

Rhode Island Supported Employment and Day Services Interim Settlement Agreement Fact Sheet

Background

The Interim Settlement Agreement resolves the Civil Rights Division’s findings that the State of Rhode Island and the City of Providence failed to serve individuals with intellectual and developmental disabilities (I/DD) in the most integrated setting appropriate for them, and placed individuals at serious risk of segregation, in violation of the Americans with Disabilities Act (ADA) and *Olmstead v. L.C.*

The Department of Justice has enforcement authority under Title II of the ADA. To that end, the Department has a responsibility to enforce the rights of individuals with intellectual or developmental disabilities in Rhode Island. Through this Interim Agreement, the Department seeks relief for individuals currently being served at the sheltered workshop Training Thru Placement, Inc. (TTP), and for young people working in the in-school sheltered workshop at the Harold A. Birch Vocational Program at Mount Pleasant High School (Birch).

ADA Requirements

Title II of the ADA requires people with disabilities to be served in “the most integrated setting” that is appropriate for them. According to the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999), unnecessarily requiring people with disabilities to go to segregated settings to get services is a violation of the ADA and “perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” The Court also found that “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” in conflict with the purposes of the ADA.

The integration mandate, as interpreted in *Olmstead*, applies to all state and local government services, programs and activities, including employment services and day activity services. *See Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205-06 (D. Or. 2012); *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.*” at 3 (June 22, 2011) (emphasis added), *available at* www.ada.gov/olmstead/q&a_olmstead.htm.

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.

Work and Day Activity Services in Rhode Island

In Rhode Island, day activity services for individuals with I/DD include facility-based day programs, facility-based sheltered workshops, integrated day services, integrated supported employment, and group employment.

TTP and Birch each operate a sheltered workshop. A sheltered workshop is a segregated facility that exclusively or primarily employs persons with I/DD. Sheltered workshops are usually large, institutional facilities in which persons with I/DD have little or no contact with non-disabled persons besides paid staff. People with I/DD typically earn wages that are well below minimum wage at sheltered workshops. Under the 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 relieve States of their obligation to comply with the ADA’s integration regulation in their employment and vocational services.

TTP also operates a facility-based day program. Facility-based day programs are segregated non-work activities for people with disabilities during the day. These services are often provided by the same service providers, in the same locations, as sheltered workshops. In Rhode Island, sheltered workshop and facility-based day activity services are closely intertwined.

Supported employment services allow persons with disabilities to work in typical jobs in the community at competitive wages. Such services include job discovery (assistance in identifying a person’s abilities and strengths that may be transferable to work in community employment), vocational assessment, job coaching, and job training. These services enable individuals to access jobs in typical work settings where they can interact with non-disabled coworkers, customers, and peers, and enjoy the same benefits of employment as their non-disabled peers, like competitive wages, employee benefits, and the opportunity to advance.

Integrated day services are non-job-related supports focusing on community involvement, such as access to public resources (recreational, educational, cultural, social, etc.) or volunteer activities. Integrated day services are often designed to focus on critical aspects of life, such as work, family ties, social relationships, community engagement, volunteerism, health, learning, and recreation.

The goal of the United States’ interim agreement with Rhode Island is not to close sheltered workshops. However, the United States seeks to ensure that individuals who can and want to work or participate in meaningful non-work activities in integrated settings have a realistic opportunity to do so. Our primary concern is achieving integration for the impacted population of individuals with I/DD in Rhode Island who can and want to work but who have remained unnecessarily consigned to sheltered workshops.

Transition-Age Youth

The ADA and *Olmstead* prohibit public entities from placing individuals, such as young people with I/DD, at serious risk of unnecessary segregation. Students with I/DD at Birch have not been provided with meaningful choices and preparation for work in integrated settings, or with information and access to appropriate services and supports that would allow them to choose to work in integrated settings. As a direct consequence of the Birch sheltered workshop's cultivation, preparation, and direct referral of students with I/DD for sheltered workshop participation, those students are at risk of unnecessary placement at TTP.

Outcomes of the Interim Agreement

The Interim Agreement addresses the Department of Justice's findings of discrimination by the State and City at two facilities – TTP and Birch. The Department will continue its statewide investigation of the State's day activities service system for people with I/DD.

The Interim Agreement, therefore, provides relief for approximately 200 people who fall into three categories: (1) Individuals currently at TTP or who have received services at TTP in the last year; (2) youth preparing to leave Birch or who left Birch within the last two years; and (3) youth participating in the Birch program.

Under the Interim Agreement, over the next year, the State and City will work together to:

- Stop funding or supporting sheltered workshop or segregated day services at TTP and Birch. The State has already stopped funding new entrants for sheltered workshop or segregated day services at TTP. The City has already closed the workshop at Birch;
- Provide career development plans and benefits counseling for all individuals at TTP and all youth leaving, or who recently left, Birch;
- Provide supported employment services and placements to all individuals at TTP and youth leaving, or who recently left, Birch;
 - Supported employment placements must pay at least minimum wage;
 - Supported employment placements must be individual placements;
 - The target population, as a group, must work an average of at least 20 hours a week; and
 - Individuals may make an informed choice to participate in sheltered work, group work, or other segregated settings through a variance process.
- Provide integrated day services to allow individuals at TTP and youth who recently left Birch to participate in integrated activities when they are not working, for a total of 40

hours of work and non-work activity per week;

- Provide annual career development planning and vocational assessments to all individuals at TTP, and all youth who are leaving, or recently left, Birch;
- Adopt appropriate Employment First Policies (the State adopted an Employment First Policy in March 2013 but, under the Interim Agreement, the City of Providence will also adopt one);
- Develop a transition planning process for students at Birch to begin at age 14 (City policies already call for transition planning to begin at age 14) that focuses on integrated employment outcomes and includes trial work experiences;
- Ensure that Birch students have opportunities to receive a high school diploma;
- Develop a robust education program designed to inform individuals at TTP and Birch and their families about the benefits of supported employment and integrated day services;
- Increase supported employment and integrated day service provider capacity;
- Implement quality improvement programs for supported employment, day activity, and transition services.

Models and Resources

Rhode Island is not alone in moving toward more integrated day services for people with disabilities. Jack Markell, Governor of Delaware, and Chair of the National Governor's Association has made the employment of people with disabilities a critical objective of the NGA and has launched an initiative, "A Better Bottom Line: Employing People with Disabilities" to give states technical assistance and more information about best practices that can be implemented nationwide.

The Department of Labor's Office of Disability Employment Policy offers numerous resources and supports for states implementing integrated employment plans and policies. *See* <http://www.dol.gov/odep/ietoolkit/policymakers.htm>.

In addition, the federal Medicaid system provides support for community-based services for people with I/DD. Federal Vocational Rehabilitation funding can also be used to support people with disabilities to receive community-based employment services.