



LEAD CENTER

Disability, Employment & Lane v. Brown

October 22, 2015

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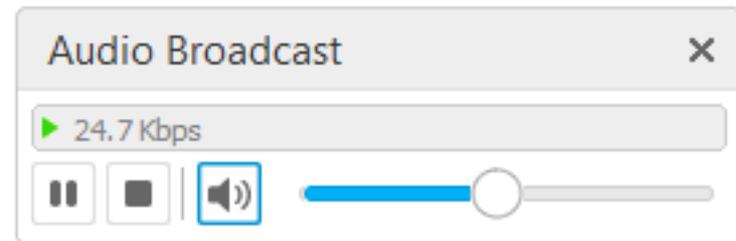
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The National Center on Leadership for the Employment and Economic Advancement of People with Disabilities (LEAD) is a collaborative of disability, workforce and economic empowerment organizations led by **National Disability Institute** with funding from the **U.S. Department of Labor's Office of Disability Employment Policy**, Grant No. #OD-23863-12-75-4-11.

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LEAD CENTER MISSION

- ▶ To advance sustainable individual and systems level change that results in improved, competitive integrated employment and economic self-sufficiency outcomes for individuals across the spectrum of disability.

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TODAY'S PRESENTER: *PANEL MODERATOR*

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LEAD CENTER



Department of Justice
***Olmstead* Enforcement in**
Employment Services

Office of Disability Employment Policy
(ODEP) & National LEAD Center

Webinar

October 22, 2015

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

- “Year of Community Living”
 - “The *Olmstead* ruling . . . articulat[ed] one of the most fundamental rights of Americans with disabilities: Having the choice to live independently. [T]his initiative reaffirms my Administration’s commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation.” President Obama June 22, 2009
- DOJ *Olmstead* enforcement efforts
 - 50+ matters in 25 states
 - Directly affecting 53,000 people

Title II of the ADA

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

Olmstead v. L.C.: Unjustified Segregation is Discrimination

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

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

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

When is the ADA's Integration Mandate Implicated?

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

Who Does the Integration Mandate Cover?

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

What Does *Olmstead* Cover?

- ADA and *Olmstead* are not limited to residential programs
 - Covers all state and local government services, programs, or activities, including:
 - Employment services
 - Day services

Segregated Days (1 of 3)

– *Lane v. Kitzhaber/U.S. v. Oregon*:

- On May 17, 2012, a court decision on motion to dismiss found that ADA and *Olmstead* applies to government services, programs and activities that include employment. Rejected argument that only applies to residential services and programs.

– Settlements in VA, DE, NC, and GA– Include an expansion of supported employment & integrated day activities as part of system wide relief.

Segregated Days (2 of 3)

- The Department of Justice has applied the ADA and *Olmstead* to state and local government services, programs, and activities that pertain to **what individuals with disabilities do during the day**. These services include employment, day, and educational services.
 - *United States v. Rhode Island and the City of Providence (2013)*
 - *United States v. Rhode Island (2014)*
 - *Lane v. Brown (formerly Lane v. Kitzhaber)(2015)* (DOJ intervened in a suit brought by private plaintiffs)

Segregated Days (3 of 3)

- Important Principles of Integrated Services

Integrated Employment means:

- Individualized, typical jobs in the community.
- Earning at least minimum wage.
- Working among peers without disabilities for the maximum number of hours consistent with a person's abilities and preferences.

Integrated Day Services means:

- Self-controlled recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities.

U.S. v. Rhode Island and the City of Providence – Settlement Agreement

- DOJ found that the State unnecessarily segregated adults with I/DD in one of the largest sheltered workshop/day activity service programs in Rhode Island and the State and the City of Providence (local education agency) placed public school students at serious risk of unnecessary segregation in that same program.
- Relief for 200 individuals with intellectual and developmental disabilities, including opportunities for real employment in the community and integrated day services.

U.S. v. Rhode Island and the City of Providence (cont'd)

- The agreement dismantled the school to sheltered workshop pipeline between the Harold A. Birch Vocational Program and Training Thru Placement, Inc. (TTP).
- As a result of the agreement, the State and City have provided adults from TTP and youth from Birch with robust person-centered career development planning, youth transition services and supports, placements in competitive, integrated employment, and integrated day services.

U.S. v. Rhode Island and the City of Providence - **Two Years Later**

- Individuals who spent as long as thirty years at TTP are now working in competitive, integrated employment. Students from Birch are receiving work experiences in competitive integrated settings while still in school.
- 96 individuals have been placed in competitive, integrated employment.
- Individuals work in real jobs in offices, retail, and the service industry among other places.

U.S. v. Rhode Island – Statewide Settlement Agreement

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

***U.S. v. Rhode Island* – DOJ Findings**

(1 of 2)

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

***U.S. v. Rhode Island* – DOJ Findings**

(2 of 2)

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

***U.S. v. Rhode Island* – Consent Decree**

(1 of 6)

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

***U.S. v. Rhode Island* – Consent Decree**

(2 of 6)

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

***U.S. v. Rhode Island* – Consent Decree**

(3 of 6)

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

U.S. v. Rhode Island – Consent Decree **(4 of 6)**

Sustained Commitment to Funding

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

***U.S. v. Rhode Island* – Consent Decree**

(5 of 6)

Outreach, Education and Support:

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

U.S. v. Rhode Island – Consent Decree **(6 of 6)**

Provider Capacity:

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

***U.S. v. Rhode Island* – One Year Into the Consent Decree**

- Individuals who spent decades in sheltered workshops are now working in competitive, integrated employment settings;
- Person-centered planning and Employment First policies across agencies;
- Sheltered Workshop Conversion Institute and Trust Fund geared towards assisting providers to convert to integrated service models.

Lane v. Brown

Proposed Agreement

- Relief that will impact approximately **7,000** individuals with I/DD.
- Opportunities for real employment in the community at competitive wages, and integrated employment services and supports for transition-age youth with I/DD.

Lane v. Brown

DOJ Findings (1 of 3)

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

Lane v. Brown

DOJ Findings (2 of 3)

- As of March 2012, 61% of persons receiving employment and vocational services from the State of Oregon received at least some of those services in sheltered workshops.
- By contrast, less than 16% of these persons received services at any time in individual supported employment settings.

Lane v. Brown

DOJ Findings (3 of 3)

- Hundreds of youth with I/DD each year left Oregon schools and entered sheltered workshops.
- Youth with I/DD were not given timely or adequate services to allow them to make informed choices about transitioning to work in integrated employment settings.
- Youth with I/DD often lacked access to the services and supports necessary to prepare them for integrated employment.

Lane v. Brown

Proposed Settlement (1 of 9)

- After the plaintiffs and USDOJ filed the lawsuit, Oregon commenced several voluntary remedial efforts (including the issuance of two successive Executive Orders and Integrated Employment Plans).
- These plans represent Oregon's commitment to reform its employment service system for individuals with I/DD. The proposed settlement agreement builds upon these plans and commitments and incorporates many of their provisions while adding discrete and enforceable outcomes.

Lane v. Brown

Proposed Settlement (2 of 9)

- Transitions 1,115 working-age individuals that receive or have received sheltered workshop services into competitive, integrated employment over the next seven years.
- Provides at least 4,900 youth ages 14 to 24 years of age with the employment services necessary to prepare for, choose, get, and keep competitive, integrated employment.

Lane v. Brown

Proposed Settlement (3 of 9)

- By June 2017, Oregon will reduce the current number of working age adults with I/DD in sheltered workshops from approximately 1,926 to no more than 1,530
- And decrease the number of hours adults are working in sheltered workshops from approximately 93,530 hours to no more than 66,100 hours.

Lane v. Brown

Proposed Settlement (4 of 9)

- At least half of the youth who receive employment services will receive an individual plan for employment (or “IPE”).
- All individuals in the target populations of the proposed agreement will receive a career development plan.

Lane v. Brown

Proposed Settlement (5 of 9)

- Supported employment services must be individualized, evidence-based, flexible, offered in an integrated employment setting and based on an individual's capabilities, choices, and strengths.
- All persons who receive supported employment services under the agreement will have a goal of working the maximum number of hours consistent with their abilities and preferences.

Lane v. Brown

Proposed Settlement (6 of 9)

- The Oregon Department of Education will improve employment-focused transition services by:
 - Allowing the transition process to begin as young as age 14, if deemed appropriate by an IEP team;
 - Providing students with information about, and opportunities to experience, supported employment services in integrated settings;

Lane v. Brown

Proposed Settlement (7 of 9)

- Prohibiting schools from including sheltered workshops in the continuum of alternative placements and supplementary aides and services provided to students; and
- Excluding mock sheltered workshop activities from school instructional curricula.

Lane v. Brown

Proposed Settlement (8 of 9)

- Training and Provider Capacity
 - Oregon will maintain:
 - a technical assistance provider(s) to offer training, assistance, and support to supported employment services agencies;
 - grants for the transformation of existing sheltered workshop providers, the development of new supported employment service providers, or the expansion of existing providers.

Lane v. Brown

Proposed Settlement (9 of 9)

- Oregon DHS will take steps to affirm that the recommended standard for planning and implementing supported employment services is the opportunity to work **at least 20 hours per week**
 - by issuing guidance, utilizing outcome payments and one-time performance-based payments to providers, seeking to promote the training of employment professionals and job developers about the standard, and collecting data on the standard.

Guidance and Website

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

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QUESTIONS?



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