

DISTRICT OF OREGON

PORTLAND DIVISION

PAULA LANE, et al.,

on behalf of themselves and all
others similarly situated, and

**UNITED CEREBRAL PALSY OF OREGON
AND S.W. WASHINGTON,**

Plaintiffs,

v.

Case No.: 3:12-cv-00138-ST

**KATE BROWN, Governor of the State of
Oregon; et al.,**

all in their official capacities,
Defendants.

UNITED STATES OF AMERICA,

Plaintiff- Intervenor

v.

STATE OF OREGON,

Defendant.

EXPERT REPORT OF DR. DAVID MANK

I. Purpose of Review

The purpose of this report is to provide my evaluation of the developmental disabilities employment and day services system in Oregon. In this report, I review both the processes and the employment outcomes for people with intellectual and developmental disabilities

(I/DD). I provide my assessment of the situation based on review of documents and key informant interviews. All opinions expressed are mine.

II. Background and Experience

I am the Director of the Indiana Institute on Disability and Community (IIDC), and full professor in the School of Education at Indiana University, Bloomington. IIDC is a university center for excellence in developmental disabilities, as designated by the US Department of Health and Human Services, Administration on Community Living. I have held this position since 1996. Prior to this position, I was a doctoral student, then later research associate, and associate professor in the College of Education at the University of Oregon. While at Oregon, I was a part of the Specialized Training Program conducting research and providing technical assistance and training on integrated supported employment for people with I/DD. In January 2015, I was appointed, (and subsequently elected as Chair) by the Secretary of Labor, to the Advisory Committee on Increasing Competitive Employment for Individuals with Disabilities, as authorized by the Workforce Innovation and Opportunity Act of 2014. My full curriculum vita is attached to this report.

III. Materials Reviewed and Information Collected

1. Materials Reviewed

In preparation of this report I reviewed numerous documents and depositions related to this Case No. 3:12-cv-00138-ST. A list of these documents is also attached to this report.

2. Key Informant Observations

As a part of the preparation of this report, I interviewed, by phone in the Summer 2014, three people knowledgeable about the history and current supported employment implementation efforts in Oregon. These were: Paula Johnson, Tara Asai, and Joanne Sowers.

IV. Overview of Sheltered Workshops

This case is about Oregon's over-reliance on sheltered workshops for providing day and employment services for people with I/DD.

Sheltered workshops, meaning settings where people with I/DD are segregated with primarily others with I/DD, was the result of an assumption that people with I/DD were incapable of working in integrated employment in typical community jobs. If you begin with an assumption of un-employability, then grouping people in a sheltered setting may seem to be a useful strategy to give people some access to some kinds of work. In addition, historically, sheltered work was hoped to be a transition point where people learned some jobs skills and then later might be able to get jobs in the community.

Research has clearly demonstrated that neither assumption is true. First, research shows clearly that people with I/DD can and do learn to perform jobs in typical, integrated community settings. As such, the assumption of un-employability is not true. In addition, research has also shown that time spent in a sheltered workshop does not prepare a person with I/DD to perform a job in a typical, integrated job setting. This was documented as early as 1994 (Buckley and Bellamy) and more recently in 2011 (Cimera). Both studies conclude that sheltered work did not increase the probability of having an integrated job later in life. While the logic that sheltered work helps people succeed later may be intuitively attractive, it is simply not true. In fact, the evidence is now clear that sheltered workshops usually, often inevitably, become permanent employment placements. (Enzi 2005)(noting that fewer than 5% of participants in the federal Javits-Wagner-O'Day program move into supported or competitive employment in a given year); (Gill 2005) (citing a 2003 study which found that only 3.5% of sheltered workshop employees in the United States transitioned into community-based settings per year).

Instead, sheltered work is entirely defined by segregation from community and society and poor wages. Workshops generally subsist on reimbursement from State or local governments as service providers, along with income from subcontracts for the production of goods. (Simmons & Flexer 1992). Individuals spend their days at sheltered workshops performing assigned tasks that bear no relationship to their individual skills, interests, or prior work experience. (Mank 1994) (describing the problems with sheltered workshops that first prompted serious interest in supported employment, and that stubbornly persist despite the early promise that supported employment demonstrated).

V. Overview of Supported Employment

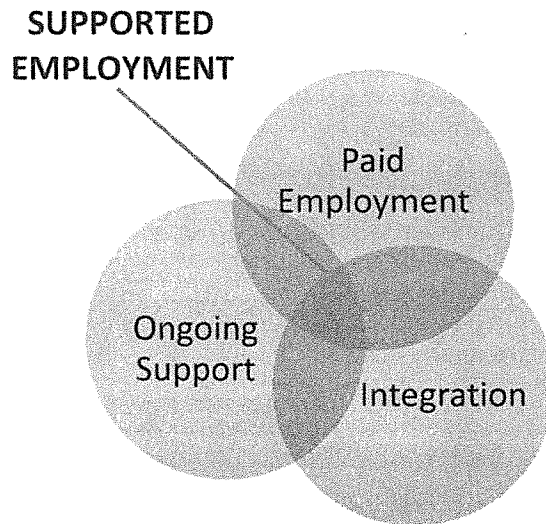
1. Purpose and Evolution of Supported Employment

Integrated supported employment became the primary model for allowing persons with intellectual and developmental disabilities (I/DD) to work in integrated employment settings in the early 1980s. This was the direct result of research that began in the 1970s on applied behavior analysis and direct instruction methods (Gold, 1975; Gold, 1978; Bellamy, Horner & Inman, 1979). This important and early applied research established the fact that, given emerging teaching methods, people with significant intellectual and developmental disabilities could live, learn work tasks, and work productively in typical community jobs (Wehman, 1980; Rusch, 1990). In particular, the early work of Marc Gold in California, and G. Thomas Bellamy and his associates at the University of Oregon established detailed teaching procedures that were emulated nationwide and in other countries (Bellamy, Rhodes, Mank, & Albin, 1988).

The importance of these teaching breakthroughs cannot be overstated, as they refuted the long held assumption that people with I/DD were incapable of working, or could only work under segregated settings on very simple tasks. This early, innovative research established that it was possible for even people with the most significant disabilities to learn work tasks. This, in turn led to the development of early demonstration programs at the University of Washington (Jim Moss, Frank Rusch), at the University of Vermont (R.

Timm Vogelsburg), at Virginia Commonwealth University (Wehman), and at the University of Oregon (Bellamy and Horner). These demonstration programs created supported employment organizations that began developing jobs for a number of individuals with I/DD.

Integrated supported employment was unique this way: it combined paid work in integrated settings with ongoing training and other supports that result in individuals with I/DD being successfully employed. The following Venn Diagram shows the intersections of paid work, integration and support, that is constitutes supported employment.



Supported employment can exist only when paid employment, ongoing support, and integration are present.

The presence of all three components is a requirement for integrated supported employment – and for the success and effectiveness of supported employment – as described in detail by Bellamy, et al in 1988. The absence of any one of these three key components means it is not supported employment and is not likely to result in persons with I/DD working in integrated employment settings. Paid work with support (and without integration), is a sheltered, segregated work setting. Support and integration (and without paid work) is some kind of integrated community program or alternative to employment. Paid work and integration (and without support), is typical employment and is unlikely to happen for people with significant I/DD because of the absence of training and other supports. By definition, supported employment is both a model and an outcome, not simply a service. Without paid work, it simply is not supported employment.

At the same time that the teaching methodology was leading to the possibility of work, the guiding principles for integrated supported employment were also emerging. These principles, predicated upon the proven fact that people with significant I/DD *could* work, meant that people with I/DD should have the same patterns of daily life as any other citizen in society, including integration and employment. The early research on supported employment established that people with I/DD *could* work. The programmatic principles established that integrated employment with supports is *preferable* to either non-work or

segregation. This evolution and the expectations of integrated supported employment was articulated by Mank in 2008:

“The thinking about employment (in integrated settings with supports) can be summarized in this way

- From impossible to possible.....
- From possible to beneficial.....
- From beneficial to allowed.....
- From allowed to preferred.....
- From preferred to expected.....
- From expected to required.....

..... to the same standard (of expectations) as everyone else.

The governmental response to the emergence of supported employment also evolved. Prior to 1984, supported employment had not been defined as a model that could be offered and funded by state developmental disability agencies or state vocational rehabilitation programs. In 1984, the words “supported employment” were defined for the first time in the federal Developmental Disabilities Assistance and Bill of Rights Act. In 1986, “supported employment” was included in the Vocational Rehabilitation Act. These important changes allowed states to use federal funding for supported employment, rather than to pay for segregated adult day programs or sheltered workshops, which had previously been the only federally-funded services for adults with I/DD. By the end of the 1980s, federal and state governments, disability professionals, academic researchers, and local employment agencies all understood that supported employment was the most successful, most coherent, and most cost-effective method for allowing persons with I/DD to work in integrated employment settings.

In addition to legislative changes that made it possible to fund and deliver supported employment, the federal government and some state governments invested in the infrastructure and expansion of supported employment. In the first ten years of supported employment expansion (1985-1995), the federal investment in systems change in states exceeded \$100 million (Mank 1996). This funding supported state systems change grants (beginning with 10 states in 1985 and extending to all states in later years), training grants, national scale technical assistance grants, training, research and data projects. Oregon was one of the first 17 states to be funded with a systems change grant in 1986.

Parallel to the emergence of supported employment, investment in transition from school to work emerged as another initiative of federal and state programs. This initiative linked schools with vocational rehabilitation services and long term I/DD services to begin to emphasize employment as the expected outcome of transition services. (Halpern, 1985; Wilcox, & Bellamy, 1982). This investment in the transition of students with I/DD from school directly into supported employment, rather than first offering sheltered work, or non-work programs, is the expected outcome of federally-mandated transition process.

Initially supported employment included individual employment as well as crews and enclaves (eight or less in a group). However, extensive research and demonstration programs proved that crews and enclaves delivered lesser outcomes in both wages and integration (e.g., Kregel, Wehman, & Banks, 1989). As a result, individual employment became the preferred approach, and the expected professional standard, for providing supported employment to individuals with I/DD. In 2006, Boeltzig, Gilmore, and Butterworth report that only 12% of people in supported employment were in group employment. In 2015, Butterworth reported 3.5% of people in supported employment were in crew or enclaves (small group) employment.

Over the same period of years, clarity has emerged from the self-advocacy community comprised of people with I/DD. In fact, as early as 1984, the Oregon self-advocacy organization called People First of Oregon, issued a Bill of Rights (see Dean & Coulson, 2010) that included the following statements:

- We have a right to a job in the community.
- We want to work regardless of productivity.
- We have the right to be respected on the job.
- We do not want to live in poverty.
- We want to work for fair wages.

At the national level, the primary self-advocacy voice of people with I/DD is Self Advocates Becoming Empowered (SABE). In 2009, SABE issued a policy statement on Employment. The byline of this document states “We have been prepared enough. Get us real jobs. Close Sheltered workshops”. This 2009 policy statement goes on to issue the following calls: SABE calls for:

- Immediately, no new people go into sheltered workshops.
- Immediately, no new people join an enclave.
- Ending the sub minimum wage by 2012.
- Ending enclaves in 2014.

This clarity of the junction of professional associations and the expectations of people with I/DD about the need for, and ability to provide integrated supported employment is important. Professional standards for integrated supported employment are clear, and the people who will benefit indicate it is preferred.

2. Professional Standards for Integrated Supported Employment

While teaching methods were among the first innovations leading to integrated supported employment, other strategies for creating and sustaining supported employment evolved and improved. Methods for developing jobs emerged, based upon innovations in marketing and the abilities of people with disabilities. A new notion of “natural supports” (Nesbit, 1992) was developed to make use of the supports of co-workers and other typical supports in the workplace, in addition to supports from paid job coaches. New approaches to organizational management emerged with an emphasis on

agency conversion from workshops and segregated day programs to supported employment agencies (Albin, 1992).

New business models evolved to develop corporate initiatives (Microsoft, Walgreens, Marriott, e.g., Luecking & Fabian, 2000). These initiatives invested in developing a large number of jobs across multiple locations of national and international corporations.

For youth with I/DD, it has become clear that real work, while youth are still in high school, is important for enhanced wage and integration outcomes later in life. In fact, in 2014, Siperstein, Heyman, and Stokes report that the best predictors of individual employment as an adult are: having a job before the age of 21, having job training, and having had more than one job. Conversely, adults in sheltered workshops were far less likely to have had integrated job opportunities while still in school. This research demonstrates the importance of quality transition for employment while students with I/DD are still in school.

In the last fifteen years, as many as 47 states and Canada (Butterworth, et al 2014) have created some kind of "Employment First" Initiative. This means that states are making some level of commitment to offering integrated employment as the first priority when creating an individual service plan for a person with I/DD. Some of these initiatives are incorporated in state administrative policies, like executive orders, while others, like Washington State, are defined in legislation. In addition, in 2012, as Chair of the National Governors Association, Delaware Governor Jack Markell created an initiative to increase employment of people with disabilities. This resulted in a publication entitled *A Better Bottom Line: Employing People with Disabilities*. This initiative continues to this day.

In the last decade or more, practitioners and policy makers alike agree that integrated supported employment is both the preferred and the desired outcome over day programs and sheltered work. In fact, the policy statements by numerous national associations is consistent and clear. These include the State Employment Leadership Network (SELN), APSE (formerly called the Association for People in Supported Employment), The Arc of the US, the Association of University Centers on Disability (AUCD), the National Disability Rights Network (NDRN), and others.

In 2004, a coalition of 11 national I/DD associations, formed the Alliance for Full Participation (AFP). All of the members of AFP agreed to forego their own national meetings and conferences in 2005, in order to conduct a single national I/DD Summit in Washington DC. In 2005, the AFP Summit addressed a number of community issues important to people with I/DD, including employment. AFP leadership decided that the single most important issue was integrated supported employment. This led to the 2011 AFP Summit which concentrated the attention of all of these national associations on integrated supported employment. All of the statements from these national associations, advocates, practitioners and researched-based organizations agreed that employment for people with I/DD must be paid and integrated in typical community settings.

Moreover, these national associations, state employment first initiatives, disability professionals, and state and federal governmental agencies all agreed upon certain common principles, professional standards, and expected outcomes for integrated supported employment. First, the individual with I/DD must be employed in an integrated setting – one that provides opportunity for the individual to regularly interact with non-disabled employees, and affords the individual the same employment benefits and opportunities as non-disabled workers. Second, the individual must be compensated at or above minimum wage. Third, the employment must be based upon the individual's strengths, abilities, and preferences, and must be developed on an individual basis. Fourth, the individual must be supported to work as many hours as her abilities and preferences indicate. These factors now define, and are essential to, professionally-acceptable integrated supported employment.

It is also important to note how the federal agencies and funding is aligning with the professional standards regarding integrated supported employment. In 2001, the Rehabilitation Services Administration ceased funding sheltered work as a successful vocational rehabilitation case closure. In 2011, the Centers for Medicare & Medicaid Services (CMS) issued an Informational Bulletin which, for the first time, indicated a preference for competitive employment in the use of Medicaid Waivers for people with I/DD. And, in 2014, CMS issued new guidance regarding the use of Medicaid waivers in non-residential settings, which now requires integration and personalized approaches, including a preference for integrated, personalized supported employment.

Federal legislation also emphasizes employment outcomes. PL 113-128, the Workforce Investment and Opportunity Act (WIOA) was passed by Congress and signed by the President in 2014. The Act includes provisions for people with I/DD and specific outcomes. In a section on performance indicators, it specifies counting the number of people who “enter and retain employment”. It also defines competitive, integrated employment as meaning “full or part time work at minimum wage or higher”. The Act goes on to specify that such employment must also be “fully integrated with coworkers without disabilities”.

3. Benefits of Supported Employment

Since states and vocational rehabilitation began counting the number of people in supported employment in the 1980s, the number of people in supported employment has grown to more than 100,000. However, this figure was initially attained in the late 1990s, and has remained at about the same level since then (Butterworth, et al 2013).

Wages in supported employment are substantially higher than in sheltered workshops. In Indiana, for example – those in workshops earned \$2.44 an hour while those in supported employment earned \$7.26 an hour. Moreover, persons with I/DD in supported employment worked an average of 20 hours a week (Grossi, Myers, Tijerina, & Mank, 2014).

The federal definition of supported employment allows individuals in work crews and enclaves to be counted as working in supported employment. However, the outcomes and

benefits of supported employment are less in crews and enclaves than in individual supported employment. Grossi, Mank, & Myers (2013) report that those in group employment earned an average of \$4.62 an hour, compared to \$7.26 for those in individual jobs.

Integration, the opportunity to interact with people without disabilities while working, is clearly better in individual jobs compared to sheltered workshops. There is also a difference in integration in individual employment compared to group employment. In fact, a 1991 research study (Storey & Horner, 1991) observed higher levels of interaction with people without disabilities for those in individual employment compared to those working on crews. Similar findings were reported by Mank, Cioffi, and Yovanoff (1997) reporting better outcomes for individual employment.

In 2011, Cimera reported on a matched sample study that compared individuals who entered supported employment from a workshop vs. entering supported employment not from a workshop. Those entering from a workshop earned \$118.55 weekly and those entering from school or some other service earned \$137.20 a week.

It has long been established that people in supported employment earn more money and have higher integration outcomes than those in sheltered workshops. Even in more individualized jobs there is variation in wage and integration outcomes. There are certain job features that are associated with better wage and integration outcomes. Mank (2003) found that:

- ☐ Higher wages are associated with better integration;
- ☐ More hours are associated with better integration;
- ☐ Higher levels of social interactions are related to the typicalness of a job compared to others in the workplace;
- ☐ Coworker involvement is related to more earnings and better integration.

While wages and integration are the most easily measured benefits of being employed, there are other important benefits. People that work are healthier. People that work are more likely to have an increase in choices, large and small in life, if they have discretionary income as a result of working. Working in community brings self-esteem and a sense of contributing to the community.

4. Cost Benefit Analysis

Analyses of the costs and benefits of integrated supported employment is another important consideration in understanding why supported employment is preferred in professional standards, legal expectations and by people with I/DD. Cost benefit analyses have been conducted early in the development of supported employment and more recently. Cimera (2012) provides a review of the literature on supported employment costs and benefits compared to sheltered work. In particular, he notes, "taken in total, the recent cost-analysis research on the worker's perspective corroborate the finding of studies conducted in the 1980s and 1990s – individuals with disabilities experience greater

monetary benefits than costs when working in the community. Further, this cost-efficiency appears to be regardless of type of disability and the presence of secondary conditions.”

Further, Cimera (2008) also conducted research on the cost-trends of supported vs. sheltered employment. This study demonstrated that the cumulative costs for providing supported employment are much lower than the cumulative costs of providing sheltered employment when costs are considered throughout an “employment cycle” (meaning, from the point of entering the job to the point of leaving). These and other studies show that, while the initial months of costs of supported employment may be higher, the overall costs decrease over time. As such, not only is sheltered work more expensive over time, it delivers far lesser wage and integration outcomes.

Overall, cost benefit analyses reach a number of important conclusions:

- (1) Greater net monetary benefit in supported employment .
- (2) Over time supported employment is more cost-efficient .
- (3) Over time individual placement is more cost-efficient than crews and enclaves (where support is constant) and more likely to fade hours in individual placements.
- (4) Supported employment is more efficient from worker and taxpayer perspectives.
- (5) Cumulative costs for supported employment are lower than the cumulative cost of sheltered work.
- (6) The cost trend of supported employment is downward. The cost trend of sheltered work slightly up over time (constant forever).
- (7) Since 1980s, supported employment relative wages are up 31.2%, while wages in workshops are down 40.6%.
- (8) While sheltered workers work more hours – 72 a month vs. 44.91 a month (2011) – supported employees generate lower cumulative costs and earn more money.
- (9) Supported employees also had a lower cost per hour worked and lower cost per dollar earned.

VI. Oregon’s Supported Employment Program

1. Early Leadership in Research and Development

In the late 1970s and throughout the 1980s, Oregon was widely considered a leader in researching, developing and implementing supported employment for people with significant I/DD. The Specialized Training Program (now Education and Community Supports) at the University of Oregon conducted numerous research, demonstration and data projects and published widely in journals and books (e.g., Albin, 1992; Bellamy, Rhodes, Mank, & Albin, 1988; Buckley, Mank, & Sandow, 1990; Rhodes & Valenta, 1985). Along with demonstrations projects and state level implementation projects, this early work in Oregon helped define supported employment in law and helped create the federal initiative of state systems change grants.

Oregon also invested in supported employment in innovative ways. New supported employment programs were created that had no association with workshops or day programs, and offered only supported employment (e.g., McKenzie Personnel Systems, <http://mckenziepersonnel.com/>; Alternative Work Concepts, <http://alternativeworkconcepts.org/>). These, then small, new non-profits created an entirely different business model, having no reliance on segregated settings. This means all staff, and the entire organization, were focused on integrated employment outcomes, rather than the mixed mission of sheltered workshops who were also attempting to implement supported employment. This was an important development in Oregon's leadership which allowed and encouraged organizations to provide supported employment without already being tied to sheltered workshops or other day services.

Starting in 1986, Oregon had 10 years of "state systems change" grants from the federal Department of Education, Office of State? Employment Rehabilitation Services (OSERS) to implement transformation from segregated employment to integrated supported employment. This investment extended the initiatives of creating new programs, assisting with agency change in sheltered settings, and providing training and technical assistance statewide. These "systems change" grants further expanded Oregon's investment in supported employment until about 1996.

In approximately 1994, Oregon introduced a new day service category called "Alternative to Employment" (ATE). This service would provide basic skill training, usually in a segregated setting, instead of vocational training or sheltered work. Within a few years, it had grown to nearly 30% of persons with I/DD who received any form of day services, and marks the beginning of the decrease in percentage of people in integrated supported employment.

2. Oregon 1994-2007

An early report from the Employment Outcome System (EOS) concluded that about 29% of persons with I/DD served by Oregon's Office of Developmental Disability Services (ODDS) were working in integrated supported employment settings. (DD Program Office 1988). By 1991, 50% were in integrated supported employment settings. As of April 2010, that percentage had fallen to 21.4%. A report from January 2014 finds only 24.2% of ODDS waiver participants were in integrated supported employment settings. A March 2014 report shows 23.5%. While Oregon was also adding many people to the new support services waiver after 2000, little of the waiver investment focused on integrated employment. This dramatic drop in focus on integrated employment clearly meant supported employment was no longer a priority.

Oregon's regression in integrated employment and reduction in investment, is made clear in a 2010 state-funded report noting the states funding in training and technical assistance had dropped "to nearly nothing" as of 2006.

There was concern emerging, however, from Oregon's advocacy community much earlier than 2010. In 2005, a report by Janet Steveley about the status of supported

employment in Oregon was prepared for the Oregon Council on Developmental Disabilities, entitled *Supported Employment for Oregonians with Developmental Disabilities: Recommendations for Action*. This report notes, that while Oregon was once a leader in supported employment, Oregon had regressed to far greater reliance on sheltered work, facility based day programs and alternatives to employment. This report called for a review of state policy, creation of new leadership, the building of community capacity and a new evaluation of employment outcomes. This report also provided information about the loss of focus and decreased outcomes and provided recommendations for improvement.

3. Oregon 2008-2012

In response to the DD Council's report and pressure from stakeholders, ODDS finally undertook selected actions designed to reverse the downward spiral of integration in employment. However, despite these actions, the percent of people in supported employment only increased from 21% to 23% between 2008-2012.

Oregon's Employment First Policy

In September of 2008, Oregon issued its Employment First policy, which declared integrated employment as the preferred goal for day and employment services. The policy documents included a "policy framework" and a "policy statement". The policy statement speaks to the need for employment "outcomes". In 2008, states were just beginning to notice the "employment first" possibilities and beginning to write such policies. Oregon was an early state in developing an Employment First policy.

This policy notes that, "In order to achieve the intent outlined in the framework of this policy, employment opportunities in fully integrated work settings shall be the first and priority option explored in the service planning for working age adults with developmental disabilities. While all options are important and valued, integrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes for individuals with developmental disabilities."

This policy sets forth worthy language and goals about productivity, integration and independence. It adopts the principle that most people with I/DD prefer employment, and affirms that improvements in employment can be accomplished.

What is notable about this Employment First Policy is that it specifically says that "employment outcomes" are more valued than other options. This focus on integrated employment outcomes is consistent with, and in fact, identical to, the recommendations from the DD Council report. Regrettably, there was virtually no improvement in integrated supported employment outcomes as a result of either the DD Council report or the Employment First Policy.

Supported Employment State Initiatives

During this same time period (2008-2012), ODDS created several supported employment related initiatives. These included the creation of positions in ODDS with some responsibility to focus on supported employment. In addition, ODDS began a series of training and technical assistance activities.

In 2010, ODDS created the Employment First Outreach Project, which resulted in the Dean, & Coulson report entitled *Community Leadership for Employment First in Oregon: A Call to Action*. This document chronicles the decline in integrated employment outcomes from the years of Oregon's leadership in the 1980s through 2010. This document also sets forth specific goals for statewide infrastructure to align with and promote Employment First; community capacity to implement Employment First; individuals with disabilities and family members promoting Employment First; and communities implementing Employment First. Significantly, this report, like the predecessor DD Council report, calls for integrated employment outcomes.

Initiatives such as these are constructive because they require two strategically important actions: (1) a statewide initiatives with statewide leadership; and (2) training and technical assistance necessary for building provider capacity and the full implementation of integrated supported employment. However, as indicated earlier, despite these initiatives, there was virtually no improvement in integrated employment outcomes in 2008-2012, with continued over reliance on sheltered work and on alternatives to employment.

Contracting with the Washington Initiative for Supported Employment

Beginning in 2010, initially using funds from the state's Medicaid Infrastructure Grant (MIG), ODDS contracted with the Washington Initiative for Supported Employment (WISE) for the provision of training and technical assistance activities across the state. This began a set of trainings on a number of employment related topics and more specific technical assistance work in three counties.

This contractual relationship with WISE for training and technical assistance continues into 2015. This is a constructive step. Practitioners and others will benefit from such work and WISE is well respected nationwide as a provider of employment related training and technical assistance. But, once again, despite this effort, there were virtually no improvements in integrated employment outcomes for persons with I/DD during 2008-2012.

It is important to note the highly elevated attention to integrated supported employment that began in 2012, just after the state of Oregon received an August 2011 letter from Disability Rights Oregon (DRO) indicating a lawsuit was planned regarding Oregon's over reliance on sheltered workshops and lack of integrated employment.

Employment First Stakeholder Planning Work Group

Shortly after initial discussion to address DRO's systemic concerns were unsuccessful, and just after DRO indicated it would file a class action lawsuit, ODDS created a Stakeholder Work Group, which met from January – June 2012. The Work Group included representatives from a number of constituencies, including providers, families, advocates and state department personnel. The June 2012 final report from the Work Group includes a five year plan with specific recommendations and integrated employment outcomes to achieve three objectives: (1) "decrease the number of individuals transitioning from schools into sheltered workshops; (2) increase the number of people who move from sheltered workshops to supported employment; and (3) increase the number of people... who are actively engaged in Paths to Employment."

The Work Group described detailed action steps for accomplishing each of the employment goals, including specific outcomes for the number of persons leaving workshops each year for five years, and the discontinued use of workshops for brokerage waiver young adults. The Work Group also established specific outcomes to increase the number of persons with I/DD in integrated supported employment each year for five years, with a total increase of 32% (1,000 individuals) by 2017. Significantly, 80% of all new persons in supported employment would receive individual (rather than group) supported employment. The report went on to frame "next steps" for training and technical assistance, implementation of Employment First plans, as well as developing more complete implementation plans.

It is also noteworthy that the Work Group's report specifically creates a preference for individual rather than group supported employment, which acknowledges Oregon's current over reliance (about 50%) on group employment even when it does provide supported employment.

This Work Group Report of 2012, like the Employment First Policy, the 2005 DD Council Report, and the 2010 Dean and Coulson "Call to Action" Report, speaks to the need for supported employment measures and outcomes. It is regrettable that from 2005 through 2012 there is virtually no improvement in integrated employment outcomes, despite clear calls for change, and little investment until a United States Department of Justice investigation is begun in November 2011 and the DRO lawsuit is filed in January 2012.

Oregon ReBAR Program

In 2008, ODDS initiated a study of payment structures and rates for all DD waiver services, beginning with residential services for individuals served by the state's Comprehensive Waiver. While this study was projected to address day services, including employment, this did not begin in earnest until late 2012, after Oregon was awarded a federal grant from the Department of Labor's Office of Disability Employment Programs (ODEP). This resulted in a series of fiscal analyses and projections to adjust the way supported employment and other day services were funded. However, while this project

amassed many financial assumptions, calculations and analyses about rates for sheltered work vs. supported employment, it became clear over time that this analysis was intended to result in cost neutral plans for the overall funding of day and employment services.

Key Measures Analysis

Oregon created a system of Key Performance Measures (KPM) to hold governmental agencies accountable for achieving specific numerical outcomes with public funding. ODDS established a KPM for employment in 2011 that projected a 5% annual increase in “percentage of people employed in integrated employment settings”, with a goal of 45% by 2013. Despite the agency’s commitment to the Legislature, the actual percentage of persons in integrated employment settings decreased from 32% in 2004 to 22.8% in 2013, and from 23.5% in 2012 to 22.8% in 2013. Significantly, this KPM system focused only on employment outcomes in integrated settings.

In addition, in 2012 ODDS made a budget request for additional resources to expand integrated supported employment, and specifically to implement the recommendations and employment outcomes set forth in the Work Group’s 2012 Report. However, despite receiving a substantial increase in funding for employment services, there was no improvement in supported employment outcomes, even using the metrics recommended by the Work Group.

4. Components of a State Integrated Employment (or Olmstead) Plan

Any state plan for integrated employment should be expected to have a number of important components. These include:

- clear and consistent definitions
- specific measures of outcomes (especially related to wages, integration and outcomes)
- active and discernable steps for implementation of supported employment services
- specific timelines for implementation
- specific goals for employment outcomes
- specific timelines for achieving defined outcomes
- a valid and reliable data system showing comparable outcomes over time.

These are important components in evaluating Oregon’s plans and activities in the implementation of supported employment.

5. The 2013 Executive Order

Following the strategic Work Group Report of 2012, and investment in training and technical assistance through the contract with the Washington Initiative, Oregon issued an Executive Order (EO) in 2013. At first look, such an order might be considered progress

toward employment for people with I/DD. Regrettably, a second look reveals that it is actually a retreat from meaningful progress on employment because it focuses only on the provision of “employment services”, which may not necessarily result in integrated employment at all. Unlike each of the reports, policies, and legislative measurements noted above, all of which require specific, integrated employment outcomes, the Governor’s Executive Order speaks only to employment services, not actual integrated employment outcomes and work opportunities.

Overall, the EO points, correctly, in the general direction of employment for people with intellectual and developmental disabilities. Its intent is to “further improve Oregon’s systems of designing and delivering employment services” toward fulfillment of Oregon’s Employment First policy, and a “significant reduction over time of state support of sheltered work”. Its provisions on career planning, training, outreach and awareness, provider capacity, education provisions, interagency collaboration, quality assessment and improvement, and data collection and reporting, while necessary, are superficial, inadequate, or simply too general to accomplish the necessary activities for system reform. Most importantly, it fails to expect any employment outcomes for persons with I/DD who are the beneficiaries of the EO.

While the EO is accurate that “the state cannot guarantee a job to any Oregonian”, failing to set goals about employment outcomes is deeply problematic. Integrated employment outcomes in the aggregate should be an expectation in Oregon, and are in most state’s Employment First policies. By analogy, state departments of education cannot guarantee a high school diploma to any given student. However, expectations set by clear goals for achieving a certain level of graduation rates is an aggregate educational outcome. Similarly, integrated employment outcomes can no more be divorced from employment services that graduation rates can be divorced from K-12 education services.

Under the EO and its related data reports, receiving employment services is defined as a determination of eligibility and entry into an employment plan by the Office of Vocational Rehabilitation Service (OVRs), or an employment assessment or discovery from ODDS. Hence, even a brief vocational assessment means the state has met its obligation under the EO. This is both entirely inconsistent with professional standards and a retreat from the state’s own commitment to deliver integrated employment outcomes, as articulated in the 2012 Work Group report, the 2008 Employment First Policy, and the KPM. It is also a retreat from the goals of the DD Council Report of 2005 and the Coulson and Dean ‘Call to Action’ Report of 2010.

EO Section I: Definitions

“Employment services” are those “that are intended to assist a person with I/DD to choose, get, learn, and keep work in an integrated employment setting”. By definition then, any service “intended” to assist a person, satisfies the EO and will count toward its implementation. Moreover, the assistance is not limited to obtaining integrated employment but includes, instead, any service that helps an individual choose – or presumably not to choose – employment. Services need not promote or result in integrated

employment opportunities, but simply be intended to assist a person to choose or learn to work. In addition, the definition is passive, in as much as it intends to “assist” the person, which implies that the responsibility for employment is the person’s and suggests a lesser responsibility by the state. By any measure, this definition of “employment services” – which exclusively determines the EO’s compliance standard – is inconsistent with professional standards, guidelines from professional associations, professional literature on effective strategies for achieving integrated employment, governmental regulations on federal funding for supported employment, and even the state’s own working groups and Employment First policy.

An “integrated employment setting” is defined as “a setting that allows an individual to interact with non-disabled persons in the employment setting”. Once again, if a setting merely “allows”, yet does not promote or assure integration, it can be considered sufficient. This is a much softer definition of integration than the recent legislation (WIOA) mentioned earlier in this report. In addition, the definition specifically includes group enclaves and mobile crews (size undefined, presumably 8 or less). It is well established by research, that those with I/DD in enclaves and work crews are less well integrated and earn less money than those in individual employment.

It is important to contrast this language with the state’s 2012 Work Group language which recommended that 80% of future placements in integrated employment settings must be in individual employment rather than group employment. Over reliance on group employment will assure lower wages and lesser integration than individual integrated employment.

Under the EO’s definition of services and settings, it is entirely possible to see a decrease in the percentage of people actually working with pay in integrated settings, while claiming progress because hundreds of people were determined eligible by Vocational Rehabilitation, participate in discovery for a few weeks and then elect not to work at all, or receive a brief vocational assessment but never are offered any employment opportunities in an integrated setting.

EO Section III: Sheltered Workshops

The EO indicates that as of July 2014, no state-funded vocational assessments will occur in sheltered workshops. By July 2015, the state will no longer fund sheltered work placements for transition age youth, adults new to ODDS day services, nor anyone not already in a sheltered workshop.

There are two concerns with this apparent effort to limit access to sheltered workshops. First, it is unclear, and unlikely, that the planned growth in employment services at least equals the number of students exiting schools in the years ahead, in addition to the number of new people expected to enter the day and employment services system. In addition, there is no commitment whatsoever to actually reduce the number of people currently in sheltered workshops, despite the Work Group’s Report and specific

outcome measures, and expectation for decreasing the state's reliance on segregated settings.

EO Section IV: Expansion of Employment Services

This section speaks appropriately to services that are evidence-based, individualized, and based on an individual's capabilities, choices and strengths. It also sets a target of 2,000 in a ten year period. However, as discussed earlier, the compliance standard is limited to the provision of broadly defined "employment services" and is totally unrelated to the actual number of individuals who are offered employment opportunities in integrated settings or any other professionally-acceptable employment outcome. Therefore, as long as 2,000 persons with I/DD receive a few hours of services "intended to assist" them choose whether to work, the EO's key compliance standard has been met. This is very problematic. The definition of supported employment is that it be: employment, in an integrated setting, and paid, not simply that a person is receiving an employment service such as discovery or job development or be eligible for Vocational Rehabilitation services.

In addition, there is no mention of any intention to reduce the number of people in segregated, sheltered workshops. That success with the EO's key requirement can be achieved without even a single person – and certainly not 2,000 persons – actually working for pay in an integrated employment setting is plainly inconsistent with professional standards on employment, professional literature on successful employment for persons with I/DD, federal funding requirements, the state's own reports and policies, and even its own legislative commitments.

EO Section IX: State Agency Actions

This section specifies that the state will: hire an employment coordinator; support training and technical assistance providers; and develop an integrated employment plan (IEP). While these general goals are appropriate, the section provides no details for assessing the adequacy of implementation, and, most importantly, for determining if any of these actions actually result in integrated employment. For the actions in this section to be achieved, any amount of training or any type of plan is sufficient, as long as they generally support the provision of services "intended to assist" a person to choose a job.

Arguably, the EO's general commitments are intended to be further delineated in supplementary documents, like the IEP (discussed below). Where specific plans are required, and if those plans are deemed binding commitments of the state, then the adequacy of those plans need to be assessed and their implementation evaluated, to determine if the more general EO requirements are satisfied. Obviously, if those plans themselves are lacking, then the EO is further weakened. And if those plans are fluid and ever changing, it is impossible to assess their adequacy or implementation, leaving the more general EO commitments as the only measure of the state's efforts to provide integrated employment. Finally, to the extent that the EO itself simply mentions a state action, like training, but requires no further detail or action steps in another document,

then the EO's general commitments, and the mere provision of some services, are the only measures of compliance.

EO Section XII: Quality Assessment and Assurance

This brief section simply indicates that a quality improvement initiative will be put into place. While a quality improvement initiative is a good idea, without any tie to expectations of integrated employment outcomes, it provides no measures for assessing whether the state's employment system actually is shifting from its current over-reliance on segregated settings to actual employment in integrated settings. This initiative simply needs to "be designed to promote employment services" (services which need only be intended to assist a person with I/DD to choose, get, or keep an integrated job).

The quality assurance provision of the EO does not require or even suggest that there will be a discrete plan for implementing this initiative. Thus the EO, on its face, is satisfied with any type of a quality assurance initiative, regardless of its adequacy or impact. Whether the state's subsequent adoption of a QA Plan (discussed below) should be deemed binding and a supplement to the EO is unclear.

The Executive Order of 2013 gives an appearance of promoting integrated employment for Oregonians with I/DD. In fact, it only sets measures for the provision of broadly-defined employment services, which are entirely disconnected from actual employment in an integrated setting, or any other professionally-acceptable employment outcome for persons with I/DD. As a result, the EO is only an appearance of change, and more properly is a retreat from previous intentions and reports from the state, including the 2005 DD Council Report, the 2008 Employment First Policy, the 2010 Dean and Coulson "Call to Action" Report, and the 2012 Work Group Report, and ODDS' own KPM. All of these reports, policies, and legislative commitments, identify specific employment outcomes that increase the number or percentage of persons with I/DD who work in integrated settings and that decrease the number or percentage of people in segregated sheltered workshops. The Executive Order measures neither. Rather, it only speaks to increasing employment services. Not surprisingly, the Oregon APSE Chapter (2013), while commending the general intent of the EO, made 10 recommendations, including a clear call for integrated employment outcomes rather than simply providing services.

6. The 2015 Revised Executive Order

In February 2015, the Oregon Governor issued a revised Executive Order (No. 15-01). This EO is substantially the same as the 2013 EO, with a few exceptions. The changes are largely in the definitions section (I), and in the service expansion section (IV). These do not alter the overall meaning or intent of the 2013 EO, which is focused on providing services without accountability for employment outcomes for people with I/DD. The sections about Sheltered Workshops (III), Career Planning (V), Training (VI), Outreach and Awareness (VII), Provider Capacity (VIII), State Agency Actions (IX), Interagency Collaboration (XI), Quality Assessment and Improvement (XII), Data Collection and

Reporting (XIII), Assuring Success (XIV), and Other Laws (XV) are virtually identical or substantially the same as the 2013 EO.

Definitions

The 2015 EO provides new definitions for an “Annual Plan”, “Discovery”, “Self-Employment”, “Supported Employment”, “Small Group Employment”, and “Related Employment Services”, and revised definitions for “Career Development Plan” and “Person Centered Planning”. It appropriately includes “Competitive Integrated Employment”, which is required by the 2014 Workforce Innovation and Opportunity Act (WIOA). It modifies the definition of “Integrated Employment Setting” by cross referencing Competitive Integrated Employment and Small Group Employment. This definition of Competitive Integrated Employment replaces what was previously called Individual Supported Employment.

However, the definition of “Employment Services” is the same for adults with I/DD, and covers any service which is “intended” to assist a person to choose, get or keep a job. This exceedingly broad definition now also includes any education or training for youth in the transition process or for those who exit public school. What is important to note about Employment Services is that there is no requirement where these services are provided. That is to say, any, or all of these could be provided while a person is in a sheltered workshop or a segregated day program. This means that people with I/DD could be considered to be receiving employment services while spending all or most of their time, for months or longer, while sitting in a sheltered workshop or day program every day for the foreseeable future.

The new definition of “Small Group Employment”, while requiring compensation at the State minimum wage, is otherwise the same as the first EO’s reference to enclaves or crews. Although recognizing the group employment is less preferred than Competitive Integrated Employment, it endorses congregate employment settings which are not individualized, are less integrated, traditionally include only persons with disabilities, and often are created and maintained by employment providers including sheltered workshop providers. Further, there is no limit on the amount of time someone can be in small group employment, while noting (EO 2015, p.6) “the individual must maintain goals to pursue Competitive Integrated Employment opportunities”.

Employment Services Provided Through ODDS and VR

There is an important and surprising change in this section of the EO compared to the 2013 EO. The 2013 EO projected 2,000 individuals would receive Employment Services by July 2022. The 2015 EO projects 7,000 or 3.5 times more individuals will receive Employment Services over 9 years and almost the same percentage will receive such services annually compared to the 2013 EO. Of course, according to the January 2015 Employment First Report, discussed below, 3,071 people are already getting employment services (Path to Integrated Employment), even though the number of people working in paid and integrated jobs is virtually unchanged for decades. In 2011 and 2012, the number

of ODDS clients who received job development funded by ODDS exceeded the projected annual number of persons who will receive any form of employment services under the EO, including discovery (a new service), vocational assessments and VR plans (VR services), job development and supported employment. As noted later in this report, this apparent changing of the targets from 2,000 receiving Employment Services to 7,000 receiving Employment Services is, in reality, a different way of calculating the same service settings and service utilization that informed the original EO. According to the Statewide Employment Coordinator, instead of taking a point in time count of the number of individuals with I/DD in sheltered workshops, a data analyst counted the number of individuals with I/DD who were in, or at risk of entering, sheltered workshops over the course of a year. Thus, the new EO figures is simply a more accurate projection of the actual number of persons who have always been in, or at risk of being in, segregated employment settings.

The 2015 EO, like the 2013 EO, only requires exceedingly broadly-defined Employment Services, with virtually no commitment to improving the employment rate of people with I/DD in integrated settings, despite the fact that Oregon's Employment First policy "makes competitive integrated employment -- not employment services -- the goal. And while employment is the goal, there are no measures of integrated employment in either the 2013 or 2015 EO. What is equally troubling about the 2015 EO is that in each of the service definitions there is no indication of the amount of service offered, the degree of integration, and, most importantly, the outcome -- integrated employment in a competitive employment setting. As a result, a single assessment, or 2 hours a month of job development, or an hour a week of discovery mean a person has received, and will be counted as having attained, employment services.

The expansion of definitions of services to include almost anything, while more than tripling the number of individuals who receive such services, further undermines the EO as a practical or productive plan for reducing segregation and concomitantly expanding integration in employment. In the absence of any standard for service intensity, location, integration, or outcome of these services, together the lack of any commitment that anyone will actually get competitive integrated employment, renders the EO an unproductive and ineffective approach to complying with the ADA. These elements of the 2015 EO can only further undermine the confidence of people with I/DD, their families and the providers of services in the State's commitment to integrated employment. For individuals and families the message is: providing any amount of any employment service -- no matter how little or what the result -- allows the state to claim success. The message to providers is that providing any employment service is sufficient, whether or not anyone actually gets competitive integrated employment.

The 2015 EO does not meet the expected standards of an adequate Olmstead employment plan. Definitions have been added or adjusted since the 2013 EO, but employment outcomes are not a part of the EO, and commitments by the state are only concerned with providing services of an unknown quality or amount.

7. Analysis of Quality Assurance / Quality Improvement Plan Report July 2014

The Oregon Department of Human Services, through its Employment First Office, issued a Quality Assurance/Quality Plan in July 2014. As noted above, the status and binding effect of this plan is unclear, as well as whether it should be considered a part of, or supplement to the EO. In any event, this plan includes specific measures that could form the basis for specific employment outcomes such as: the number persons with I/DD served, the number obtaining employment in an integrated setting, average wages and hours (p. 8), type of work (p. 10), the number of students who have a job when exiting school and those with a job within one year of exiting school, etc. These data points suggest that integrated employment outcomes should be the proper measure of the effectiveness of the EO, rather than simply the number of persons receiving employment services.

But there is a significant problem with both these measures and their application. While the QA plan describes appropriate data points (actual employment, integration, individualization, wages, hours, job retention), with the single exception of core competencies, the plan includes no standard, no number, no expectation of change, no measure of adequacy – not even a goal – for each. As a result, the plan represents little more than a data collection directive and fails entirely as an appropriate supplement to the EO for describing actual integrated employment outcomes.

Section A. Quality of Planning

The activities of this section appear to be planned for statewide implementation across ODDS, ODE and VR. Data measures are specified in terms of the number of persons with I/DD served, the number obtaining employment, etc. and the number that apply to the Vocational Rehabilitation agency. There are also measures for the Department of Education concerning the number of students who have a job prior to school exit, etc. However, there are no employment measures for ODDS, only process measures concerning service planning. This is particularly troubling since all persons in sheltered workshops and many persons who will receive integrated employment are served and funded by ODDS. Similarly, the only two “Quality Improvement Initiatives” apply to ODE, with none for ODDS or OVRs.

It is difficult to imagine a plan to improve quality when there is no measure of expected employment outcomes for ODDS, the agency with the primary responsibility for day and employment services in the state.

Section B. Quality of Providers

The activities in this section apply to providers of employment services. Data measures are included, but, once again, no standards or numerical outcomes or goals are identified. The one exception to this pattern is the requirement that 100% of all ODDS employment service providers meet the core competencies for employment professionals (job developers and job coaches) established by DHS. Significantly, this requirement is limited to ODDS providers and thus has no impact on VR providers, which represent the majority

of current job developers and job coaches in Oregon. While this is an expectation of providers, it does not mean people with disabilities will necessarily obtain integrated employment as a result. Moreover, when read together with the new ODDS employment standards, it becomes clear that the 100% outcome measure is satisfied if only 1 staff person in an agency meets these competencies, even if that agency employs has dozens of employees involved in vocational services.

Section C. Quality of Services

In this section a number of services and processes are measured. The majority of measures involve service planning and implementation processes, and are generally appropriate. However, the plan includes no specific employment outcomes, numerical standards or goals, or compliance requirements. It does reference and propose monitoring the requirements of the EO and IEP. But, as discussed earlier, the EO specifies services not integrated employment outcomes. As discussed below, the IEP constitutes the only document that sets forth specific numerical outcomes for increasing the number and percentage of persons served by ODDS who obtain individualized integrated employment (presumably this means non-group and non-sheltered workshop) and the percentage of those in individualized, integrated employment who work more than either 10 or 20 hours a week. It includes no measures or standards applicable to persons with I/DD served by VR, youth in schools, or persons in segregated workshops.

Overall, this QA/QI plan has language and features one would expect to see in such a plan and many of the process measures are useful and important. However, the lack of any numerical goals or compliance standards (with one exception), the omission of any integrated employment outcomes for ODDS, and the exclusion of VR providers from the core competency requirements is very problematic.

8. The Initial Integrated Employment Plan (IEP) - November 2013

The IEP of November 1, 2013 is a byproduct of the Executive Order of April 2013. It guided the State and set forth its commitments on employment services to individuals with I/DD, their families and guardians, the provider network, other stakeholders, the legislature, and the general public for the first two years of the EO. Since the IEP is required by the EO, and given testimony by the Director of DHS, Errin Kelley-Siel that the IEP metrics are binding, the IEP arguably is incorporated into the EO and assessed as part of the EO. It allegedly was the detailed Olmstead plan that the State touted as meeting its responsibilities under the ADA.

The IEP provides a history of integrated employment for people with I/DD in Oregon as well as providing goals, strategies, activities and metrics for progress. It then describes goals and activities in six areas: Policy; Funding; Capacity Building; Outreach and Awareness; Quality Assurance; and Innovation. Generally, the goals and activities described are what would be expected from a major state level initiative. In addition, the plan describes outcomes and metrics, including:

- ❑ Increasing the percentage of people who are working in individual integrated employment settings (increase by 12% to 13% from 6/13 to 6/14, and to 14% from 6/14 to 6/15).
- ❑ Increasing the number of people who are working in individual integrated employment settings (increase by 50 from 6/13 to 6/14, and by 100 from 6/14 to 6/15).
- ❑ Increase the percentage of people who are working in individual integrated employment settings who receive pay at or above state minimum wage (increase from 78% to 81% from 6/13 to 6/14, and from 81% to 84% from 6/14 to 6/15).
- ❑ Increase the percentage of people who are working in individual integrated employment more than 10 hours a week (increase from 20% to 29% from 6/13 to 6/14, and from 29% to 43% from 6/14 to 6/15).
- ❑ Increase the percentage of people who are working in individual integrated employment more than 20 hours a week (increase from 3% to 15% from 6/13 to 6/14, and from 15% to 21% from 6/14 to 6/15).

While the plan says in its introduction that it intends “a significant reduction over time of state support of sheltered work”, no measures or goals for reducing segregation were included in the initial plan. This is inconsistent with the intent and purpose of the EO, and again a retreat from the state’s commitments in other documents. In addition, these goals seem quite modest considering there are more than 11,000 people receiving day services. They are particularly so since the last three metrics intentionally omitted almost 2/3 of the individuals with I/DD served by ODDS (persons on the Support Services Waiver), even though these individuals were known to work more hours and earn more money. While it appears that the first two metrics may include all persons on both DD waivers, the EF data analyst, who works regularly with these metrics, believes they do not.

It is important to note the inconsistencies of the measures being used for progress in expanding individual integrated employment:

- ❑ The Work Group Report contains numerical commitments to decrease the number of persons with I/DD who are segregated in sheltered workshops. Despite the purpose and intent of the EO, the IEP contains no metrics for reducing segregated employment.
- ❑ The increases in individual integrated employment contained in the Work Group Report and used to support the legislative appropriation request for 2013-2015 are significantly greater than those contained in the IEP.
- ❑ The KPM contains numerical commitments to increase integrated employment which are substantially greater than those in the IEP.
- ❑ The QA/QI Plan measures increases in individual integrated employment for providers of service, VR and ODE, but not for ODDS.

The initial IEP measured increases and improvements in individual integrated employment but only for persons funded by ODDS. It contained no measures for persons receiving VR services or youth in transition, even though these are part of the Target Population of the EO and part of the compliance measure for employment services.

These inconsistencies, deficiencies, and substantially reduced commitments from prior documents are a major concern about the effectiveness and appropriateness of the EO and the initial IEP. The metrics for accountability in the EO appear to be Oregon's expectations going forward, even those the other documents measure actual outcomes of jobs, integration, hours and wages.

9. The Revised Integrated Employment Plan (IEP) – January 2015

The revised IEP is substantially the same as the initial IEP for the first sixty pages. The differences are in the definitions (which align with the new 2015 EO) and a summary update on activities from the original IEP. There are new measures (metrics) that are added. The overall intent of the IEP remains much the same in as much as it measures a number of items relative to employment, services and workshop participation without addressing accountability.

The first five measures, starting on page 64 of the IEP are the same as before: increasing the percent working in individual employment, the number in individual employment, per cent paid at or above minimum wage, working more than 10 hours a week and per cent working more than 20 hours a week. All of the baselines and annual projected increases for these five metrics continue the data deficiencies, omissions, and unreliable analysis contained in the original IEP, despite improved data systems, alleged oversight by the Policy Group, and the intentional exclusion of approximately 8,000 individuals on the SSW.

Four of the five are metrics counted as the percent of those working. However, number two is the actual count of people "receiving employment services who are working in individual integrated employment settings". Presumably this number is cumulative, with 1,486 indicated as working 6/30/14 and 1586 by 6/30/15 (with 1353 set as the baseline). This suggests an anticipated increase of 100 in the current fiscal year. It is important to note the 2015 EO indicates 750 people will receive employment services. This means Oregon intends that only 13.3% of those receiving employment services will actually participate in employment in competitive integrated environments. It is also important to note that this table shows a cumulative number.

A number of new measures are added, but most include no metrics or projections, indicating only that they will be supplemented at a later date (TBD). These include the key measure for Strategy 1 (Reduce Use of Sheltered Workshop Services), most of the measures in Strategy 2 (School Age Services), all of the measures in Strategy 3 (Service Capacity), and the core EO commitment – the percentage of individuals with I/DD who receive employment services. Two other measures are added: increase in "newly achieved" employment for adults with I/DD (Measure 6) and increase "newly achieved" employment for 18-24 year olds (Measure 7). Both of these metrics are problematic. Measure 6 shows 295 in "newly achieved employment for 6/30/14 and 315 by 6/30/15. It is important to understand that Measure 7 (18-24 year olds), is a subset of Measure 6 (adults receiving ODDS/VR services). But Metric 2 (discussed above) projects an increase of 183 adults who will receive individual integrated employment by 6/30/15. It is almost impossible to

understand how these numbers can be reconciled, since it appears that almost 175% more adults will newly achieve employment in an integrated setting than the number of ODDS clients who will work in an integrated setting.

Measure 6 projects an additional 330 individuals will newly achieve employment in individual integrated employment settings from 6/15 to 6/16. If this rate of expansion extends through 6/22, this means more than 2,300 individuals would achieve individual integrated employment. However, as noted by the EF data analyst, the baseline of 266 individuals simply reflect the number of VR clients with I/DD that achieved closure in the VR system before the EO was even issued, and has nothing to do with the stated intention or investment going forward. Moreover, the modest projections for 6/14 (additional 29 individuals) and 6/15 (additional 49 individuals) was calculated without any reference to new services or efforts, but instead just reflected projected demographic and demand data for Oregon. Thus, it is hard to have any confidence in figures that the State's own personnel acknowledge as severely influenced by data limitations.

Strategy #1 intends to reduce the census of sheltered workshops and projects a rapidly declining number of individuals who receive sheltered workshop services. Clearly this chart is cumulative, decreasing from 2,717 to 2,540 (177) by 6/30/15. Significantly, the number of persons in sheltered workshops who obtain integrated individual supported employment is left blank. But even setting aside this glaring omission, it is unclear how 177 individuals will leave sheltered workshops while 183 ODDS clients will receive integrated individual supported employment unless virtually all new supported employment placements are reserved for adults – and exclude youth 18-24 – who are in sheltered workshops. Information provided by the EF data analyst clarified this confusion.

It appears that this decrease in the number in sheltered work simply reflects the numbers that have typically exited sheltered workshops in recent years, and has nothing to do with achieving individual integrated employment. The decrease admittedly includes individuals who move to a different segregated setting, or even stop receiving services altogether. There is no indication that a decrease in the number of individuals in sheltered work is at all related to the numbers achieving individual integrated employment.

Overall, expanding employment for people with I/DD should be less about taking things away (sheltered work) than it is about making sheltered work unnecessary by helping people get and keep integrated employment. One clear risk is that people will move from sheltered work to non-work segregated programs, which is simply a form of trans-institutionalization and hardly an adequate Olmstead strategy. A second risk is over reliance on group employment which will clearly result in far lesser wage and integration outcomes than competitive integrated employment. Having a plan to remove people from workshops without a concomitant commitment to ensure that they receive integrated employment can only create fear and mistrust on the part of people with I/DD and their families. It also sends the wrong message to providers, by focusing on census reduction rather than service expansion, which is precisely what seems to be happening in Oregon. Simply getting people out of workshops accomplishes nothing and may actually do harm.

Overall, the IEP is little changed in any substantive way but the new “counting” issues are very troubling. This plan, and the 2015 EO, clearly do not meet the expected standard for a credible, employment plan outlined in Section 4 of this report. It is not using definitions consistently; its measures are confusing and do not reconcile with each other; the actual steps to achieve improvements are not well laid out or presented in ways to show how they will result in meaningful change; and ultimately, it is not likely to result in a substantial enhancement of professionally-acceptable and effective integrated employment opportunities. Further, the data system is becoming less credible rather than more valid and reliable over time. Finally, there is no accountability established to achieve employment outcomes. Providing services without commitment to outcomes cannot possibly achieve the success targeted in early reports and recommendations and by the early working groups, prior to 2013.

10. Employment First Reports

The most recent reports of progress to date is provided in the July 2014 and January 2015 Employment First Report. These reports provide information about where people spend their time and whether or not they are working.

These data from the July 2014 shows remarkably little, if any, progress in providing supported employment to Oregonians with I/DD. Given the ramp up of activity following this lawsuit, there is little progress after three years.

- ☐ From September 2011 to March 2014 the number of people in integrated employment decreased by 61.
- ☐ In the same time period, the number of people in group supported employment decreased by 12.
- ☐ In the same time period, the number of people in facility based sheltered employment increased by 167.
- ☐ The number of people in non-work day programs increased by 317.
- ☐ In this time period, overall, 547 people were added to day services.
- ☐ The number of people in Job Development services increased by 31.
- ☐ The number of people in Discovery service increased by 105.
- ☐ No information is provided about the hours per week of those receiving the services of Job Development and Discovery.

From September 2011 to March 2014, individual integrated employment has not increased. Sheltered work and non-work day programs have increased.

There is another troubling fact in these data. The number of hours in employment is remarkably low. Those in group employment averaged only 10.2 hours a week. Those in individual integrated employment average 6.3 hours a week or 1.26 hours a day. While we might expect substantial variation from person to person, such low averages indicate major problems in job development, and the overall implementation of supported employment. With hours of employment so low, this guarantees a secondary service is likely being provided which is either non-work or segregated or both.

The data from the January 2015 report provides data about services and employment outcomes through September 2014. As presented it is largely un-interpretable because the data system used to create the report has changed. It now relies on the “Plan of Care” (POC) for each individual rather than the former “snapshot” data system called the Employment Outcome System” (EOS). The July 2014 Employment First report indicated 1,486 in individual supported employment and 1,186 in group employment. The January 2015 report indicated that, as of September 2014, there were 573 in individual employment and 751 in group employment. Oregon is reporting 2,672 in supported employment in March 2014 and 1,324 in September 2014 – or an almost 50% *decrease* in supported employment in six months. Even if a portion of this dramatic decrease is due to changes in definitions and data errors, it is alarming. The January 2015 report goes on to say the data reported undercounts the number who are in fact receiving services, but offers no explanation how this undercounting effects the data.

Another troubling number in the January 2015 report is the number of people receiving Path to Employment services. Path to Employment services include sheltered workshops and community employment that does not meet the definition for Supported Employment in the EO and IEP. In January 2015 the number in total is 3,071. This compares to 1,607 in the July 2014 report. Thus, an additional 1400 received Employment Path services in this six month period. In effect, the decrease in the number of persons integrated employment settings was virtually matched by the increase in the number in segregated settings and other, non-competitive community employment. At best, the definitional and data modifications reveal a far more troubling picture of Oregon’s employment system than just a year ago; at worst, it indicates real regression.

The implication here is deeply troubling. Services are defined in the 2015 EO to include a wide range of things from the discovery process to assessments, to name only a few. This clearly suggests that anyone getting one of these services for a few hours a week is counted as being served, for the purposes of the EO’s expectation of 7,000 receiving employment services by 2022. In reality, this seemingly greater number to receive services is simply a reflection of a different way of counting the same, original reality of sheltered workshops in 2013-2014.

Even more troubling is that the EOS data were not collected in September 2014, making it impossible to assign meaning about impact or progress from the January 2015 report. And because the numbers are so different, it raises questions about the meaning of the July 2014 report as well. Of course, data systems can always be improved and should be adjusted over time. However, when shifting from one method to another, the former (EOS) should have been done at the same time that the POC approach was introduced. Having September 2014 numbers side by side for the EOS and the POC approach would have allowed some chance at interpreting the POC based reports. As it stands, the January 2015 tells us very little about Oregon’s stated overall goal of competitive integrated employment for people with I/DD. In fact, the changing definitions, addition of people with brokerage waivers, and changes in what is counted and how things are counted, make suspect the data of the past, the present and the near future. Only by establishing some kind of new and

credible baseline, and tracking employment data in a valid and reliable way, and over a period of several years, will it be possible to understand what progress may be made in increasing competitive integrated employment outcomes for people with I/DD in Oregon.

11. Employment Benchmarks from initial IEP and July 2014 Employment First Report

The IEP set five Employment Benchmarks to measure progress. Progress on these Benchmarks is also reported in the July 2014 report.

This report concludes that:

- ☐ The percent in individual integrated employment increased from 12% to 13.1% from March 2013 to March 2014 (goal reached).
- ☐ The number of people receiving employment services increased from 1352 to 1486 from March 2013 to March 2014 (goal reached).
- ☐ The percent working in individual integrated employment increased from 78% to 82.6% from March 2013 to March 2014 (goal reached).
- ☐ The goal of reaching 29% of people in IIE working at least 10 hours a week was not reached.
- ☐ The goal of increasing the percentage of people in IIE working more than 20 hours was not reached.

These goals are, in the first place, quite modest, and, as noted above, substantially less ambitious than prior commitments in the KPM and Work Group Report. In addition, the baseline set is March 2013 – even though the data show integrated employment losses from September 2011 through March 2014.

12. Key Informant Information

Significantly, many of the findings and opinions set forth in this report are consistent with the independent observations of key informants, including their consistent reports that:

- ☐ Oregon was a leader in the past, in the 1980s.
- ☐ Since about 2010, there has been a lot of activity with little outcome.
- ☐ There is a general feeling of a lack of sustained state level leadership.
- ☐ Many training events have occurred but typically without follow up for local implementation.
- ☐ There is too much group employment rather than individual integrated employment.
- ☐ There is too much emphasis on “Choice” rather than “Employment First”.
- ☐ Oregon APSE issued a statement of concerns about the EO emphasizing services rather than integrated employment outcomes.
- ☐ All of the effort to close Oregon institutions resulted in a lack of focus on integrated employment.

- ☐ “Discovery” services are being provided in Oregon but there is little reason to believe it is being conducted with fidelity.
- ☐ The data about the employment states of people in the “brokerage” system is suspect because the method by which it has been collected.
- ☐ There appears to be limited vision that people with significant disabilities can and should work in integrated employment.
- ☐ Providers are under little pressure to improve.
- ☐ Providers have not been asked to set clear goals for integrated employment.
- ☐ Training for quality implementation is provided to providers but little ongoing technical assistance statewide.
- ☐ WISE assistance has been of good quality and useful, but they are unable to follow up with providers statewide in the intensive fashion needed.
- ☐ There are insufficient methods to connect people and providers to learn from each other.
- ☐ There is a lack of clear goals for integrated employment outcomes for each county and provider and for ODDS.
- ☐ The rate structure is inadequate and lacks incentives for integrated employment.
- ☐ There has long been an insufficient involvement of all counties and communities.
- ☐ There are few, if any, rewards for integrated employment outcomes and progress.

VII. Summary and Conclusion

Oregon was an early leader in the development and implementation of supported employment in the 1980s and the early 1990s. The state had clearly demonstrated it had the capability and capacity to implement supported employment statewide and improve for at least a decade. Along the way, Oregon lost its focus on supported employment outcomes, and, as a result, sheltered work and day habilitation programs became the predominant services for people with I/DD.

By 2005, advocates had begun to express great concern about the loss of focus on supported employment and the declining outcomes. Even as Oregon declared an Employment First Policy, and commissioned a 2010 “Call to Action” report, no improvements were evident. Only after a 2011 letter from Disability Rights Oregon, did activity begin about supported employment, with the formation of a Stakeholder Planning Workgroup.

Four years later, now in 2015, little if any, progress has been made in employment outcomes for people with I/DD, even if there is the appearance of great activity, the provision of some new employment services, and Oregon’s unsupported and highly-questionable declaration in its January 2015 Integrated Employment Plan that it is “outcome driven”. Oregon continues to assert that the provision of employment services is the acceptable measure of its efforts, despite the reality that employment services can be, and are being, provided in the same segregated setting where individuals with I/DD have remained for years, and even without any outcome that is even vaguely related to

professionally-acceptable, integrated employment. In fact, the simple provision of a few hours per week of employment or related services, allows the state to claim progress, even while those individual served continue to spend their days in sheltered workshops or other non-employment day services.

Oregon's 2015 Revised Executive Order and January 2015 revisions of the Integrated Employment Plan are inadequate as a workable plan and ineffective as a method for ensuring integration in competitive employment opportunities for persons with I/DD.. The changes in how employment and employment services are counted, and for whom, have resulted in continued confusion in measuring exactly what integrated services are being provided where, and with what results.

The Executive Order No. 15-01 clearly states "Competitive Integrated Employment is the much-preferred and optimal form of employment for all Oregonians with intellectual or developmental disabilities". The activity of the last several years have not delivered on this stated goal, nor do the current plans for the future provide a credible path for competitive integrated employment for Oregonians with intellectual or developmental disabilities.

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