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Conference  
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ADA Audio Conference Series  
November 19, 2013

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## Department of Justice *Olmstead* Enforcement

Anne Raish, Deputy Chief  
Disability Rights Section, Civil Rights Division  
U.S. Department of Justice

November 19, 2013

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## **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

- approx 40 matters in 25 states over the past several years

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## **Range of DOJ "Tools"**

- Investigations & Findings Letters leading to Settlement Agreements or Litigation
- Intervention in private *Olmstead* litigation
- Statements of Interest practice in private litigation on many *Olmstead* issues
- *Olmstead* Technical Assistance Guidance
- *Olmstead* website ([www.ada.gov/olmstead](http://www.ada.gov/olmstead))

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## **Segregated Residential Service Settings**

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**Settlement Agreements**

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***U.S. v. New York***

- Agreement between U.S., New York and proposed class of adults with mental illness in large NYC adult homes
- Resolves litigation brought by New York P&A in 2003 alleging that State violates the ADA and *Olmstead* by relying on institutional adult homes to provide services to persons with MI
- U.S. intervened following trial
- Agreement must be approved by Court

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***U.S. v. New York***

- Agreement provides relief to the roughly 4000 individuals with mental illness in 23 large adult homes in NYC
- NY will provide supported housing to all eligible individuals with SMI in adult homes. At least 2000 and potentially more than 4000 individuals will transition to supported housing

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**U.S. v. New York**

- Agreement ensures individuals receive services needed to support them in supported housing
- Services include ACT, mental health clinic services, personal care services, home health services, care coordination and crisis services
- Person-centered planning to ensure informed choice and successful transition
- Agreement will be monitored by independent reviewer

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**U.S. v. Virginia Settlement Agrmt.**

- Reforms of entire ID/DD system; relief for more than 5000 people
- HCBS waivers for people transitioning out of state-operated ICFs, youth transitioning from nursing homes and large ICFs, and people with "urgent needs" on the waitlist (4200 waivers)
- Family support program created for people on waitlists (1000 people)
- Full range of community-based crisis services (crisis hotline, mobile crisis teams, crisis stabilization programs)
- Expanded case management
- Develop and implement Employment First policy and expansion of supported employment and integrated day opportunities
- Integrated housing (including subsidies for independent living)
- Expansive quality management system for community services

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**U.S. v. North Carolina**

- Settlement provides community svcs to 3,000+ people with mental illness in or at risk of entering adult care homes.
- Services include supported housing, ACT, supported employment, transition supports, enhance QM, crisis services.
- Second year of implementation.

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### ***Steward v. Perry (Texas)***

- Case addresses persons with ID/DD in and at risk of entering nursing homes
- Interim Agreement
  - While a comprehensive settlement is negotiated, Texas is expanding community alternatives:
    - New PASRR reviews of all current Texas nursing facility residents to identify those who have a developmental disability;
    - Service Planning Teams and Service Coordinators for all adults with developmental disabilities in nursing facilities or who are diverted from nursing facilities;

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### ***Steward v. Perry***

- Community supports:
  - 635 home and community-based Medicaid waivers in current legislative biennium;
  - medical, nursing, and nutritional management supports and services,
  - integrated day, employment, recreational and other activities.
- Diversion efforts:
  - identification of individuals with ID/DD at risk of entering nursing facilities,
  - Education about community alternatives, and
  - Diversion Coordinators to identify and arrange community services for such individuals.

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### **Other Agreements in Implementation**

- [US v. GA](#) – community svcs. for 1,000+ people in state DD facilities and on waitlist and 9,000+ people in or at risk of entering state psych hosp.
  - DD relief includes waivers, family supports, crisis services, and case management
- [US v. DE](#) – community svcs. for 3,000+ people in or at risk of entering state psych hospital and private facilities
  - ACT, crisis services, supported housing, supported employment

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**Ongoing Litigation Addressing Segregated Service Settings**

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***U.S. v. Florida***

- Complaint filed in July 2013
- U.S. alleges Florida violates the ADA and *Olmstead* by relying on nursing homes to provide services to children with significant medical needs

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***U.S. v. New Hampshire***

- Case addresses people with MI in or at risk of entering state psych hospital and state-run nursing facility for people with MI

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## Statements of Interest

- DOJ has filed more than 35 statements of interest in *Olmstead* case since 2009
- Statements put forth DOJ's position on various *Olmstead* issues, including policies putting persons at risk of unnecessary institutionalization
- Statements filed in support of both plaintiffs and states

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## Segregated Days

- ADA and *Olmstead* not limited to where people live; also applies to how people spend their days:
  - [Lane v. Kitzhaber](#) (Oregon):
    - Court found that ADA and *Olmstead* applies to all government services, programs and activities, including employment. Rejected argument that only applies to residential services and programs.

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## Segregated Days (cont'd)

- US v. Oregon (Lane v. Kitzhaber)
  - Ongoing litigation
- US v. Rhode Island and Providence
  - Settlement Agreement
- US v. North Carolina
  - Settlement Agreement
- US v. Delaware
  - Settlement Agreement
- US v. Georgia
  - Settlement Agreement
- US v. Virginia
  - Settlement Agreement

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### **Lane v. Kitzhaber**

- **Complaint and Motion to Intervene**– alleges Oregon administers the State’s employment, rehabilitation, vocational, and education service system such that people with disabilities are denied the benefits of the State’s vocational and employment services, programs, or activities in the most integrated setting.
  - Includes “at risk” class: alleges Oregon fails to ensure that students with I/DD are provided with meaningful choices and preparation for work in integrated settings.

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### **Segregated Days (cont’d)**

- **Lane v. Kitzhaber/U.S. v. Oregon** (cont’d):
  - Factual allegations in the complaint:
    - Over 52% of participants earn less than \$3.00 per hour. Some earn only a few cents per hour.
    - Individuals with ID/DD remain in sheltered workshops an average of 11-12 years. Some remain for as long as 30 years.
    - 61% received services in segregated sheltered workshops, while only 16% received any services in individual supported employment.

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### **Segregated Days (cont’d)**

- **U.S. v. Rhode Island/City of Providence:**
  - Found the state of Rhode Island and the City of Providence violated the ADA by overly relying on sheltered workshops to the exclusion of more integrated alternatives.
    - Vast majority of people in sheltered workshops could and want to be served in more integrated settings, like supported employment and integrated day settings.
    - Students with ID/DD at risk of unnecessary segregation in sheltered workshops. In-school sheltered workshop served as pipeline to adult workshop; lack of transition services to prepare students for more integrated options (e.g., internships, part-time jobs, and work-based learning)

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### Segregated Days (cont'd)

- U.S. v. Rhode Island/City of Providence: Interim Settlement Agreement
  - Provides relief to: (1) Individuals currently at state's largest sheltered workshop provider (TTP) or who have received services at TTP in the last year; (2) youth preparing to leave in-school sheltered workshop program (Birch) or who left Birch within the last two years; and (3) youth participating in the Birch program.

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### Segregated Days (cont'd)

- U.S. v. Rhode Island/City of Providence: Interim Settlement Agreement

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

  - Provide career development plans, vocational assessments, 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;
  - Provide access to integrated transition services to Birch students through a youth transition planning process beginning at age 14;

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### Segregated Days (cont'd)

- U.S. v. Rhode Island/City of Providence: Interim Settlement Agreement (cont'd)
  - 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);
  - Increase supported employment and integrated day service provider capacity;
  - Implement quality improvement programs for supported employment, day activity, and transition services.

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## 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](http://www.ada.gov/olmstead)
  - All settlement agreements, findings letters, briefs, guidance, testimony, speeches, etc.

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## Contact Information

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Disability Rights Section  
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## Questions?

**Telephone:** Follow the instructions given by the Operator

**Webinar Platform:** You may type and submit questions in the Chat Area Text Box or press Control-M and enter text in the Chat Area

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Thank you for participating in today's  
ADA-Audio Conference Session

The next scheduled session is:

***“Questions and Answers with the EEOC”***

**December 17, 2013**

[www.ada-audio.org](http://www.ada-audio.org)

877-232-1990 (V/TTY)

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