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## Questions and Answers on the Application of the ADA's Integration Mandate and *Olmstead v. L.C.* to Employment and Day Services for People with Disabilities

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Nationally, a significant number of individuals with disabilities spend the majority of their daytime hours receiving public services in sheltered workshops and facility-based day programs. These settings segregate individuals from the community and provide little or no opportunity to interact with people without disabilities, other than paid staff.

The work of individuals with disabilities in segregated settings is often highly regimented and typically offers no opportunity for advancement. In many sheltered workshops, for example, people with disabilities perform highly repetitive, manual tasks, such as folding, sorting, and bagging, in shared spaces occupied only by other people with disabilities. They also often earn extremely low wages when compared to people with disabilities in integrated employment, resulting in stigmatization and a lack of economic independence. As long as individuals with disabilities who can and want to work remain in segregated work or day settings, they will be deprived of an important opportunity to interact with the community and the community will be deprived of their talents, skills, and contributions.

When people with disabilities are instead given access to supported employment services in the most integrated setting appropriate to their needs, they have the opportunity to live fuller lives, be more integrated into the community, and gain financial independence to "move proudly into the economic mainstream of American life."<sup>1</sup> These opportunities fulfill the core promises of the Americans with Disabilities Act to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency."<sup>2</sup>

State and local governments that fail to provide services to people with disabilities in the most integrated setting appropriate to their needs may be failing to

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<sup>1</sup> President George H.W. Bush, Remarks at the Signing of the Americans with Disabilities Act (July 26, 1990), <https://perma.cc/VNU4-HR7P>.

<sup>2</sup> 42 U.S.C. § 12101(a)(7).



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comply with Title II of the Americans with Disabilities Act (ADA). The U.S. Department of Justice (the Department) has created this guidance to discuss and explain the requirements of the ADA's integration mandate and the Supreme Court's decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), as applied to segregated employment settings and facility-based day programs.

This guidance complements and supplements, but does not supersede, the Department's 2011 *Olmstead* guidance, [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.\*](#)

### **The ADA and Its Integration Mandate**

In 1990, Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."<sup>3</sup> In passing the ADA, Congress recognized that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."<sup>4</sup> Title II of the ADA prohibits public entities from discriminating against individuals with disabilities in the provision of public services.<sup>5</sup> The Department's implementing regulation requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."<sup>6</sup> The Department has consistently interpreted "the most integrated setting appropriate" to mean one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . ."<sup>7</sup>

In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court, interpreting the ADA's integration mandate, held that Title II prohibits the unjustified segregation of individuals with disabilities. The Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are

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<sup>3</sup> *Id.* § 12101(b)(1).

<sup>4</sup> *Id.* § 12101(a)(2).

<sup>5</sup> *Id.* § 12132.

<sup>6</sup> 28 C.F.R. § 35.130(d) (the "integration mandate").

<sup>7</sup> Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. pt. 35, app. B (addressing 28 C.F.R. § 35.130).



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appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who receive disability services from the entity.<sup>8</sup>

To comply with the ADA's integration mandate, public entities must make reasonable modifications to their policies, practices, or procedures when necessary to avoid discrimination on the basis of disability.<sup>9</sup> The obligation to make reasonable modifications is not unlimited. A public entity is not required to make requested modifications if it can demonstrate that making the modifications would "fundamentally alter" the nature of the service, program, or activity.<sup>10</sup>

### **State and Local Employment and Day Services**

Most states offer publicly-funded employment and day programs for eligible individuals with disabilities. These programs may include services that are available through multiple state agencies and funding streams, including vocational rehabilitation, Medicaid, and education agencies. They may be provided in a range of settings, including sheltered workshops, small group or enclave employment, facility-based day programs like day habilitation, day treatment, or adult day centers, or typical integrated workplaces. Supported employment services are provided in mainstream workplaces typical for employees without disabilities. Integrated day services are characterized by going out into the community and engaging in activities alongside people without disabilities.

- "Sheltered workshops" are segregated facilities that primarily or exclusively employ people with disabilities. Sheltered workshops are usually large, institutional facilities in which people with disabilities have little or no contact with non-disabled people besides paid staff. Often wages in sheltered workshops are extremely low compared to wages paid to people with disabilities in integrated employment, resulting in stigmatization and a lack of economic

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<sup>8</sup> *Olmstead v. L.C.*, 527 U.S. 581, 607 (1999).

<sup>9</sup> 28 C.F.R. § 35.130(b)(7)(i).

<sup>10</sup> *Id.*; see also *Olmstead*, 527 U.S. at 604–07.



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Independence. Sometimes these workshops pay wages well below the minimum wage.<sup>11</sup>

- “Small group” or “enclave” employment refers to work performed in regular business, industry, and community settings by small groups of individuals with disabilities (typically two to eight) under the supervision of an instructor or service provider.
- “Facility-based day programs” are programs in which people with disabilities participate in segregated non-work activities during the day, designed to habilitate or rehabilitate individuals with disabilities. They can include psychosocial rehabilitation programs that serve people with mental illness.
- “Supported employment services” allow people with disabilities to work in typical employment settings where they can interact with non-disabled coworkers, customers, and peers. Such services include job coaching, job training, vocational assessment, job discovery,<sup>12</sup> person-centered employment planning, job development, negotiation with prospective employers, benefits counseling, and other services that enable people with disabilities to succeed in securing and maintaining employment. These services help individuals with disabilities find meaningful jobs in the community and receive ongoing support from a team of professionals.
- “Integrated day services” are not facility-based and allow people with disabilities to engage in community activities of their choosing where they interact with

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<sup>11</sup> See, e.g., Nat’l Council on Disability, National Disability Employment Policy: From the New Deal to the Real Deal 12 (2018), <https://perma.cc/5LXH-2CPA> (observing that “. . . there remain approximately 321,131 Americans with disabilities who, even while living in the community, still earn subminimum wages in segregated sheltered workshops under Section 14(c) of the Fair Labor Standards Act . . .”).

<sup>12</sup> Job discovery is a process that assists job seekers in identifying employment that would be a good fit for them and an employer. LEAD Center, Implementing Customized Employment, Guided Group Discovery and Self-Guided Discovery in a Variety of Settings and With a Variety of Partners 5 (2019), <https://perma.cc/Y6PW-SUVQ>.



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people without disabilities. Such services provide access to mainstream social, educational, recreational, cultural, or other activities.

**1. Does the ADA’s Title II integration mandate apply to public employment and day services?<sup>13</sup>**

Yes. Title II of the ADA covers all services, programs, and activities of state and local government entities.<sup>14</sup> A public entity may violate the ADA’s integration mandate when it plans, administers, operates, funds, or implements any services—including employment or day services—in a way that unjustifiably segregates individuals with disabilities.<sup>15</sup>

**2. What is the most integrated setting under the ADA and *Olmstead* in the context of public employment and day services?**

The Department has consistently interpreted “the most integrated employment setting appropriate” to mean one that “enables individuals with disabilities to interact with non-disabled people to the fullest extent possible . . .”<sup>16</sup>

Supported employment services allow people with disabilities to work in typical jobs in the community like individuals without disabilities. In typical employment settings, individuals with disabilities work on a full- or part-time basis, at or above minimum wage, at locations where they interact with individuals without disabilities, with access to the same opportunities for benefits and advancement that are provided to non-disabled workers. Such settings are commonly referred to as competitive integrated employment settings. Similarly, integrated day services support community engagement by allowing individuals to engage in self-directed activities of their

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<sup>13</sup> This guidance addresses state and local governments’ obligations under Title II of the ADA. Title I of the ADA covers public and private employers’ nondiscrimination obligations toward their own employees with disabilities. Title III of the ADA covers nondiscrimination obligations relating to public accommodations, including those of private providers of goods and services to people with disabilities.

<sup>14</sup> 42 U.S.C. § 12132.

<sup>15</sup> *Cf. Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 169–70 (2017) (educational services are covered by Title II of the ADA).

<sup>16</sup> Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. pt. 35, app. B; *cf. Olmstead*, 527 U.S. at 592.



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choosing in the community, including mainstream recreational, social, educational, cultural, and athletic activities, or other pastimes that offer meaningful opportunities for learning, expanding skills, and developing relationships critical to employment and independent living.<sup>17</sup> By contrast, in segregated employment settings, people with disabilities have little or no contact with non-disabled people besides paid supervisory staff.

Being fully integrated in a workplace means an individual has an opportunity to interact regularly and consistently with their non-disabled peers to the same extent as their non-disabled coworkers. Consistent with Title I of the ADA, an employee with disabilities should be treated similarly to employees without disabilities and participate equally in the customary benefits of the workplace. For example, individuals with disabilities should be compensated equally to their non-disabled peers performing the same work.<sup>18</sup> They should have the same opportunities as their non-disabled peers, including opportunities for promotion and advancement; opportunities for privacy,

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<sup>17</sup> See U.S. Dep't of Educ., Off. Of Special Educ. And Rehab. Servs., et al., [A Framework for Community Engagement A Pathway to Competitive Integrated Employment](https://perma.cc/BZ6K-QRG7) (Aug. 3, 2022), <https://perma.cc/BZ6K-QRG7>.

<sup>18</sup> Providing compensation and benefits to people with disabilities in an employment setting that are not equal to those offered to peers without disabilities performing the same job may also violate Title I or Title III of the ADA or other federal laws. Individual service provider entities, including sheltered workshops, have obligations not to discriminate against individuals with disabilities. Title I of the ADA covers employers with 15 or more employees. As such, Title I's coverage can include individual service provider entities or sheltered workshops in their capacity as private employers. Title I prohibits employers from discriminating on the basis of disability in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment and requires reasonable accommodations. 42 U.S.C. § 12112(a). Also, under Title III of the ADA, individuals with disabilities cannot be discriminated against on the basis of disability in the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). A "social service center establishment" is a place of public accommodation, 42 U.S.C. § 12181(7)(K), and can include an individual service provider entity or a sheltered workshop. Accordingly, individual service provider entities may also have obligations not to discriminate against their clients as places of public accommodation under Title III of the ADA.



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autonomy, and the ability to manage their work schedules and assignments; access to the community during breaks; and other employment benefits.

**3. What best practices can state and local governments' employment service systems adopt to ensure that people with disabilities have access to competitive integrated employment?**

Research on supported employment services has yielded best practices for ensuring that individuals with disabilities are able to engage in employment in the most integrated setting appropriate, including ensuring that employment services are individualized, sufficiently intense and of sufficient duration, provided in integrated settings, and designed to achieve competitive integrated employment.<sup>19</sup>

a. Individualization of Services

The success of a person with a disability in competitive integrated employment often depends on identifying jobs and services that align with the particular person's skills, abilities, and interests. Individualization of services is achieved through a process by which a person with a disability identifies his or her particular interests, preferences, strengths, skills, and support needs for the purpose of finding, obtaining, and maintaining employment. This process includes: (1) assessments that evaluate the individual's skills, strengths, and support needs in an integrated setting; and (2) person-centered planning.<sup>20</sup> Individualization typically depends upon a career development plan developed by a qualified employment professional who is familiar with how to support people with disabilities in competitive integrated employment and how to connect a person with a disability with employment opportunities identified in the local

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<sup>19</sup> See, e.g., Nat'l Center on Leadership for the Emp. and Econ. Advancement of People with Disabilities (LEAD Center) & U.S. Dep't of Labor, Off. of Disability Emp. Pol'y (ODEP), Employment First Technical Brief #3: Criteria for Performance Excellence in *Employment First* State Systems Change & Provider Transformation 8–9 (2016), <https://perma.cc/L9TK-SKRU> ("ODEP encourages state governments to prioritize and financially incentivize the following types of employment services and evidence-based effective practices that lead to competitive, integrated employment for individuals with disabilities: Competitive Placement . . . Customized Employment . . . Supported Employment . . . Self-Employment . . . [and] Entrepreneurship or Small Business.").

<sup>20</sup> See LEAD Center, Nat'l Disability Inst. (NDI), & ODEP, Guided Group Discovery Facilitator Guide (2017), <https://perma.cc/3W6R-3VBK>.



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job market. Employment professionals, like job developers and job coaches, typically identify how an employer's unmet needs may align with a person's distinct interests and capabilities to create a potential employment opportunity. Medicaid home- and community-based services can help state governments' employment service systems ensure that people with disabilities have person-centered plans.<sup>21</sup>

b. Intensity and Duration of Services

To be effective, supported employment services should be provided in a sufficient amount, intensity, and duration to enable a person with a disability to secure and maintain employment. The type, amount, and intensity of someone's services may change over time, but such services should be provided for a sufficient duration to ensure that the person can continue to succeed and to avoid placing the person at risk of unnecessary segregation. Supported employment services should be sufficient to allow individuals to work in a mainstream job for the maximum number of hours consistent with their abilities and preferences.

**4. What evidence may a person with a disability use to establish that an integrated employment setting is appropriate for them?**

A person with a disability in a segregated employment or day services setting may rely on a variety of evidence to establish that an integrated employment setting is appropriate. An assessment by a qualified public official, like a state vocational rehabilitation counselor or a healthcare professional, is one option.<sup>22</sup> But this is not the only method of demonstrating the appropriateness of community-based employment for a particular individual. For example, appropriateness may also be established with evidence that:

- (1) people with similar impairments are working in integrated employment settings;
  - (2) the individual has formerly worked in a more integrated employment setting;
- or

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<sup>21</sup> See, e.g., 42 C.F.R. § 441.301(c) (person-centered service planning process and requirements).

<sup>22</sup> See *Olmstead*, 527 U.S. at 587.



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(3) the individual currently performs tasks in a sheltered workshop that demonstrate his or her capability to perform work in a mainstream employment setting with services.<sup>23</sup>

Such evidence may come from the person's employment service provider, community-based organizations that provide supported employment services, former employers, family members and friends, teachers, or any other relevant sources. Similarly, evidence from day service or other providers, employers, family members, friends, or other relevant sources may be used to show that individuals are appropriate for integrated day services.

Professional research has consistently shown that people with significant disabilities can work in typical jobs—that is, in competitive integrated employment.<sup>24</sup> In fact, numerous states have adopted Employment First policies that instruct states' disability service systems to prioritize competitive integrated employment for individuals with disabilities.<sup>25</sup> Such policies frequently include the directive that state systems must be driven by the presumption that individuals with disabilities can work, and that not working should be the exception.<sup>26</sup>

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<sup>23</sup> *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 612–13 (7th Cir. 2004) (Medicaid-eligible person who lived at home with services demonstrated that community-based services were appropriate for him); *Townsend v. Quasim*, 328 F.3d 511, 516 (9th Cir. 2003) (same). For the same reasons, such an individual may similarly rely, for example, on evidence that the individual currently receives or formerly received integrated day services.

<sup>24</sup> See, e.g., Gary R. Bond et al., *An Update on Individual Placement and Support*, 19 *World Psychiatry* 390 (2020), <https://perma.cc/FG2H-LDDG>; Robert E. Drake & Michael A. Wallach, *Employment is a Critical Mental Health Intervention*, 29 *Epidemiology and Psychiatric Sciences* 178 (2020), <https://perma.cc/9466-V7CZ>; Robert E. Drake et al., *Assisting Social Security Disability Insurance Beneficiaries with Schizophrenia, Bipolar Disorder, or Major Depression in Returning to Work*, 170 *Am. J. of Psych.* 1433 (2013), <https://perma.cc/WDP6-6DSG>.

<sup>25</sup> See The Ass'n of People Supporting Emp. First (APSE), *APSE Fact Sheet: Employment First 2* (2019), <https://perma.cc/K3B9-LC2Z>; APSE, *Employment First Map: See What's Happening with Employment First Activities Across the Country* (2020), <https://perma.cc/JLM9-QP74> (map shows which states have legislation and directive/executive orders in place implementing Employment First policy).

<sup>26</sup> APSE, *APSE Fact Sheet: Employment First 1* (2019).



**5. How is a determination made whether an individual does not oppose receiving services in an integrated employment or day services setting?**

People with disabilities in or at risk of entering segregated employment or day services settings must have the opportunity to make an informed decision about whether to work in integrated employment settings.<sup>27</sup> Such individuals have often been told that they cannot work, and frequently have been tracked away from competitive integrated employment or steered to sheltered workshops or segregated day programs directly from secondary school settings. They also may have been absent from the competitive labor market for long periods of time, or been given scant information about supported employment services, integrated employment settings, or how individuals can work in jobs in the community. Consequently, individuals and their families may hesitate to explore work in an integrated employment setting or they may not ask for or be aware of supported employment services. Thus, public entities should take affirmative steps to ensure that individuals have accurate information about integrated employment opportunities sufficient to make meaningful decisions about where to receive employment services. Affirmative steps should include:

- providing information about the benefits of working in integrated employment settings;
- providing vocational and situational assessments, career development planning, and job discovery in mainstream workplaces;
- arranging peer-to-peer mentoring;
- facilitating visits to job sites;
- conducting job exploration and interest inventories, and providing work experiences in mainstream job settings; and
- providing benefits counseling to explain the impact of competitive work on an individual's public benefits and access to public benefits plans.

Only if an individual declines after a public entity takes these affirmative steps should the public entity determine that an individual is opposed to integrated

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<sup>27</sup> Certain federal programs require participants to be offered opportunities for competitive integrated employment. *See, e.g.*, 29 U.S.C §§ 720(a)(3)(B), 794(g) (requiring State vocational rehabilitation programs to offer individuals with disabilities opportunities to obtain competitive integrated employment, including to individuals in sheltered workshops); 42 C.F.R. § 441.301(c)(4)(i) (requiring that providers of Medicaid home and community-based services ensure that recipients of services receive opportunities to seek employment and work in competitive integrated settings).



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employment or day services. Individuals with disabilities may choose to accept the services based on the information provided to them but are not required to do so.<sup>28</sup>

**6. Do the ADA's integration mandate and *Olmstead* apply to people at serious risk of segregated employment or facility-based day settings?**

Yes. The ADA's integration mandate and the *Olmstead* decision extend to people at serious risk of segregation, and are not limited to individuals currently in segregated settings.<sup>29</sup> This general principle applies to both employment and day services in segregated settings. For instance, people with disabilities could show serious risk of unnecessary segregation if a public entity's failure to provide supported employment services would likely lead to placement in a sheltered workshop. A serious risk of needless segregation may also exist when secondary school students with disabilities are not provided services to facilitate their post-school transition to adult supported employment. Individuals who are interested in mainstream employment or integrated day services are not required to wait until the harm of unnecessary segregation occurs to receive the protections of the ADA and *Olmstead*.

**7. What remedies address violations of the ADA's integration mandate in the context of publicly-funded employment and day services?**

A wide range of remedies may be appropriate to address violations of the ADA's integration mandate. In the employment services context, the Department has entered into settlement agreements with certain states that exemplify remedies that expand the variety, intensity, and duration of supported employment services. Remedies should ensure that people with disabilities who are interested in integrated employment can receive individualized services such as job discovery, person-centered career development planning, benefits counseling, job training, job coaching, and other ongoing services provided in integrated employment settings. Remedies should also

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<sup>28</sup> 42 U.S.C. § 12201(d); 28 C.F.R. § 35.130(e)(1); *Olmstead*, 527 U.S. at 602 ("Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.").

<sup>29</sup> *Steimel v. Wernert*, 823 F.3d 902, 911–13 (7th Cir. 2016); *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307, 321–22 (4th Cir. 2013); *M.R. v. Dreyfus*, 663 F.3d 1100, 1116–18 (9th Cir. 2011), *amended by* 697 F.3d 706 (9th Cir. 2012); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181–82 (10th Cir. 2003). *But see United States v. Mississippi*, 82 F.4th 387, 392–93 (5th Cir. 2023).



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allow people with disabilities to work in integrated employment settings for the maximum number of hours consistent with their abilities and preferences. In addition, remedies should ensure access to integrated day services as an alternative to facility-based day services for people who are interested in participating in community activities with people without disabilities when they are not working.

Remedies should be designed so that people in segregated settings or at serious risk of segregation who are interested in more integrated settings can access the services necessary to allow them to find, obtain, retain, and advance in employment in integrated settings. These remedies should also ensure that currently segregated individuals have information about supported employment services, as well as opportunities to make informed decisions about working in competitive integrated employment (through, for example, meeting with people who formerly were in sheltered workshops and now are working in mainstream workplaces; speaking with community service providers; and visiting mainstream job sites).

For school-age populations, remedies may include transition planning and pre-employment transition services for students with disabilities who are preparing to exit school and begin employment. Examples of transition planning include (1) providing students with community-based trial work experiences, including paid work experiences, while in school; (2) crafting career development plans from age 14; and (3) ensuring that those plans include career goals based on the student's interests and specific action steps targeted to help the student achieve those goals. Examples of pre-employment transition services include (1) job exploration; (2) work-based learning experiences, which may include in-school or after school opportunities, experiences outside of the traditional school setting, or internships; (3) counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs; and (4) instruction in self-advocacy.

### **8. Does the ADA require an individual with a disability to work in an integrated employment setting or participate in integrated day services?**

No. Individuals with disabilities may decline to accept a service in the most integrated setting appropriate for them.<sup>30</sup> State and local governments are not required

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<sup>30</sup> 42 U.S.C. § 12201(d) ("Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept."); 28 C.F.R. § 35.130(e)(1) (same).



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to provide community-based services to individuals who oppose receiving those services.<sup>31</sup> On the other hand, state and local governments have no obligation under the ADA to provide services in segregated settings.

### **9. What is the fundamental alteration defense?**

A public entity's obligation under the ADA's integration mandate and *Olmstead* to provide services in the most integrated setting is not unlimited, such as in instances where a public entity can prove that the requested modification to its programs or services would "fundamentally alter" the nature of the public entity's service system.<sup>32</sup> To demonstrate that making the requested modification would be a fundamental alteration, the public entity must prove "that, in the allocation of available resources, immediate relief for plaintiffs would be inequitable, given the responsibility the State [or local government] has undertaken for the care and treatment of a large and diverse population of persons with . . . disabilities."<sup>33</sup> It is the public entity's burden to establish that the requested modification would fundamentally alter its service system.

## **Additional Resources**

For more information about the ADA, you may call the Department's toll-free ADA information line at 800-514-0301 or 833-610-1264 (TTY), or access its ADA website at <https://www.ada.gov/>. For more information about the Department's enforcement of the integration mandate of Title II of the ADA, please visit [Community Integration | ADA.gov](#).

Information regarding disability employment-related policies and practices can be found at: [www.dol.gov/odep/](http://www.dol.gov/odep/); <https://acl.gov/programs/youth-transitions/employment>; and [aoddisabilityemploymentcenter.com](http://aoddisabilityemploymentcenter.com).

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<sup>31</sup> *Olmstead*, 527 U.S. at 602 ("Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.").

<sup>32</sup> 28 C.F.R. § 35.130(b)(7).

<sup>33</sup> *Olmstead*, 527 U.S. at 604.