments that resemble an industrial plant, for workshop participants this appears to be the sole type of workplace setting provided, and is not representative of many other workplace settings in the community. Furthermore, unlike most workplaces, many sheltered workshops lack desks or personal spaces where workers may keep personal items. Several staff members are usually on the floor of the workshop at any given time supervising individuals in their completion of manual tasks and monitoring production. DAI, 653 F.Supp.2d at 199-201 (institutional characteristics evidencing segregation include, *inter alia*, the physical layout of a facility, furnishings, and general lack of privacy and lack of private spaces.).

The business model and location of sheltered workshops further inhibits the integration of persons with disabilities. Due to the large size of most sheltered workshops and their need for space, many are located in industrial parks or in areas set off from other businesses and public transportation. Consequently, individuals with disabilities cannot always use mainline transportation to get to and from their homes to the workshops, thereby requiring the provider to transport individuals to and from work. This system accordingly perpetuates the segregation and isolation of workshop participants. Furthermore, persons in workshops cannot easily leave the facility to go to lunch or for a break. Again, while this may also be the case for some individual jobs, it is not representative of most jobs in the marketplace.

Being unnecessarily segregated in a sheltered workshop setting can impose negative consequences upon people with disabilities, in addition to individuals' isolation from non-disabled peers, including stigmatization and a lack of economic independence. Sheltered workshop participants earn extremely low wages when compared to persons with disabilities in integrated employment.²⁶ According to data provided by the State in response to our

²⁵ It is important to emphasize that a person's level of productivity in the workshop is not necessarily commensurate with severity of their intellectual or developmental disabilities. For example, we observed a number of persons who had difficulty performing their assigned task due to physical limitations such as limited hand or motor coordination. Conversely, we observed individuals with significant physical limitations working productively in community settings, either because their physical limitations were not a significant barrier to their job performance or because their physical limitations had been accommodated by their employer. Such accommodations or tailoring of jobs to meet individual needs and skills may not be possible in a sheltered workshop where everyone must perform one of the same small group of tasks to fulfill the facility's contracts.

²⁶ Under the 1938 Fair Labor Standards Act (FLSA), employers of persons with disabilities, including sheltered workshops, may pay below minimum wage if they have obtained "special certificates" issued for the purpose of "prevent[ing] curtailment of opportunities for employment" for persons with disabilities. See 29 U.S.C. § 214(c). However, this does not

investigation, the average hourly wage for sheltered workshop participants is currently \$3.72. Over 52% of participants earn less than \$3.00 per hour, and some earn only a few cents per hour.²⁷ By contrast, the overwhelming majority of persons with disabilities in individual supported employment earn Oregon's minimum wage of \$8.80 or above.²⁸ As the State's own reports have recognized, "[m]inimum or competitive wages" are "the goal of integrated employment."²⁹ Furthermore, the satisfaction achieved by persons with disabilities for earning the same compensation as persons without disabilities who perform similar work is a major reason why integrated employment is "more valued" than segregated employment.³⁰ Moreover, minimum or competitive wages promote the economic independence of persons with intellectual disabilities, which in turn can benefit the State financially and ensure that such individuals have the resources necessary to remain and thrive in community settings. At one supported employment site we visited, we met a woman with intellectual disabilities whose work skills had progressed to the point that she now worked enough hours to qualify for the employer's health plan, and no longer had to rely on the State for health insurance coverage. She also was promoted and was asked to advance to more complex tasks at work, something rarely

relieve States of their obligation to comply with the ADA's integration regulation with regard to the provision of employment and vocational services.

²⁷ Id. Oregon's minimum wage has been adjusted for inflation annually since 2003. See Or. Rev. Stat. §§ 653.025(1)(d)-(e). The current minimum wage is \$8.80 per hour. See http://www.oregon.gov/BOLI/TA/T_FAQ_Min-wage_2012.shtml.

²⁸ Under the FLSA, workers are paid based on their measured productivity when compared to a non-disabled worker performing similar work. See 29 U.S.C. § 214(c)(1)-(2). Thus, for a job that is compensated at Oregon's minimum wage of \$8.80 per hour, a disabled worker who is determined to be half as productive as a non-disabled worker would earn \$4.40 per hour. The employer must measure the productivity of disabled workers every six months. Id. § 214(c)(2)(A). Based on interviews with workshop staff, we found that this measurement is relatively straightforward for jobs involving discrete assembly tasks, in which productivity can be measured by the number of items completed or assembled. However, for jobs that do not result in such measurable outputs, such as operation of machinery, a particular worker's level of productivity is more subjective and more difficult to measure. Furthermore, in workshops that employ non-disabled workers, there is often a differential compensation structure for these non-disabled workers that reinforces the pay disparity with disabled workers doing the same or similar work in the sheltered workshop. While, absent extraordinary circumstances, non-disabled workers will be paid minimum wage or higher regardless of their productivity during a particular period, disabled workers – even those who are highly productive – must regularly demonstrate and maintain their productivity in order to keep earning at or near minimum wage, with little to no allowance for an off-day. Such disabled workers would generally not be subject to this analysis if they worked in competitive employment.

²⁹ Community Leadership for Employment First in Oregon: A Call to Action at 7. See also Stevely, Supported Employment for Oregonians with Disabilities: Recommendations for Action (Nov. 2005) at 4 ("The key features of supported employment are ... [w]ages commensurate to wages paid to for comparable work performed by someone without a disability.").

³⁰ Community Leadership for Employment First in Oregon: A Call to Action at 7 ("Integrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes.").

experienced by persons in sheltered workshops. Further, after enjoying the independence and increased wages from her job in the community, this woman was able to and selected to move into her own apartment.

B. The Majority of Oregon's Employment and Vocational Services Are Delivered in Sheltered Workshops

Although the State has recognized that "employment opportunities in fully integrated work settings should be the first and priority option explored in the service planning for working-age adults with developmental disabilities,"³¹ the available evidence indicates that only a small minority of persons with intellectual and developmental disabilities in Oregon can access supported employment services and, consequently, have the opportunity to work in integrated employment. According to data provided by the State in response to this investigation, as of March 2012, of 2,691 persons receiving employment and vocational services, 1,642 – 61% – received at least some of those services in sheltered workshops. By contrast, only 422, or less than 16%, of these persons received services at any time in individual supported employment settings.

Data provided by the State on the number of hours expended in each setting – which, under the Comprehensive waiver, determines or will determine the amount of State funds dedicated to each service setting – also demonstrate a stark differential between resources dedicated for integrated and segregated employment.³² Of a total of 118,311 hours expended on employment and vocational services, only 11,789 of those hours were in integrated, individual employment settings, or less than 10%. On the other hand, 67,640 hours, or 57%, of these hours were expended in sheltered workshops. Sheltered workshops clearly constitute the vast majority of the State's expenditures and resources for employment services for persons with intellectual and developmental disabilities.

C. Many Persons in Sheltered Workshops Could Be Served In Individual Supported Employment

Both in Oregon and nationally, it has been recognized that most, if not all, persons with intellectual and developmental disabilities are capable of working in the community. As early as 1987, one federal court recognized that "[w]hereas sheltered workshops and work activity centers were previously considered the only possible place in which to employ people with disabling conditions, now many professionals consider these places the last resort when every other employment option has failed." Homeward Bound, Inc. v. Hissom Mem. Ctr., No. 85-C-437-E, 1987 U.S. Dist. LEXIS 16866, at *43 (N.D. Okla. Jul. 24, 1987). The report underlying Oregon's Employment First Policy states: "Everyone can work and there is a job for everyone. Our job is to be creative and tenacious in providing support."³³ In addition, available data

³¹ Id. at 32, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals.

³² Both State officials and numerous providers informed us that the ODDS is revising its reimbursement system for services covered under the Comprehensive Waiver. Although not finalized, the new system is expected to compensate providers based on the number of hours of service provided.

³³ Community Leadership for Employment First in Oregon: A Call to Action at 3.

indicate that Oregon has historically served a much larger percentage of its population of persons with intellectual and developmental disabilities in integrated employment settings than it does today, further confirming the conclusion that many persons in sheltered workshops do not need to be served there.³⁴

Our investigation confirms this conclusion. Our consulting expert observed and/or spoke with hundreds of sheltered workshop participants and noted that they have disabilities similar to persons being served successfully in supported employment programs in Oregon. She did not find that the overall level of need of persons in sheltered workshops rendered them incapable of working in the community. For example, she estimated that of the total number of individuals we observed in sheltered workshops, less than 20% used a wheelchair. By contrast, we observed a supported employment program where nearly all participants had both significant mobility impairments and intellectual or developmental disabilities. Nevertheless, this agency had successfully trained and placed its clients in a number of jobs in the community and had taught them to use mainline transit, as opposed to paratransit, to get to and from work. Many providers of both sheltered workshops and supported employment told us that they believed that most persons with intellectual and developmental disabilities in workshops could, with appropriate supports and services, be served in the community.

In addition, we uncovered no evidence that persons with intellectual and developmental disabilities in sheltered workshops would oppose supported employment services, or working in an individual job, if given the choice and opportunity to do so. See Olmstead, 527 U.S. at 607. However, our investigation revealed, and our expert concluded, that few persons are provided a meaningful and informed choice of supported employment services. For example, one sheltered workshop participant told us that she was trained to wash tables and dishes as a volunteer while in high school, and that she currently wants to be a greeter in a retail store, but no one, including her case manager, has spoken with her about securing the services necessary for community employment. She called her work assembling syringes in the workshop “boring.” Another person who has been in the workshop for ten years putting labels on bags said that she wants to work in the community, preferably with children or in the food service industry, and wanted to earn minimum wage so that she could independently select (and pay for) recreational activities in the community. However, neither her case manager nor anyone else had discussed community employment with her. Another sheltered workshop participant we met with has been in a workshop for over twenty-five years. He told us that, every year, he has expressed his desire to work in the community during his ISP team meetings. Nevertheless, he knew of no plan to secure supported employment services for him.

D. Oregon Administers Its Employment and Vocational Services System in a Manner that Segregates Persons with Disabilities in Sheltered Workshops

Under the ADA, states may not utilize “criteria or methods of administration” that subject persons with disabilities to illegal discrimination, 28 C.F.R. § 35.130(b), including, *inter alia*, unnecessary segregation in sheltered workshops. Based on our investigation, we have concluded that the State is violating this provision with regard to the placement of persons with intellectual and developmental disabilities in sheltered workshops.

³⁴ See John Butterworth *et al.*, State Data: The National Report on Employment Services and Outcomes (Institute for Community Inclusion, University of Massachusetts-Boston Winter 2011) at 281.

While Oregon provides supported employment services to some persons with disabilities, it has not developed adequate capacity to provide these services to all persons in sheltered workshops, or who are in or at risk of entering sheltered workshops, who could benefit from them and would not oppose being served in the community. See *Olmstead*, 527 U.S. at 587. Many employment services providers we interviewed identified a lack of resources to provide job coaches, job developers, behavioral supports, and other necessary services and supports as a barrier to serving workshop participants in the community. Providers also expressed uncertainty as to whether new rates being developed under the State's Comprehensive waiver would allow them the resources to develop such capacity. During our investigation, we were unable to discern any meaningful or effective financial incentive by the State to encourage the movement of persons with intellectual or developmental disabilities out of sheltered workshops and into supported employment services. Furthermore, in addition to the lack of supported employment services, our investigation revealed a number of policies, practices or omissions by the State that further the unnecessary segregation of persons with intellectual and developmental disabilities in sheltered workshops, as described below.

1. Failure to Utilize OVRs Services to Encourage Supported Employment for Persons with Intellectual and Developmental Disabilities

OVRs is the first resource available to persons with intellectual and developmental disabilities seeking employment services. One supported employment provider told us that OVRs can be an important source of funding for job training and other vocational services in integrated community settings. Nevertheless, our interviews with providers and stakeholders indicated that, overall, OVRs does not use its resources to further integrated employment for persons with intellectual and developmental disabilities. Instead, it was reported, OVRs often screens out such persons by classifying them as too severely disabled to benefit from employment services or succeed in a job setting. Accordingly, sheltered workshops often become the default setting for many people with intellectual and developmental disabilities who have been found ineligible for OVRs services.

OVRs's eligibility determination does not appear to be based on a professionally appropriate assessment of the needs and skills of persons with intellectual disabilities. The OVRs assessment tool requires that applicants for services demonstrate that they are "motivated, reliable and dependable," and staff must verify an applicant's "motivation."³⁵ Virtually all of the providers and stakeholders we spoke with stated that this process is wholly inappropriate for persons with intellectual and developmental disabilities because most such persons cannot, as a result of their disabilities and concomitant limited verbal skills, express this motivation in the manner contemplated by OVRs' assessment tool. This process, which has been the subject of numerous complaints, effectively screens out persons with intellectual and developmental disabilities from OVRs' resources and increases the likelihood that such individuals will enter a sheltered workshop.

Furthermore, the State's lack of investment in supported employment services also may discourage OVRs from assisting persons with intellectual and developmental disabilities from finding competitive employment. Because OVRs is evaluated based on the number of

³⁵ See "Enhancing Employment Outcomes Project," www.dhs.state.or.us/tools/vr/training/2008/2008-enc-emp-outcm.ppt (August 2008).

successful employment outcomes for persons it serves, and because sheltered work is not, under federal law, considered a successful employment outcome,³⁶ it is simply easier for OVRS to find a person ineligible than to attempt to find the person a job, which is rendered more difficult by the lack of job coaches, job developers and other supports and services among service providers. While such a practice is not universal, many providers reported their belief that OVRS often declines to find persons with intellectual or developmental disabilities eligible because they are concerned about whether a successful employment outcome is possible. One supported employment provider told us that most of the persons they served had been determined ineligible for OVRS services, reinforcing the fact that such a determination does not indicate whether a person can or cannot work in integrated employment.

The failure of OVRS to serve persons with intellectual or developmental disabilities who are entering vocational services for the first time – including persons graduating from or leaving public schools – can have lasting consequences. We heard from numerous providers and stakeholders that it is common for individuals to transition to Medicaid-funded supported employment after they have fully utilized OVRS resources, like job coaches and job developers, to locate and identify supported employment opportunities in the community. However, we also learned that individuals who have been found ineligible for OVRS services are often placed immediately in sheltered workshops due to a lack of available, immediate resources for supported employment services. As stated above, once placed in a sheltered workshop, persons tend to remain there indefinitely.

Moreover, even though federal law prohibits OVRS from using federal funds for long-term placements in sheltered workshops,³⁷ OVRS nevertheless utilizes sheltered workshops to perform assessments of persons with disabilities. These assessments are often conducted not in the community but in the workshop itself, where it may be difficult to gauge a person's ability to function in an integrated work setting. These assessments often lead to placement in the very workshop that assessed the person. In fact, one sheltered workshop provider informed us that many individuals sent to the workshop for assessment by OVRS arrive with the impression that they have been sent there for placement.

2. Failure of Case Managers to Interact with Supported Employment Providers to Identify and Locate Employment Opportunities

Our investigation revealed little apparent interaction between vocational rehabilitation counselors, service coordinators, and personal agents with supported employment providers to assist individuals in transitioning out of sheltered workshops. Many providers told us that they were rarely, if ever, contacted by these case managers to find out about their services or available employment opportunities. In fact, one supported employment provider told us that her organization recently became aware of three jobs in the community that were available for persons with intellectual and developmental disabilities receiving supported employment services. The provider contacted case workers and agencies in the area to see if they had any clients – whether in sheltered workshops or at risk of such placement – who might be interested in these jobs. The provider, however, received no response. As a result, no one was referred to these jobs, and the jobs were eventually lost.

³⁶ See 66 Fed. Reg. 7249, 7250 (Jan. 22, 2001) (codified at 34 C.F.R. §361).

³⁷ Id.

E. Persons with Disabilities Exiting the School System Are at Risk of Placement in Sheltered Workshops

As described above, due to the State's overreliance on segregated sheltered workshops and concomitant failure to develop sufficient supported employment services, many youth with intellectual and developmental disabilities are at risk of entering a sheltered workshop. See M.R. v. Dreyfus, 663 F.3d 1100, 1116 (9th Cir. 2011) (recognizing claim under Olmstead for persons at risk of segregation). According to the stakeholders and others we interviewed, the State, via its vocational rehabilitation counselors, service coordinators, and personal agents, fail to present transition-age students with intellectual and developmental disabilities with viable alternatives to sheltered work to receive employment services. Students in the system are also not identified early enough by either school transition specialists or vocational rehabilitation counselors as needing transition services to prepare them for transitions into integrated work.

The State has no formal plan to transition students to individual supported employment from school. Although DHS and OVRS entered into a Memorandum of Understanding with the Oregon Department of Education in August 2011 that seeks to increase the number of students with disabilities transitioning from school to work, it is nonspecific with regard to achieving this goal and lacks clearly defined benchmarks for transitioning students into supported employment.³⁸

Numerous stakeholders stated that a referral from high school to a sheltered workshop continues to be the most common outcome for transition age youth who seek employment services in Oregon. We also received reports that some school districts in Oregon simulate workshop activities in order to transition students with disabilities into workshops. Other school districts have placed students in workshops as part of their transition planning for such students, which often leads to permanent placement in the workshop. At least one sheltered workshop grants a number of high school students per year "scholarships" to work in the facility prior to transitioning from school. In addition, as described above, many students are referred from schools to sheltered workshops for assessments to determine their eligibility for OVRS services. These actions place students with disabilities at risk of unnecessary placement in sheltered workshops and run directly counter to the goals of the MOU and Oregon's policy on employment. Nevertheless, such actions are not specifically addressed in the MOU.

F. Serving Persons with Disabilities in Integrated Employment Settings Can Be Reasonably Accommodated

Providing services to sheltered workshop participants with intellectual and developmental disabilities in community-based employment settings can be reasonably accommodated. The types of services needed to support people with intellectual and developmental disabilities in community-based employment settings already exist in Oregon's employment service system. The State could redirect Medicaid and other funds that it already spends to support people in sheltered workshops to provide services in integrated employment settings. Further, many of the services provided to sheltered workshop participants, including job coaching, job training, job

³⁸ See Memorandum of Understanding, Oregon DOE/ OVRS/ ODDS, available at: www.ode.state.or.us.

assessment, job oversight and supervision, environmental modification, and transportation, are the same services that individuals would need in the community in integrated employment.

The State, as set forth in its Employment First Policy, has aspired to make “employment opportunities in fully integrated work settings... the first and priority option explored in service planning for working age adults with developmental disabilities.”³⁹ As the State already provides employment services in integrated settings to some individuals in Oregon,⁴⁰ expanding the availability of services in fully integrated work settings to serve others who are unnecessarily segregated or at risk of unnecessary segregation in sheltered workshops is a reasonable modification to the State’s employment service system. DAI, 598 F.Supp.2d at 335 *vacated on other grounds sub nom. DAI*, 2012 WL 1143588 (“Where individuals with disabilities seek to receive services in a more integrated setting- and the state *already provides* services to others with disabilities in that setting- assessing and moving the particular plaintiffs to that setting, in and of itself is not a ‘fundamental alteration.’”). See also Messier v. Southbury Training School, 562 F.Supp.2d 294, 344-345 (noting that the Defendant state agency’s “public commitment to further enhancing a system of community placement” was “entirely inconsistent with its fundamental alteration claim.”).

Accordingly, redirecting services from sheltered workshops to supported employment settings in the community for those individuals who are unnecessarily segregated will not be a fundamental alteration of Oregon’s employment service system, and, instead, is a reasonable modification.⁴¹

³⁹ Community Leadership for Employment First in Oregon: A Call to Action at 32, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals.

⁴⁰ See *Supra*, Part B (stating data produced by the State of Oregon demonstrates that in March 2012, 16% of individuals received services at any time in individual supported employment settings).

⁴¹ One study found that in Oregon, persons with intellectual or developmental disabilities in supported employment returned \$1.61 for every dollar spent on them. Robert E. Cimera, “National Cost Efficiency of Supported Employees with Intellectual Disabilities: 2002 to 2007,” Am. J. of Intellectual and Developmental Disabilities, vol. 115, no. 1, at 26 (Jan. 2010). Additionally, because supported employment helps persons with intellectual and developmental disabilities to secure competitive employment with higher wages and benefits, such services may assist at least some persons in becoming less dependent on public benefits, including state-funded health insurance and transportation subsidies. *Id.* at 23. Also, for some individuals, the amount of required support is likely to decrease over time, thus lowering costs over the longer term. *Id.* at 27. Conversely, the per-person cost of sheltered workshops tends to either stay the same or increase over time. *Id.*

VI. RECOMMENDED REMEDIAL MEASURES

To remedy the deficiencies discussed above and to protect the civil rights of individuals with intellectual and developmental disabilities who receive services in sheltered workshops, the State should promptly implement the minimum remedial measures set forth below.

A. Serving Individuals with Intellectual and Developmental Disabilities in Integrated Employment Settings

The State must develop sufficient supported employment services to enable those who are unnecessarily segregated in sheltered workshops to receive services in the most integrated setting appropriate to their needs. Supported employment services must include the placement of individuals with intellectual and developmental disabilities in individual integrated employment settings in the community, alongside non-disabled co-workers, customers, and peers, where individuals earn competitive wages, and have access to the services and supports that they need to fulfill the requirements of and to retain a job.

The State must develop an effective plan to appropriately serve people with intellectual and developmental disabilities in integrated employment settings when they so choose. Such a plan should include statewide directives sufficient to, among other things, substantially increase the number of persons appropriately offered supported employment and concomitantly decrease the number of persons unnecessarily placed in sheltered workshops; ensure that youth in schools or transitioning from school are provided supported employment services and will not be unnecessarily placed in sheltered workshop settings; and ensure that vocational assessments and OVRs policies and practices encourage supported employment and do not lead to unnecessary determinations of ineligibility or unnecessary placements in sheltered workshops.

The State should also develop policies and procedures to implement these statewide directives, including conditioning funding on the achievement of numerical targets and implementation timelines.

The State should incrementally shift its current funding from sheltered workshops to supported employment services.

B. Discharge and Transition Planning

The State must implement an effective plan to transition people with intellectual and developmental disabilities unnecessarily segregated in sheltered workshops to supported employment. The plan should include requirements for effective outreach, early and regular assessment, information, and transition support for people currently in sheltered workshops. Discharge assessments should be based on the principle that with sufficient services and supports, individuals with intellectual and developmental disabilities can work in integrated community settings.

No one who is qualified for supported employment should be placed into a sheltered workshop, unless after being fully informed, he or she declines the opportunity to receive services in integrated supported employment.

VII. CONCLUSION

Please note that this findings letter is a public document. It will be posted on the Civil Rights Division's website.

We hope to continue working with Oregon in an amicable and cooperative fashion to resolve our outstanding concerns with respect to the services the State provides to persons with intellectual and developmental disabilities in sheltered workshop settings. We hope that you will give this information careful consideration and that it will assist in facilitating a dialogue swiftly addressing the areas that require attention.

We are obligated to advise you that, in the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to the ADA once we have determined that we cannot secure compliance voluntarily, 42 U.S.C. § 2000d-1, to correct deficiencies of the kind identified in this letter. We would prefer, however, to resolve this matter by working cooperatively with the State and are confident that we will be able to do so. The Department of Justice attorney assigned to this investigation will be contacting the State's attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please call Greg Friel, Acting Chief of the Civil Rights Division's Disability Rights Section, at (202) 514-8301.

Sincerely,

Thomas E. Perez
Assistant Attorney General