



LEAD CENTER

Competitive Integrated Employment as a Civil Right for People with Disabilities

November 8, 2016
3:00 – 4:30 PM EST

The LEAD Center is led by National Disability Institute and is funded by the Office of Disability Employment Policy, U.S. Department of Labor, Grant No. #OD-23863-12-75-4-11

WELCOME

Rebecca Salon, Ph.D.

Project Director

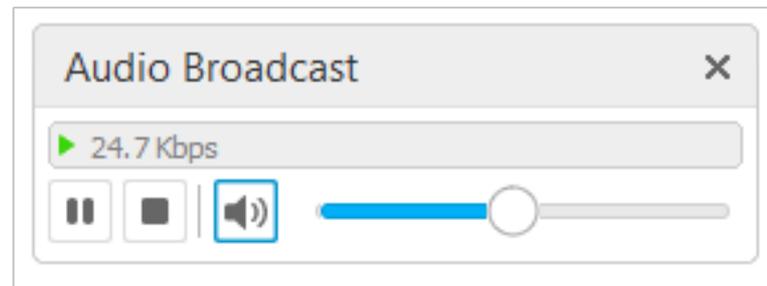
LEAD Center

A Project of National Disability Institute



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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.



AGENDA

- ▶ The Importance of Employment as a Civil Right for people with Disabilities
 - ▶ Presenters will explain their views on the linkage between EFSLMP and civil rights legislation
 - ▶ The law and policy focused on the inclusion of people with disabilities in their communities
- ▶ A discussion how supporting transformation to competitive integrated employment aligns with
 - ▶ Changing laws and policies to improve the lives of people with disabilities and their families
- ▶ Questions & Answers



TODAY'S MODERATORS

Michael Morris, Executive Director

National Disability Institute and LEAD Center Public
Policy Co-Chair

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TODAY'S SPEAKERS

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Association of People Supporting EmploymentFirst
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THE IMPORTANCE OF EMPLOYMENT AS A CIVIL RIGHT FOR PEOPLE WITH DISABILITIES

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Department of Justice *Olmstead* Enforcement in Employment Services

LEAD Center Webinar
November 8, 2016

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 (state and local governments) 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
- ▶ States and local governments must administer their programs in the most integrated setting appropriate including by and through:
 - ▶ Operating facilities/programs
 - ▶ Financing services including in private placements
 - ▶ 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
 - ▶ Residential Services

SEGREGATED DAYS

- ▶ 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 services. 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 (CONT'D)

- ▶ 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 (CONT'D)

▶ 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:

- 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 – DOJ FINDINGS

- ▶ 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

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

U.S. V. RHODE ISLAND CONSENT DECREE

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



LANE V. BROWN

DOJ FINDINGS

- ▶ 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

- ▶ 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

- ▶ 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 – CONSENT DECREE

- ▶ Supported employment services to 1,115 working-age individuals
- ▶ 4,900 youth to receive services to prepare for, obtain and keep integrated employment
- ▶ Supported employment services must be individualized, evidence-based, flexible, offered in an integrated employment setting, and based on an individual's strengths, capabilities and choice
- ▶ The State will establish a goal of working the maximum number of hours consistent with abilities and preferences

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)
- ▶ Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* to State and Local Governments' Employment Service Systems for Individuals with Disabilities (October 31, 2016)
- ▶ 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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ACL EMPLOYMENT PRIORITIES

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ACL Employment Priorities

Annette Shea

for LEAD Center Webinar:
*Competitive Integrated Employment
as a Civil Right for People with Disabilities*

November 8, 2016

ACL EMPLOYMENT GOAL

Vision: *Individuals with disabilities will not need to choose between health care supports and work to live successfully in the community. All individuals with disabilities will have access to competitive, integrated employment options as a pathway to achieving successful community living.*

ACL Goal: To improve the lives of all individuals with disabilities, ACL will pursue policies that promote improved economic status through employment. ACL will encourage systems that promote competitive integrated employment opportunities, career and skills development, and offer an array of appropriate work supports needed to achieve and maintain employment.



ACL EMPLOYMENT INVESTMENTS AND PRIORITIES

Partnerships in Employment (PIE) Grants

- ▶ Five-year grants awarded to 14 states from (2011, 2012 and 2016)
- ▶ To enhance collaboration across existing state systems, including programs administered by state developmental disabilities agencies, state vocational rehabilitation agencies, state educational agencies, and other entities to prioritize employment as the first and preferred option for youth and young adults with developmental and intellectual disabilities.
- ▶ 2011: California, Iowa, Mississippi, Missouri, New York, Wisconsin.
- ▶ 2012: Alaska, Tennessee.
- ▶ 2016: Washington, DC, Hawaii, Kentucky, Massachusetts, South Carolina, Utah.
- ▶ Training and Technical Assistance provider for the 8 grantees is TASH.



MORE ACL EMPLOYMENT INVESTMENTS AND PRIORITIES

Communities of Practice (COP) – Employment

- In 2012 AIDD awarded funding to the Institute for Community Inclusion (ICI) at the University of Massachusetts Boston to establish a community of practice to reform current employment systems with the goal of increasing competitive and integrated employment for individuals with intellectual and developmental disabilities.
- COP states: DC, Idaho, Kentucky, Maryland, Minnesota, New Hampshire, North Dakota

ACL EMPLOYMENT INVESTMENTS AND PRIORITIES (CONT'D)

- ▶ The Workforce Innovation and Opportunity Act (**WIOA**) and **ACL Centers for Independent Living 5th Core Service** - Support the successful implementation of the 5th core service and promote promising practices within CILs.
 - ▶ (iii) facilitate the transition of youth who are individuals with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), and who have completed their secondary education or otherwise left school, to postsecondary life.
- ▶ **Medicaid** policy subject matter expertise and liaison for states, federal and advocacy groups with CMS, including Medicaid Buy-In program, disability policy matters. Promote the enhancement of the Medicaid Buy-in program. Identify states in which there could be opportunities for policy and programmatic improvement.
- ▶ Support CMS in their development of an Informational Bulletin with guidance on the use of **Pay for Performance** using Milestone and Outcome-Based Reimbursement for Supported Employment Services.

STILL MORE ACL EMPLOYMENT INVESTMENTS AND PRIORITIES

- ▶ **WIOA ACICIEID Advisory Committee:** Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.
- ▶ **HCBS Settings Regulation Implementation:** ACL is partnering with CMS to support the successful implementation of the settings rule. States are required to comply with the regulation by March, 2019.
- ▶ **Promoting Promising Practices in Employment Services:** In 2015 and 2016 ACL has posted 5 provider examples from across the country and one blog highlighting tips from each provider example. The focus of the profiles is to feature critical leverage points providers utilized in converting sheltered workshops to more integrated models. Ideally the goal would be for providers and stakeholders to gain a better understanding of what is possible in the area of employment services and supports and make decisions to adopt or encourage similar changes.



FEDERAL PARTNERSHIPS

- In 2014 the Department of Education awarded \$211 Million for the Promoting the Readiness Of Minors in Supplemental Security Income (**PROMISE**) Initiative. The five-year grants to five states and a consortium of six states will establish and operate model demonstration projects designed to improve the education and employment outcomes of child Supplemental Security Income (SSI) recipients and their families. PROMISE is a joint initiative ED, HHS, Labor and SSA. ACL and ASPE represent HHS. ACL is the liaison for Medicaid.
- The Federal Partners in Transition (FPT) was formed in 2005 to improve interagency policy and service coordination to support all youth, including youth with disabilities, in successfully transitioning from school to adulthood. In March 2015 FPT released ***The 2020 Federal Youth Transition Plan: A Federal Interagency Strategy (2020 Plan)*** to improve transition outcomes for youth with disabilities. FPT is a partnership of ED, HHS, Labor and SSA.



FEDERAL PARTNERSHIPS

- **ACL and DOL Office of Disability Employment Policy (ODEP)** signed an Memorandum of Agreement in September, 2015 to work together to expand and promote competitive integrated employment as the first employment option for individuals with significant disabilities, as well as to stimulate innovative strategies of collaboration in the community.
- The Achieving a Better Life Experience (**ABLE**) Act is considered a positive step in regards to economic well being and successful community living for people with disabilities. However, there is widespread misinterpretation of the ABLE Act and what it means particularly in regards to employment and access to benefits. ACL is coordinating with key federal partners involved in the implementation of the ABLE Act to advocate for beneficiary protections and appropriate information dissemination and technical support for beneficiaries and families.
- **ACL and RSA:** Strengthening ACL and ED Rehabilitation Services Administration (RSA) collaboration and coordination to promote employment for youth in transition.



HHS HISTORIC EVENTS AND INVESTMENTS

- **Developmental Disabilities Act** of 1963, a historic piece of legislation that we now know as the Developmental Disabilities Assistance and Bill of Rights Act (DD Act).
- **The Rehabilitation Act** of 1973 expanded employment and opportunities for community living for people with disabilities.
- **Americans with Disabilities Act (ADA)** 1990 & **Olmstead Decision** of 1999
- **Ticket to Work & Work Investments & Opportunities Act (TWWIA)** 1999
 - Incentivized employment by expanding access to **Medicaid and Medicare** for workers with disabilities.
 - **Medicaid Infrastructure Grants (MIG)** spanned more than 11 years with almost a half billion dollars invested in state infrastructures.
 - The **Demonstration to Maintain Independence and Employment (DMIE)** grants awarded funds to states to develop, implement, and evaluate interventions for workers with potentially disabling conditions.
- On July 22, 2014, President Obama signed the **Workforce Innovation and Opportunity Act (WIOA)** which provides comprehensive change to a number of employment and education-related programs, including services for people with physical, intellectual, and developmental disabilities.



RESOURCES

- ▶ Partnerships in Employment (PIE) Grant announcement:
http://www.acl.gov/NewsRoom/NewsInfo/2016/2016_10_06a.aspx
- ▶ ACL Blogs featuring Employment Providers Promising Practices:
<http://www.acl.gov/Programs/CPE/OPAD/Integrated-Employment-Blog-Series.aspx>
- ▶ ACL TWWIIA blog Incentivizing Employment with Medicaid and Medicare:
http://www.acl.gov/NewsRoom/blog/2016/2016_10_28.aspx
- ▶ ACL blog highlighting features and business case for Medicaid Buy-In:
http://www.acl.gov/NewsRoom/blog/2014/2014_10_27.aspx
- ▶ Celebrating 53 years of the Developmental Disabilities Act
http://www.acl.gov/NewsRoom/blog/2016/2016_10_31.aspx
- ▶ Implementing WIOA with link to the IL final rule
http://www.acl.gov/NewsRoom/blog/2016/2016_10_26.aspx
- ▶ Bob Williams' blog on the Rehabilitation Act of 1973
http://www.acl.gov/NewsRoom/blog/2016/2016_09_26.aspx



RESOURCES

- ▶ ACL ODEP MOA:
http://www.acl.gov/NewsRoom/NewsInfo/2015/2015_09_15.aspx
- ▶ The Workforce Innovation and Opportunity Act and ACL:
<http://www.acl.gov/Programs/WIOA/Index.aspx>
- ▶ Federal Partners in Transition (FPT) 2020 Strategic Plan:
https://www.icdrteam.acl.gov/content/2020_federal_youth_transition_plan_federal_interagency_strategy_0
- ▶ Medicaid.gov Employment page:
<https://www.medicaid.gov/medicaid/ltss/employment/index.html>
- ▶ Mathematica Policy Research MIG products: <https://www.mathematica-mpr.com/our-publications-and-findings/projects/medicaid-buy-in-program>
- ▶ Mathematica Policy Research Top Outcomes of MIG Grants:
<https://www.mathematica-mpr.com/our-publications-and-findings/publications/what-were-the-top-outcomes-of-state-medicaid-infrastructure-mig-grants>



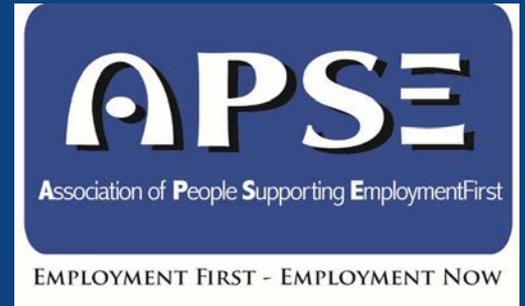
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LEAD CENTER

Competitive Integrated Employment as a Civil Right for People with Disabilities

Allison Wohl
Executive Director, APSE National
November 2, 2016

The LEAD Center is led by National Disability Institute and is funded by the Office of Disability Employment Policy, U.S. Department of Labor, Grant No. #OD-23863-12-75-4-11

HOW DO WE UNDERSTAND CIVIL RIGHTS?

- ▶ Civil and political rights are a class of rights that protect individuals' freedom from infringement by governments, social organizations, and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.
- ▶ Civil rights include the ensuring of peoples' physical and mental integrity, life, and safety; protection from discrimination on grounds such as race, gender, national origin, color, age, political affiliation, ethnicity, religion, or disability; and individual rights such as privacy and the freedoms of thought, speech, religion, press, assembly, and movement.*
- ▶ APSE's Vision: Through advocacy and education, APSE advances employment and self-sufficiency for all people with disabilities:
 - ▶ Competitive Integrated Employment
 - ▶ Greater Economic Self-Sufficiency
 - ▶ Supported Decision-Making
 - ▶ Individualized Supports
 - ▶ Informed Consent
 - ▶ Freedom from Discrimination and Segregation.

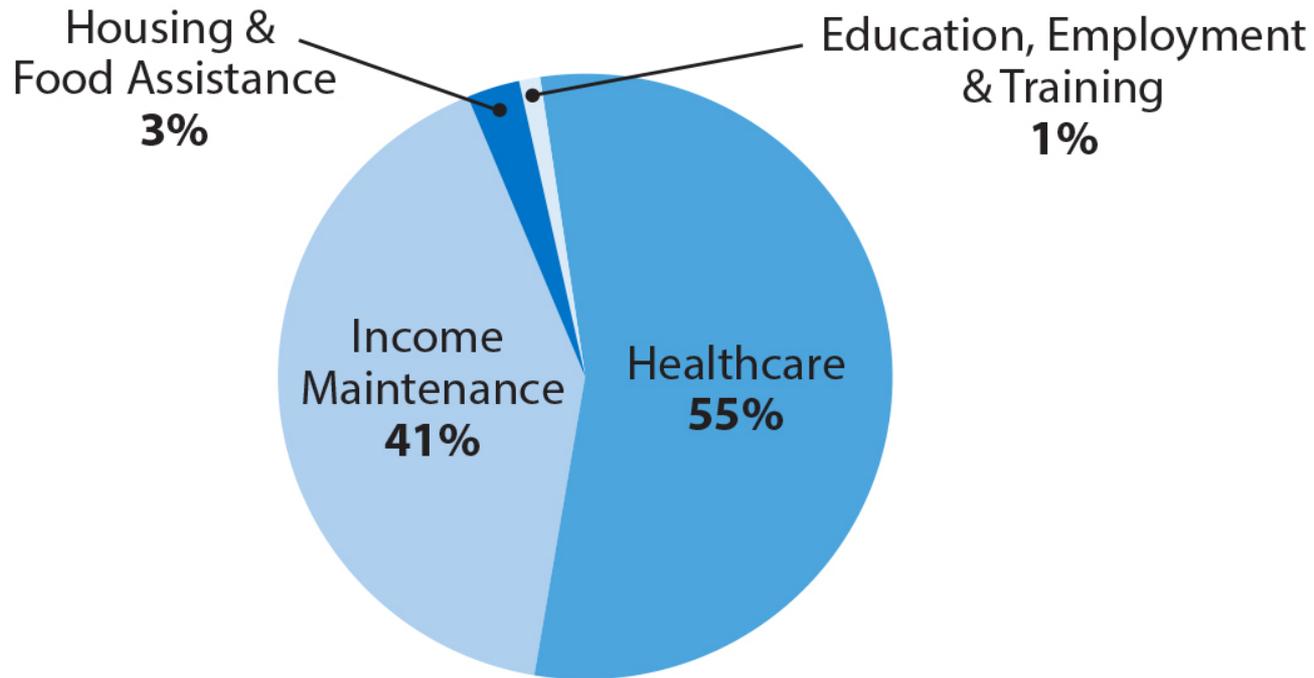
▶ *Wikipedia



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Poverty and Disability: *Money is not Always the problem.... Sometimes the problem is an Issue of Priority*

Figure 1. Percentage of Estimated Federal and State Expenditures for Working-Age People with Disabilities by Major Expenditure Category, Fiscal Year 2008¹



¹ Adapted from Livermore, Stapleton and O'Toole (2011, Health Affairs)



IS THE SYSTEM PART OF THE PROBLEM?



- ▶ It is often our own system of supports and services that stands in the way of the a person's civil rights; when we create an alternative to community rather than facilitating community, participation, our service system acts as a barrier.
- ▶ EFSLMP has worked to eliminate many of the systemic barriers that segregate people with disabilities who are served by the public system by providing extensive resources for provider transformation in states:
 - ▶ The importance of measurement, analysis, and knowledge management
 - ▶ Holistic Individualized Supports that Sustain Employment
 - ▶ Messaging Change and Solidifying Stakeholder Buy-In on Employment
 - ▶ Building Strong Employer Relationships
 - ▶ Building a Sustainable Team
 - ▶ Board Development and Strategy
 - ▶ Funding Options

Building virtual Communities of Practice have been invaluable in creating and sustaining systems change



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From the Cyclical Dependency Model....



Education

- Segregated from class or school
- Often placed on non-diploma track at an early age. Little or no access to general curriculum



Transition

- Low expectation
- Weakened school accountability
- Lack of access to transition activities
- Lack of long term support



Employment

- Individual typically placed into extensive segregated options
- Disincentives to work
- Subminimum wages often paid

**This Model results in Chronic Impoverishment, Cyclical Dependency,
and Loss of Human Dignity throughout Lifespan.**



From the Cyclical Dependency Model Continued....



Housing

- Often options are institutions, and congregate provider operated group home facilities that regiment people's lives
- Long waiting list for residential services



Financial Planning

- Asset limitation of \$2K (has not been revised since 1985)
- Benefits riddled with complexities

**This Model results in Chronic Impoverishment, Cyclical Dependency,
and Loss of Human Dignity throughout Lifespan.**

To the Self-Sufficiency Model



Education

- Inclusion in home school
- Support to earn diploma
- Access to the general curriculum
- High expectations and school accountability



Transition

- Transition planning begins at 14
- Work experience required as part of transition
- PSE
- Cross agency/braided funding for ongoing employment supports



Employment

- Presumed eligibility for supports via VR, on-stops and local/state programs
- Outcome is integrated employment in general workforce

**This Model represents Optimal Self-Sufficiency, Independent Living,
Economic Empowerment and Full Community Participation.**



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To the Self-Sufficiency Model continued...



Housing

- Focus is on getting person into own home in integrated setting
- On-going, self-directed personalized supports to optimize independence



Financial Planning

- Consumes control public resources
- Increase asset limits to \$10K

**This Model represents Optimal Self-Sufficiency, Independent Living,
Economic Empowerment and Full Community Participation.**

WHAT COMES AFTER CIVIL RIGHTS?



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Competitive Integrated Employment as a Civil Right for People with Disabilities

RESPONSE PANEL



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RESPONSE PANEL QUESTION #1

What are federal and state systems doing in terms of cross-system collaboration to address the needs of people with disabilities and their families and what more can be done?



RESPONSE PANEL QUESTION #2

The ADA findings explain that one of the goals of ADA is to advance economic self-sufficiency. How does a civil rights framework move beyond an employment outcome to “advancing economic self-sufficiency?”



RESPONSE QUESTION #3

What needs to be done to better align federal and state disability employment policies with human and civil rights imperatives?



RESPONSE QUESTION #4

How do change thinking and behavior of employment provider staff to embrace a civil rights orientation? What are the implications for staff training or exposure to the rights-based concepts?



RESPONSE QUESTION #5

How do disincentives (SSI/DI asset limits; services arrays that are Medicaid or state appropriation reimbursable, etc.) impede people's hope that competitive, integrated employment is possible in their lives? What efforts might promote the removal of disincentives to increase the possibility for employment?



RESPONSE QUESTION #6

What more can people with disabilities do to self-advocate for employment as a fundamental right? What more do they need to know and/or what support might they need?



RESPONSE QUESTION #7

How might the partnerships normally sought by service providers to help people with disabilities obtain jobs be more effective if the rights case is made?



RESPONSE QUESTION #8

In the latest Census Report on Income and Poverty, all groups including women, people of color, and families with children made gains in 2014 regarding income and moving out of poverty. The only group with no gain was individuals with disabilities. There was no significant increase in employment and over 60 percent of individuals with disabilities were no longer counted in the labor statistics as they were no longer looking for work. How do we change this picture?



Competitive Integrated Employment as a Civil Right for
People with Disabilities

QUESTION & ANSWER



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