

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

PAULA LANE, et al.,

on behalf of themselves and all
others similarly situated, and

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

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

Plaintiffs,

v.

**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.

REBUTTAL REPORT OF DEBRA McLEAN

I. ISSUES ADDRESSED

I have reviewed and am responding to the reports of Cathy Anderson, Eugene Edgar, Brian Lensink, James Nicholson, Kimberly Osmani, and Ric Zaharia.

Among other issues, I will focus on Oregon's historical efforts to provide integrated employment, its person centered planning process including its Career Development Plan, and Oregon's efforts to provide vocational training and opportunities to youth with IDD. Finally, I will address the adequacy of Oregon's historical and current plans to increase integrated employment.

II. EXPERTISE

I attended college at the University of California, Riverside and received a Bachelor's degree in Psychology. I moved to Oregon in 1979 to pursue my graduate studies in Rehabilitation Counseling and Deafness.

Upon receiving a Master's degree in 1981, I worked at the Oregon State School for the Deaf as a transition and work experience teacher. My case load was mainly students 14-21, most with additional disabilities besides deafness. My first mandate was to participate in a short lived project to locate paid summer jobs for all students with deafness in the state of Oregon. This was funded by a work force CETA grant for youth. I didn't know until the project was over that most of these students, most of whom had IDD and deafness, were considered unemployable and were destined for sheltered employment, if any employment. Through that experience I became galvanized by how capable my students were, despite their files documenting a litany of disability labels and diagnoses. In particular I saw how students thrived in regular work settings as they were able to escape the stigmatizing low expectations of the school itself. Over my 7 years at the school I experimented with getting as many of my students as possible into real work settings, without knowing that supported employment was beginning to be a nationally recognized concept and movement. After seeing my students burst into competence, I was shocked to realize that, as students with Deafness and IDD, once they left school that their best option for employment was a waiting list for sheltered employment. After visiting such places, I concluded that sheltered employment seemed to be a huge step backwards for such capable people.

In 1988, I took a summer job for the state of Oregon as a trainer in health and safety for the direct care workers who worked at Fairview. At this juncture the State was under siege for the dreadful conditions at Fairview. This gave me the painful opportunity to see first-hand the lost generations of human beings who had not been raised in regular communities and how neglect, dehumanization, and lack of education had so adversely affected them.

In September of 1988, I went to work at the University of Oregon Specialized Training Program (STP) for the next six years. At the Specialized Training program, I worked on several statewide projects involving youth with IDD, transition, and employment. All of these projects partnered with the state of Oregon. These projects worked closely with Oregon Department of Education (ODE) and with Oregon Developmental Disabilities Services (ODDS), and to some extent with Oregon Office of Vocational Rehabilitation Services (OVRS).

As an employee of the Specialized Training Program, I was able to learn from the very best trainers and practitioners of supported employment, many of whom are now considered national experts in employment and people with IDD. There, I studied Person Centered Planning with, John O'Brien, Marsha Forrest, and Jack Pearpoint, the founders of Person Centered Planning. I also took classes in Person Centered Planning from Beth Mount and later Michael

Smull. I am committed to the core of John O'Brien's philosophy that true Person Centered work must have inclusion, full participation, and community as its goals. I see paid integrated employment in regular settings with regular wages as the embodiment of this work. Coupled with my work in assisting people to access paid employment, I saw how useful the Person Centered Planning process could be in uncovering the secret of competence that is in every person, which is akin to Discovery work done by Cary Griffin and Michael Callahan.

Since learning Person Centered Planning facilitation in 1988, I have facilitated at least 1,000 plans. Most of the plans that I have facilitated have centered around accessing paid employment. My work as facilitator in Oregon and Washington has assisted people of all ages in leaving institutions including psychiatric facilities, jails, and drug rehabilitation. I have helped people of all ages and diagnoses, as well as families, plan to enter and succeed in a range of environments -- from regular education settings to dying at home.

After leaving the University of Oregon as an employee in 1994 I began working for Oregon Technical Assistance Training Corporation, a non-profit providing training and technical assistance for numerous projects involving people with IDD and employment. This included working closely with agencies across Oregon to improve access to employment for people with IDD. I also worked for at the Center on Self Determination in Portland, providing technical assistance to families, schools, and agencies seeking to improve their employment outcomes for people with IDD. I also worked as an adjunct at Portland State University where I taught courses on transition to graduate students in the special education teaching degree program. I have presented at numerous national conferences and provided training on Job development, supported employment, and Person Centered Planning in Oregon, Washington, California, and Australia.

For the last two years I have been working as a freelance consultant providing training and consultation on supported employment and Person Centered Planning to families, businesses, schools, and agencies. For the past 6 years I have taught the winter term of the state of Washington's Employment Professional Certification Program, sponsored jointly by the state of Washington, WISE, and Highline Community College. This term focuses on best practice job development and placement of people with IDD. I also teach trainings on teaching and training people with IDD to succeed with supports in the workplace.

A full description of my training and experience is set forth in Appendix 1.

III. DOCUMENTS REVIEWED

In preparing this report, I reviewed the documents set forth in Appendix 2.

IV. CONCLUSIONS

A. OREGON'S HISTORY OF SUPPORTED EMPLOYMENT SERVICES

In reviewing the outline of events in Oregon's history of supported employment, as described by defendants' experts and specifically by Brian Lensink, I feel they have omitted critical events and processes that shaped Oregon's system in the years prior to the Executive Order. Much of what was done over the past 25 years was undertaken by stakeholders, advocacy groups, universities, and concerned professionals, in significant part because of a lack of leadership and efforts by the State. I have attempted to enumerate some of these events in this document.

Oregon began the process of crafting policies and resources that would lead to improved employment outcomes in the 1980s, but abandoned it by 2001. The last 13 years, up to 2013, have seen a decline in supported employment outcomes and a lack of training for employment professionals and specialists, as well as a rise in the numbers of people entering Alternatives to Employment.

Upon reflection, I feel that the original trajectory of work done by the State of Oregon, including Oregon Developmental Disabilities Services (ODDS), Oregon Office of Vocational Rehabilitation Services (OVRs), and Oregon Department of Education (ODE), became a flat and sometimes downward line away from progress when it came to support for people with IDD attempting to enter the work force. The families and individuals who have waited so long for employment deserve better than a circuitous system fraught with disappointment and artificially created systemic dead ends, with a limited capacity of trained professionals to carry out the work.

1. Closing Institutions Was a Missed Opportunity to Build Systems that Would Support Greater Employment Options

As mentioned by many of the defendants' experts, Oregon did indeed take the step of closing its institutions after their horrific conditions came to light, though not without pressure from the U.S. Department of Justice and from the U.S. Department of Health and Human Services. Oregonians should be proud of taking this necessary step. However, a full community life that included community-based employment was not presented as an option to all, or even many, people leaving institutions in Oregon.

Supported employment was not fully explored for most individuals exiting institutions. Rather, people were given the option to work in a sheltered workshop or within the rapidly expanding, and segregated, Alternatives to Employment (ATE) program. Much time, effort, and thought was put into finding appropriate housing and supports, but very little, if any, was put into collaborative efforts to find paid community employment across the State. Thus, instead of the closing of Fairview and the Eastern Oregon Center being a rationale for the State failing to

maintain its leadership on supported employment, it actually was an unfortunate missed opportunity to increase its capacity for, and focus on, integration.

2. Manuals

The State's experts cite the development of training manuals as another event on their supported employment timeline. From 1999 to the present, numerous transition manuals have been produced by the Oregon Council on Developmental Disabilities (OCDD), by ODE, and by ODDS. This practice came out of the early transition projects of the late 1980s that were collaborations with the University of Oregon and the Oregon Department of Education. Some manuals were formally commissioned by the State, others were produced by the school districts.

From 1982 to 1999, the University of Oregon, in collaboration with the ODE, had a project building local transition teams around the entire State. These teams were comprised of the stakeholders, local Vocational Rehabilitation (VR) office staff, case coordinators, community members, and teachers from the school district. The teams met periodically with guidance from the ODE, and sought to disseminate best practice information about transition leading to a life that includes paid employment. Comprehensive transition manuals were written and distributed by local teams, which detailed the collaboration and process of accessing services. These teams were organized and supported by transition specialists from the ODE. This elaborate network dissipated after 1999 after the Oregon's Department of Education withdrew its funding and supports.

From 2002 to the present, the local transition teams were abandoned, and the charge of writing and re-writing the manuals fell to the OCDD, which continued distributing them in various iterations. None of the OCDD manuals reflected the great difficulty that individuals with IDD and their families experienced in actually accessing services for employment.

3. Supported Employment Lecture Series Was Developed by Private Citizens Concerned about the State's Practices

In his report, Lensink lists a 2008 presentation by a state employee at the Supported Employment Lecture Series as an example of the upwards trajectory of state-sponsored activities to sustain supported employment in Oregon. However, the Lecture Series was not created or implemented by the State. It was conceived of and carried out by a small group of concerned citizens and professionals, including myself and the director of Oregon Technical Assistance Corporation (OTAC), Dianne Turner.

Our citizen group developed the Lecture Series because we felt that ODDS had not been interested or invested in supported employment training or practice, particularly from 1999 through 2004, during which ever-growing numbers of people with IDD were entering ATE. We observed that many people with IDD experienced difficulties effectively accessing VR services and that many employment specialists employed by programs as job coaches and developers had

lost sight of good supported employment and job coaching practices. We felt that a generation of direct care workers would lose an understanding of what supported employment meant and how to implement it.

To address these concerns, our citizen group started the Supported Employment Lecture Series, enlisting local experts to give day-long seminars on topics related to best practices in Supported Employment, such as: Person Centered employment planning, job development and marketing, systematic instruction and job coaching, as well as how to work with systems. The series was conducted monthly over the course of two years. We enlisted as lecturers professionals from around the State who had pioneered innovative programs in supported employment since the 1980s. These professionals gave their time to lecture for nominal fees, if any. The series was well attended, but on a small scale. Lectures were held once a month over 18 months, with twenty to twenty-five people attending each Lecture. This series was very well received and got excellent reviews from attendees.

Two ODDS state employees, Mariah Forrest and Molly Holsapple, attended some of the Lecture Series. I was present when Ms. Holsapple presented an hour-long lecture on rates and the progress of the ReBAR project (which, as of the time of this writing in 2015, has yet to be realized). Lensink referenced this presentation as one of Oregon's three 2008 accomplishments in his time line. In fact, at the time, neither Ms. Holsapple nor Ms. Forrest was officially designated by ODDS to work solely on employment issues. At the Lecture Series, both Ms. Holsapple and Ms. Forrest commiserated with me and the other members of the citizen group, telling us that, regrettably, supported employment was only a piece of their larger jobs at that time and that they were unable to do more. They expressed to us that they were unable to influence ODDS to take a greater role in implementing larger employment systems change.

4. Development of the Brokerage System Actually Undermined Efforts to Expand Supported Employment

The development of the Brokerage system, starting in 2000, had two implications for supported employment. First, developing the Brokerage system resulted in the expansion of the ATE program, rather than expansion of supported employment. Second, the tools used by Brokerages were not tailored to people with IDD, which meant that people with IDD did not have true choice about whether to pursue employment.

a. Expansion of Alternatives to Employment

When the Brokerages were started in 2000 after the Staley lawsuit, a small number of parents of the plaintiffs in the suit requested that their family members be placed in a segregated ATE program, as the family members felt that their children were "too disabled to work." Many employment professionals would argue that, given proper planning and innovation, these individuals could indeed enter the work force. Self-determination was the rationale for allowing this uninformed choice.

ODDS granted the family members' request, and those few individuals entered ATE. However, once established, this segregated program grew from serving 6-7 people in the whole State to serving one third of the entire IDD Oregonian adult population. Many persons were offered the option of ATE without really having an opportunity to explore their own skills and work possibilities. Services such as Discovery or Person Centered Planning can define for individuals with IDD what work can mean in a hands-on way. These services can also demonstrate that even people with very significant disabilities can be supported in paid community jobs. However, individuals with IDD were not receiving any form of prevocational or Discovery services, which meant that they were forced to make a choice about entering ATE without having a true understanding of what choosing to work might mean for them. As a result, the Brokerage system actually contributed to increased segregation in employment and day services.

B. Brokerages' Use of Inappropriate Tools and Forms for IDD Population

When the Brokerages were developed in 2000 in answer to the Staley lawsuit, it was thought that Person Centered Planning would be an integral part of the intake process for Brokerages and that Personal Agents would be trained to facilitate Person Centered Plans for each customer. Yet, ultimately, the system perpetuated practices that did not give customers with IDD informed choice around employment.

A two-day training was conducted around the state for new Brokerage employees, and Supported Employment and Person Centered Planning were included among many topics. Later, individual Brokerages also used some of their own funds to train Personal Agents after the first round of training. However, despite this training, Brokerages did not actually take a Person Centered Planning approach with a fully facilitated plan, which meant that individuals did not understand their options around using Brokerage funding for employment.

Person Centered Planning is a nationally recognized process for assisting people to determine employment goals, strengths, interests, and preferences. However, Person Centered Planning is different from the concept of Person Centered Thinking, which is what Oregon used to shape its ISP process. Person Centered Thinking is a subset of Person Centered Planning, but it is not at all an in-depth facilitated approach. In fact, Person Centered Thinking can be interpreted by some practitioners in as a cursory a way as describing a person in positive language such as: "Bob is a friendly cheerful person with an IDD." It does little to specifically uncover individual skills and interests beyond a cursory level for employment unless it is explored in greater depth. This in turn influences the employment process and outcomes, particularly with people with limited understanding of what work could mean. By not defining and clarifying use of these very nuanced processes were to be used, the State limited the options offered by the rest of the system.

One reason Brokerages did not successfully implement Person Centered Planning is that ODDS did not set a standard definition of what constituted a Person Centered Planning process, which had a number of implications. Second, the State did not even begin to define what community-based employment is until 2014. And, to this day, Oregon still defines supported employment to include crews and enclaves, which often exist as an isolated group of people all with IDD working together, as opposed to people working in integrated settings. This was in contrast to some of the very successful supported employment projects for which Oregon earned national recognition. In these employment projects, clear standards and definitions for integrated employment were outlined and upheld. For example, a definition of integrated employment might be: paid integrated employment in real work settings, for minimum wage, with supports, with wages coming from the employer, and supports provided through the state funded agencies. With no standards or a definition, there was no clear goal for employment. As a result, there was a steady decline in the number and percentage of persons with IDD in supported employment.

Illustrations of how Brokerages did not use a Person Centered Planning process:

- **First, Personal Agents presented choices in a way that did not encourage using Person Centered Plans:** Brokerages utilized Customer Interest Inventories, which involves use of a form and interview rather than facilitating Person Centered Plans. Personal Agents did not explain to customers what a Person Centered Plan was, so to get one, the customer had to request one. This meant that the customer would have to know both what a Person Centered Plan was and also that s/he could request such a plan. Instead of explaining Person Centered Plans, Personal Agents told customers that they could either fill out a Customer Interest Survey Form immediately and begin receiving services more quickly, or the customer could wait and complete a Person Centered Plan at a later date. Without some education about the value of a Person Centered Plan, customers naturally chose to fill out the Customer Interest Survey Form so as to not delay receiving services. In this way, Oregon structured service delivery so that it discouraged using the Person Centered Plan from the very first stage of the process.
- **Second, Brokerages used forms that are not understandable to many people with IDD:** ODDS' lack of a definition and resulting lack of clarity about the concept of Person Centered Planning opened the door to Brokerages using forms and check boxes as planning tools. These are inappropriate for use with an often illiterate constituency and are not consistent with Person Centered Planning, which collects information in variety of formats from people who know the person, allowing a person who doesn't use spoken language to participate in the process. As a result, regardless of the person's language or cognition level, a

Person Centered Plan can develop a full picture of the person's interests, skills, and preferences.

One written form used by Personal Agents is the Customer Interest Survey Form, which was used to find out if people were interested in employment as well as their other life options. However, many customers could not understand written forms and had to rely on the Personal Agents to explain and interpret them. Many Personal Agents lacked a sufficient knowledge base in regards to supported employment to provide a proper explanation of the options outlined in the forms. Additionally, relying on a third party explanation meant that the Personal Agent's own biases or lack of experience with supported employment negatively impacted the nature and quality of the explanation that customers received. Use of these written tools meant consumers did not receive meaningful information leading to choice about employment.

- **Third, when Brokerages offered employment choices at all, they were inappropriate and had limited flexibility:** Though individuals got to choose what to do with their Brokerage funds, the range of choices they were offered was not appropriate, and sometimes employment was not offered as an option at all. Even when employment options were presented, the choices were very limited and typically in segregated settings, such as: paid piecework in workshops, participation in crews run by local employment service providers, or participation in community activities with supports.

Further, with the rise of the Brokerages, the State made what was referred to as a "fire wall" between individuals who lived out of family homes and had already entered the comprehensive support system and individuals who lived with their families. The amount of funding for services differed depending on where people lived: people in family homes received services that were lower in amount compared to those in the "comprehensive service system." Though people living in family homes had greater choice over how the support resources available to them were spent, they had less funding, which meant they could purchase fewer hours of agency time. This led to a rise in a pool of independent individual support workers who were paid less, and had often little training in the area of supported employment.

From 1999 through 2013, the State did not offer training in any broad way across the State. Agencies and Brokerages could pay for it themselves if they were able. Additionally, if a customer wanted employment services through the Brokerage, this was not immediately possible. The customer had to get their initial employment services through VR; Brokerage funds could only be used for

employment services if VR found the person ineligible or after those funds were exhausted.

Without clear goals and expectations for paid employment, people with IDD and their parents had no counterbalance to the widespread belief that most people with IDD were not employable or had more pressing life issues that needed to be addressed, a view that persisted in the Brokerages, in the schools, and at the VR offices up until 2013.

5. ODDS' Relationship with VR Was Not Collaborative

From 1999 to 2013, the process of accessing VR was perceived to be difficult and futile, inevitably ending in denial of eligibility for VR services for many people with IDD. Many customers and Personal Agents reported painful sessions with VR, where customers expressed visions of employability that were not heard or respected. As a consequence, many Personal Agents actively advised their customers to apply for VR services, knowing they would receive an inevitable letter of denial for services, and even advising their customers that it was necessary to get a VR denial letter to be able to use Brokerage funds for employment services. Once a denial was received, the Brokerage funds could then be used for ATE or community access activities. In a perverse way, this allowed the Personal Agents to beat the system and liberate the customers' funds for other activities. But it also perpetuated a VR system that did not value or respect persons with IDD, and did not promote collaboration toward achieving paid employment, as outlined in various Memorandum of Understanding between VR and DD agencies that were signed over the past decade.

Personal Agents were uneasy about receiving a VR letter of denial because some personal agents felt privately that their customers might be able to work, but knew that this was the only way to access Brokerage funds. These Personal Agents were hesitant to assist their customers with filing an appeal of the VR denial via the Client Assistance Program (CAP), because they feared it would be construed as a complaint and might further strain an already fragile collaboration between ODDS and VR at the local level. Because of how they were treated at VR, customers with IDD and their families also expressed anxiety about returning to VR offices to appeal their own perceived deemed "unemployable status," and would refuse to engage further with the VR process. Many customers also reported failure at past VR placements that didn't fit their skills or interests or failed to provide individualized supports necessary for success.

6. Medicaid Infrastructure Grant Funding of OVRS Training for Job Developers Was Not Successful

Defendants' experts cite the 2009 Medicaid Infrastructure Grant (MIG) as an accomplishment because it funded technical assistance to VR providers. In reality, the grant was used to train VR staff to use an interviewing tool and other techniques that were inappropriate for people with IDD. The State resisted feedback from stakeholders that the interviewing tool and

other aspects of the training were not appropriate for persons with IDD, and, instead, moved forward with the training despite these concerns. Use of this inappropriate interviewing tool wrongly screened out many people with IDD who should have been found eligible for VR, simply because they were unable to sit through a language-based interview process, not because they were unable to work.

The 2009 MIG sought to improve employment outcomes in the VR system for enrolled clients. VR adopted a required training for all job developers who worked for VR clients called Employment Outcomes Professional (EOP), which was spearheaded and developed by Alan Anderson. Alan Anderson had a national reputation and experience with assisting TANF (formerly called public welfare) clients to enter the work force. His training for VR focused on generic marketing and sales techniques, and did not incorporate the specific tools and techniques that had proven successful with people with IDD, and that had been nationally developed at Virginia Commonwealth University, University of Oregon, and other programs.

One example of how the MIG-funded training for local VR counselors was not normed for people with IDD concerned the teaching of a technique called Motivational Interviewing that was to be used by VR counselors. “Motivational interviewing” is a verbally-based process and a language-based approach that had been successfully used with TANF clients in other states. However, this approach does not work well with people with IDD who need a hands-on, experiential approach to determine their interest and preference, as is provided by Discovery or Person Centered Planning. Motivational Interviewing also requires a high level of verbal comprehension, which may not be appropriate for someone with IDD.

“Motivational interviews” are conducted at VR offices by VR counselors at the onset of the VR process. The VR counselors then use the information gathered to develop a comprehensive VR plan for services to be provided, including job development and community based assessment. If a person has no way to convey their ideas or interests to the OVRS counselor using this inappropriate methodology, the plan can be either grossly undeveloped, not lead to employment at all, or not lead to VR eligibility.

People who have highly specialized support needs and who might thrive with supported employment and customized employment are not able to express themselves fully, if at all, with Motivational Interviewing techniques. As a result, when Motivational Interviewing is used for these individuals, they are deemed unable to work because they cannot clearly state intent or job goals, even though they may be able to work. In addition, if a pool of employers with specific jobs is created with *no* consideration either of clearly defined task analysis or of support need, people with IDD appear to *not* fit the job description. Therefore, they will be considered unable to work, though they would not be found unable to work if the proper techniques were used.

Defendants’ expert Lovely stated in her report that that OVRS had addressed this by using picture cards for non-verbal people when doing motivational interviewing at OVRS

offices. I have accompanied many people to meetings at OVRs and also listened to many accounts of encounters with OVRs counselors from individuals with IDD and community members who have accompanied people with IDD at meetings with VR. In all these experiences, I have never seen or heard of VR using any techniques which were NOT in a language-based form, such as picture cards.

When the EOP training was being developed, the Oregon DD Council, the Oregon State Rehabilitation Council, the Supported Employment Task Force, assorted Supported Employment professionals, and other concerned citizens brought their concerns about Motivational Interviewing and the lack of appropriate training of employment specialists to ODDS and VR, pointing out that Alan Anderson's training did not use proven, successful tools and techniques. However, both ODDS and VR disregarded these concerns. OVRs officials responded by saying that ODDS was welcome to come up with their own trainings for employment specialists, but that the EOP was the only training that would be required of entities who wanted to subcontract with OVRs to provide job development and placement services. This then created a pool of job developers who lacked knowledge about supported employment approaches or support techniques that were nationally recognized to be specific to, and successful with, people with IDD.

At the same time, Oregon's VR office actually limited availability of other free trainings for employment specialists. For years, the University of Washington's Center on Continuous Education and Rehabilitation (CCER) had offered a low cost training that was funded by the U.S. Rehabilitation Services Administration. The training was for employment specialists and was specific to supported employment with populations with IDD. Around the same time as the MIG grant trainings began, Stephanie Parrish Taylor (who was then the director of OVRs) decided to limit the number and scope of trainings conducted by CCER to rehabilitation providers and agencies in the State of Oregon for that year. This even further adversely limited the number of qualified job developers available to people with IDD, making it even more difficult to access paid employment.

Employment outcomes for people with IDD further declined during the period of the MIG grant, even though a great deal of the funds available through the grant were spent on this training effort. WISE was not utilized as a resource until 2010 and, at that point, was used on very limited basis. This has only recently begun to be mitigated with the advent of the Oregon Employment Learning Network (OELN) training series.

7. Benefits Planning has Not Been Accessible to Individuals with IDD

Another goal of the 2009 Medicaid Infrastructure Grant was extensive benefits planning and training. However few people with IDD could actually access these services. The grant established a network of SSI benefit planners who were trained by VR. On paper, this seemed positive, as other states had been very creative and innovative in using SSI tools such as Plans to

Achieve Self-Support (PASS) and Impairment Related Work Expenses (IRWE) to further support and increase the numbers of people with IDD in the work force.

When done well, benefits planning is more than just a balance and review of SSI and paid income -- it can be a very useful tool in creating actual incentives for and value to employers as well. Benefits planning also works very well to change the minds of families and individuals with IDD who have avoided pursuing work options under the mistaken assumption that they might lose their Social Security benefits.

Oregon had funding for a tool that could have been valuable for individuals with IDD, yet because benefits planning was provided only through VR, most people with IDD could not access this service, as the benefits planning network was only available to people who were clients of the VR system. As discussed above, people with IDD consistently were not being found to be competitively employable after their Motivational Interviewing sessions with VR, or even during their ISP, due to the flaws with these tools. As a result, many individuals with IDD who had been found ineligible for the VR system were not able to access benefits planning.

Additionally, benefits planning in Oregon did not embrace approaches that had been successful with people with IDD in other states. Benefits planning has been used effectively in other states (Washington, Mississippi, Montana, Idaho, Vermont, New Hampshire) to help people with significant disabilities enter the work force by establishing people with IDD as small business owners and entrepreneurs. This is done by utilizing PASS plans through SSI to obtain capital for funding business start-ups. In Oregon, this option could have been one more way to increase employment outcomes for people with IDD. Instead, OVRS and ODDS opposed the development of small businesses owned by people with IDD, even though this approach has proven successful for people with IDD in other parts of the country. Again, the order in which information about supported employment is revealed to people with disabilities in Oregon precludes and alters many possibilities before a person even has a chance to experience an array of work choices. In this case, not giving information about self-employment to a person who might otherwise change his or her attitudes about work meant that individuals did not get the presumption of competence and access to information about themselves and the system in ways that allow for informed choice.

This more accurate history of Oregon's efforts to maintain its early leadership on supported employment demonstrates that the State did not make consistent or effective efforts to expand integrated employment opportunities for persons with IDD. In fact, the opposite is true.

B. CURRENT CAREER DEVELOPMENT PLAN AND ISP

The current Career Development Plan in the ISP echoes these past dilemmas: it presents a complex, large life decision in a cursory written form to people with cognitive and academic limitations. The Career Development Plan is dependent on the literacy and comprehension of the person who fills it out. If the person is illiterate, they have to depend on the comprehension and

literacy of another person who can read and explain the Career Development Plan to them, without imbuing their own biases and opinions about work into the explanation. This form excludes people who cannot read or who cannot comprehend the concepts presented in it. Educational and employment specialists across the country have successfully used pictures, photos and visual structures, and functional experience in real settings to enhance learning and retention of tasks in the workplace and classroom. These alternative formats allow people with IDD to fully participate. However, Oregon's Career Development Plan does not use any such alternative formats; it is strictly one-dimensional and word-based. The defendants' experts overlook these critical problems with ODDS' Career Development Plan.

1. Best Practices in Career Development Planning:

The Person Centered Planning process that was devised by John O'Brien and others in the 1970s is image based and uses both words and pictograms to capture information. This allows all participants to universally access information quickly and clearly, as well as build a positive possible blueprint for the future, regardless of the participants' reading or comprehension level. Person Centered employment plans can capture skills, abilities, and needed supports of the individual with IDD, and also serve as an assessment across domains of a person's life, leading to identification of tasks and occupations that can individually fit the person. This information is invaluable when used as the blueprint for the job search, placement, and job coaching. When facilitated effectively, Person Centered employment planning saves time and resources by quickly streamlining the Discovery and job search process.

Best practice teaching and methodology for people with intellectual disabilities shows that hands-on experiences in real settings are a much better predictor of interests, preferences, and vocational fit, compared to interviewing and filling out interest surveys. That is why the Discovery process, pioneered separately by Michael Callahan and Cary Griffin, is so useful and effective for determining interest and fit when working with people with limited verbal language and experience. Both Person Centered Planning and Discovery assume competence and are based on what a person does, rather than what a person can or cannot say, or what a person can comprehend verbally or through the written word.

A classic example of people who can work but who are unable to say so is captured in the film made by Marc Gold and Associates in 1975 "Try Another Way." In the film, Mr. Gold teaches four individuals with IDD to assemble bicycle brakes. At no point does he ask them about their feelings or predilections towards work. He meticulously teaches them using a hands-on method called systematic instruction. Mr. Gold does so in a way that is respectful and enthusiastic. Their behavior and rapt engagement shows their interest, not their ability to verbally acknowledge their interest in the work. This method revolutionized both the expectations of people with IDD in regards to work and also changed how they could be taught successfully.

This approach was nationally endorsed and expanded on by both the Virginia Commonwealth University and the Specialized Training Program at the University Of Oregon. In the late 1980s, this approach was adopted and taught in the pioneering Supported Employment programs in Oregon and Washington. Though this method is nationally recognized as effective, ODDS and VR have neither endorsed nor incorporated this approach into their systems in the period between 2000 and 2013. And the State's experts who applaud the State's efforts totally overlook this approach, the State's failure to use it, and the flaws in the process that the State relies upon in lieu of this approach.

2. Problems with Oregon's Career Development Plan:

Oregon's Career Development Plan does not give people an opportunity to experience information leading to true choice regarding work for a number of reasons.

First, throughout the last ten years, ODDS has not clearly defined Person Centered Planning, nor set standards for utilizing this very effective tool. Instead, ODDS relies on one-dimensional forms. Oregon uses Person Centered Thinking and one page vocational profiles, which are far from a real Person Centered Planning process and do not capture enough information to be useful in determining job fit or supports needs. ODDS has also refrained from defining Discovery in anything but a vague way, instead coming up with yet another form in lieu of process.

Second, the order of events and processes in Oregon is skewed: because Oregon's ISP and Career Development Plan are at the beginning of the process, the person must state whether they want work before having a chance to explore or think about what work means. "Work" in all its breadth and variety needs to be presented in an experiential and hands-on way in community settings so that people, including the many individuals who are without verbal language, can make an informed choice. Further, successful placement needs to be based on an individual's interests and preferences, which means those involved in the process must have at least a cursory idea of the individual's support needs prior to the actual placement. Because of the way the events are ordered, Oregon's Career Development Plan does not adequately or sequentially collect information about a person's interests or preferences, which leads to uninformed choice.

Third, because Oregon's Career Development Plan is a written form, the plan itself serves as a gate keeping exercise, preventing individuals from accessing Discovery and the rest of the job search process. A person with IDD cannot begin a Discovery process until he/she fills out the CDP form. There are many layers of interpretation of this form by third parties, which means that at each of these stages there is an opportunity for misunderstandings, misinterpretations, and infusion of personal biases. If the person with IDD cannot understand the form, he or she will require a third party to assist with explaining the form and answering the questions. A third party may then need to explain these answers to the Personal Agent or case

manager, who then makes the decision about whether to allocate funds and start accessing a job search or Discovery process on the individual's behalf. Using the CDP form exploits the lack of literacy often found in people with IDD, as well as their limited prior experiences with work. Since the CDP is a format contingent on reading, the individual must rely on a third party such as a family member, Personal Agent, or case manager to interpret and define both work and the individual's desires. This is particularly true of people who rely on ways other than words to communicate.

Jobs are like shoes: if they do not fit they do not work. Many working age adults have experienced work that they have expressed great distaste or love for. Because the world of work and the variety of jobs are great, there is no way a working adult without a disability would say: "I didn't like work in general so I am not working." Rather, a person without a disability says: "A specific type of job or experience doesn't fit me, so I refuse that particular occupation or task." Most often, the non-disabled American population then seeks a job more commensurate with skills and predilections.

Presenting a person with IDD with a form with the written question "Do you want to work?" -- as Oregon's CDP does -- ignores the nuances, preferences, or interests of the individual. This has particularly severe implications for people with IDD who often lack work experience. People without disabilities most often choose what job to pursue based on their educational experiences and exposure to variety of work settings. By this same logic, if a person with IDD has had no experience or exposure to work, this then limits his or her ability to make an informed choice. That is, it is not their assumed skill limitations that limit the options, but their lack of exposure to work options.

By the very process Oregon itself created, a person with IDD has to agree to accept or reject exploring work options prior to ever being offered hands-on career exploration or Discovery. Signing a form that declares "I do or do not want to work" without an in-depth discussion or way to deepen the conversation means the person must make a very large life decision without a meaningful understanding of his or her options. Few adults of working age would agree to this. As equal citizens, people with disabilities who have not yet worked or have been underemployed deserve the same in-depth exposure to true choice and subsequent reflection as those without.

C. HISTORY OF SCHOOL TRANSITION ISSUES IN OREGON

The reports from defendants' experts Zaharia, Osmani, and Edgar cite Oregon's transition practices as exemplary and new, a surprising claim given the models for transition aged youth that they cite are 25 years old. The off-campus placements defendants' experts cite are common in many Oregon school districts. Emanating from the excellent work and models set forth in the 1980s by Tom Bellamy and Barbara Wilcox from the University of Oregon, such programs were staples in 1989 as the Oregon Transition Project from the University of Oregon

worked closely with school districts to promote the idea of supported employment. In their time, these models were viewed as cutting edge, but over the past twenty-five years professional standards in the field of transition have changed. Yet, despite these changes in professional standards, iterations of programs set by the standards of 1989 are still commonplace throughout Oregon -- with little genuine individualization, customization or consideration of employment outcomes in competitive, integrated settings.

One expert, Osmani describes placements he visited, commenting that the coffee carts, greenhouses, and student stores are exemplary practices that show the State is making progress. Yet these are not innovative programs. The “round robin” of off-campus placements that are the norm across the State in school districts barely meet the standards of Fair Labor Standards Act (FLSA) guidelines for work based learning. These off-campus work experiences often function in many school districts as a closed loop: many school districts set the work experience sites up and cycle students in rotation through the same series of businesses throughout the school year. Students will spend up to three years rotating through site after site. They are almost always generic in nature, relying on a group model instead of being individualized. These work experiences are often unpaid and entry-level, with students sent in pairs or groups and supervised by an educational assistant for a short amount of time -- an hour or two -- before returning to school. There is no emphasis on acquiring paid jobs. ODE has often stated “it’s not their job or responsibility to get students with IDD into paid jobs.”

Further, these unpaid work experiences are not linked to individual student interests, strengths and preferences as required by IDEA and recommended in transition best practices. These placements, often not documented accurately in a student’s IEP, will contain no goals related to the actual work experience and the specific skills the student is expected to learn. As a result, students will often stay longer than the short term guidelines stated by the federal government. Because of the generic nature of placements, as opposed to placements based on the individual, the students whose interests, skills, and abilities do not fit the generic work experience, or whose physical disability prohibits them from doing that particular type of work, are often left to carry out work experiences on-campus or at the community transition center, if at all. Thus, even students in programs located on community college campuses will be placed on a recycling crew on campus or at a school store, rather than in integrated into community businesses.

In addition, many school districts are ignorant of FLSA and federal guidelines surrounding school work-based learning. Students are often unpaid for work that should be paid, and other times, even if they are paid, it is at rates less than minimum wage. As late as 2013, some school districts continued to have students spend time at sheltered workshops such as Edwards Center, Goodwill, and Tualatin Valley workshops, as part of their transition work experiences. To this day, some high schools have contracts with local businesses to do in-house packaging and assembly and will pay their students below minimum wage, according to productivity, just as their adult counterparts are paid at the sheltered workshops. There are also

numerous in-school experiences -- usually for students deemed “lower functioning.” These experiences include cleaning the cafeteria, recycling, delivering items on campus, staffing student stores, and working in campus greenhouses. Not only are these practices not mindful of FLSA and federal guidelines surrounding school work-based learning, they are far from new - these practices were in place in schools as early as 1981. The models of today are not what was intended by the work of Bellamy and Wilcox, who believed in and pioneered supported employment.

1. Youth Transition Program (“YTP”)

YTP has been long considered an exemplary program in many ways, foremost for utilizing designated job developers embedded in schools to locate jobs for students prior to their leaving school as well as connecting exiting students with VR. Though noted for its high outcomes, meticulous data collection, follow along of exiting students with disabilities, and collaboration between partners— ODE, OVRS, and the University of Oregon — YTP has also been characterized by a consistent reluctance and sometimes open refusal to serve youth with IDD. At present, according to Dr. Morningstar’s expert report, only 10 percent of youth with IDD were represented in the data and success stories for which YTP is celebrated.

From its inception in the late 1980s, YTP staff resisted serving youth with IDD, stating that the target groups for its projects were “higher functioning youth,” and that youth with IDD had their own programs available to them. The programs they referenced were the sheltered workshops and limited array of supported employment that had long served youth with IDD. YTP staff argued that YTP served a specific, unmet need of transition services for students with milder disabilities, as those students were not eligible for services through ODDS. As late as 2012, it is my understanding that local school staff told parents and individuals seeking access to this nationally known program that students with IDD would not be considered because of their IDD labels, and that they would better served by local sheltered workshops. Only in small rural school districts with low incidence of special education students did YTP school personnel agree to serve youth with IDD. But the State’s experts appeared to ignore both the restrictive eligibility criteria and potential costs of excluding individuals with IDD.

The model itself is an effective collaboration between OVRS and ODE, and partially funded by both – allowing for job developers to be embedded in high schools who help students in the program get placed in a paying job in the community, enrolling in OVRS prior to leaving school, and following up with them for up to two years after leaving school. This funding concept, not the Youth Transition Program itself, is innovative in its use of funds and staff and has been used successfully by Washington State in its “Jobs by 21” program to place youth with IDD.

Regrettably, this innovative funding model has not been utilized on a statewide level in Oregon to serve students with IDD since the High School Transition Project (sponsored by

OTAC and ODDS), and Family Management grants ended in 1999. From 1994 to 1999, the High School Transition (HST) Project and Family Management grants succeeded in placing over 500 individuals with IDD age 18 to 25 in 20 hour per week minimum wage jobs throughout communities in Oregon, proving that youth with IDD were employable in integrated, competitive wage jobs in Oregon. The Family Management grant project won an APSE award for Innovation in 1998. Careers Community and Family (CCF), a successful but short-lived supported employment project sponsored by ODDS from 1995-2003, functioned on a smaller scale in some communities. The program, administered by Dr. Joann Sowers, Oregon Technical Assistance Corporation, and Portland State University, through 2003 created the same high placement results in both rural and urban communities. The CCF model has not been revived for students with IDD despite its great success and 80 percent placement rates.

In fact, in 2003, impressed by the work of the HST and Family Management grant, YTP hosted a day-long meeting at ODE in Salem asking stakeholders who were interested in the placement of youth with IDD to attend to consider expanding the model to include students with IDD. This meeting was attended by YTP administrators Mike Benz (University of Oregon), Laurie Lindstrom (University of Oregon), and Clayton Reese (OVRs), as well as other professionals from around the state who were connected with the Oregon High School Transition Project, Family Management grants, and Careers Community and Family projects seeking employment for students with IDD. Despite all the success of prior projects at placing students with IDD in competitive, integrated jobs, YTP officials -- in the presence of ODE and VR administrators -- stated that YTP had decided to continue serving people with "milder disabilities," citing that a narrow focus on this group contributed greatly to the successful outcomes of YTP and that an expansion of the model to include students with IDD on a broad basis might dilute the efforts and data of YTP. This has continued to be the case up until the present. It was recommended that ODDS should develop their own similar projects for students with IDD.

The common practices of all the successful projects mentioned are worth noting. Success depends on high standards and expectation. In this case, paid work in the community should meet national standards with at least 20 hours per week, individual placement, early enrollment and collaboration with VR and designated trained personnel who could carry out job placement in a local area. This same configuration of braided funds, early VR enrollment, and placement has been quite successful in Washington State for students with IDD.

2. The High School Transition Project and Family Management Grant

In 1994 the State had a waiting list for vocational services. As a result, from 1994-1999, Oregon invested in the High School Transition Project and the Family Management Grant. Utilizing one million dollars in economic development funds from the Oregon Lottery Commission, the High School Transition Project had two distinct components: (1) agencies and counties received funds for one FTE designated to carry a caseload of up to 25 job seekers with

IDD who were between the ages of 18 - 26; and (2) county entities, case managers, and provider agencies agreed (in responding to the RFP) to take on up to 25 job seekers and to place them within one year's time into paid integrated community jobs. The RFP required a commitment to actual placement of individuals with IDD in integrated employment in addition to case management. The counties and individual agencies that responded to the RFP were from all across the State and represented a mix of urban and rural communities (including Umatilla County, Deschutes County, La Grande, Klamath, Coos Bay, Beaverton, Medford, Salem, Portland Metro, Goodwill, Linn Benton, and Lane County).

There were about 16 sites designated over the course of the five years of the project. OTAC was charged with managing the project, providing technical assistance and training to each site. Ongoing training and technical assistance was specific to each site with top down management from ODDS. The sites met quarterly for specific training in job development marketing and job coaching as well as partnering with schools and VR. In addition, project specialists from OTAC met on-site with the designated job developers monthly. Expectations for job developers were spelled out clearly by OTAC at all levels: they were to partner with schools and OVRs to place individuals in paid employment at 15 - 20 hours per week at minimum wage, and in integrated settings, which meant no crews or sheltered workshops. Staff also met monthly with a designated staff person from ODDS. Job seekers were people with IDD who were not currently employed and not receiving vocational services at that point in time. The program had an 80% placement rate for people with IDD working 15 - 17 hours per week on average at minimum wage. As an OTAC employee, I along with three others provided training and technical assistance to this project. The High School transition project placed approximately 500 people over the course of five years. Some of the people who were placed in that project are still employed today.

The Family Management Grant was a second project on a smaller scale using the same lottery dollars. It was an experiment in self-determination and employment in which 15 - 20 families per year from 1994 to 1999 were awarded access to a small one-time grant of \$3,000 and a year's worth of intensive technical assistance to get their son or daughter into paid community employment at minimum wage or better. Families had access to individual funds to pay for the job development but at no time had actual cash awards. They were allowed to hire any person they wanted as a job developer using the funds available to them, and some families hired people from local agencies. This project coincided with the Staley lawsuit settlement. The development of the brokerages did not happen until 2000, and in the meantime, each family was on a waiting list for services with no designated support funds or other vocational services available. Due to the small amount of the grant, partnerships with schools, VR, and IRWES were critical to the success of the project. The project had a 90% successful placement rate, with an average of \$2,500 spent by each family in the first year. Due to this early success, the project lowered the amount per family by \$500 in the subsequent years. I was designated as the manager of the project as part of my role at OTAC and provided technical assistance to each family and

their job developer on a monthly basis in their home area. Each family had facilitated a Person Centered Plan, and this helped to define career goals and support needs. The project served people with IDD from ages 18 - 26 across the state, both in rural and urban areas. The strategy was to designate a local job developer, provide training to that person -- as sometimes they were family friends, church members, or neighbors, as well as professionals, locate the job that fit according to the Person Centered Plan, and provide training and technical assistance in setting up supports in the workplace. In addition, the strategy was to enlist local partners using VR funds for equipment and also job coaching. Schools agreed to provide job coaching as part of the IEP because some of the participants were still in school. Schools also supplied impairment-related work expenses for ongoing job coaching and follow along supports. In addition people utilized IRWES to assist with supports on the job. Most people in the projects later became clients of the new Brokerages systems.

Over the course of the five years, up to 85 families participated from communities all over Oregon from towns as diverse in size and culture as the Portland metropolitan area, La Grande, Burns, Tillamook, Salem, and Eugene, to Roseburg, Pendleton, Newberg, Lincoln City and Troy. The Family Management Grant had excellent placement outcomes well beyond the program's state-sponsored end in 1999, and was continued through Portland State University (PSU) until 2003. Under PSU's management, Dr. Joann Sowers served as the project manager and renamed it Careers, Community and Families in 2000. Under the auspices of PSU, I continued providing technical assistance and training to families. The CCF project had a 90% placement rate again with 15 - 20 hours per week at minimum wage for anyone with IDD who applied in the specified age range without regard to severity of disability. The criteria for enrollment were: unemployment, not enrolled in another employment service, and meeting the state criteria of IDD eligibility. Despite high rates of successful placement, ODDS discontinued the High School Transition Grant and Family Management Grant after 1999, and the Careers Community and Families after 2003, due to lack of funds.

D. OREGON DOES NOT HAVE AN EFFECTIVELY WORKING PLAN

I believe that the State of Oregon has yet to address the details and specifics mentioned above, even at this late date. There is still no definition of supported integrated employment that does not include segregated crews. There is still the option of using support dollars to enter into ATE programs. Genuine cooperation between ODDS and OVRS is yet to be spelled out. The Executive Order issued by the former Governor John Kitzhaber itself does not address a true partnership -- it tasks ODDS with seeking links and partnership with OVRS and ODE, rather than holding all three equally accountable for employment outcomes .

The State is remiss in not clarifying many critical definitions, among them supported employment itself, the hours, what is truly integrated vs. segregated settings, school work experience programs, Person Centered Planning processes, and Discovery. Without such specificity, huge gaps exist in how programs are carried out. People are still allowed to use state

dollars to be supported in workshops and paid less than minimum wage, or to attend ATE programs under the guise of choice. Agencies are allowed to manipulate their roles in structuring programs -- having individuals with IDD rotate in and out of paid segregated crews, or sending them to attend work readiness classes in segregated facilities. Schools and transition programs sanctioned by districts and the ODE continue their endless round of work experiences. Models like the Pilot Transition Projects are extremely small in scope and in outcome. Even the much touted Transformation Projects do not specify numbers of placements and specific placement outcomes, only a vague intent to transform. Meanwhile the participating agencies themselves continue to maintain people with IDD in segregated crews and workshops.

The small and still inadequately trained pool of trained employment specialists can not meet the need of job seekers with IDD and is hampered by a cumbersome job development process with impossibly short time parameters. These short time frames limit success for people with significant developmental disabilities who will need intricate support and placement strategies. If there is someone who has much more significant barriers to employment, providers have the same time frame for developing a job as they have to obtain competitive employment for someone with less serious challenges. This indirectly encourages providers not to serve people with significant disabilities who might take a more elaborate strategy to assist them in obtaining competitive integrated employment.

OVRs counselors, Personal Agents, and case managers continue to use inappropriate information gathering strategies during the course of intake interviews and ISP meetings, which then determine the amount of hours and resources that will be devoted to employment. Thus, this limits the choices and outcomes for individuals with IDD seeking employment in Oregon today.