

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Exhibit A

PORTLAND DIVISION

PAULA LANE, et al.,

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

on behalf of themselves and all
others similarly situated, and

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.

EXPERT REPORT OF DR. LAURA OWENS

I. Purpose and Summary

At the request of the Department of Justice, Civil Rights Division, I prepared this report to assess whether Oregon's Executive Orders No. 13-04 (November, 2013) and No. 15-01 (February, 2015) (EO) and the Department of Human Service's Integrated Employment Plan (IEP), which implements the goals of the Executive Orders, constitute an effective Olmstead

plan for employment, and are consistent with professional literature, national professional standards, and accepted practices in supported employment for individuals with intellectual and developmental disabilities (I/DD).

II. Qualifications

I am the President of TransCen,¹ an organization based in Rockville, Maryland that provides training and technical assistance around the country to improve educational and employment outcomes for individuals with disabilities. I am also an Associate Professor at the University of Wisconsin-Milwaukee in the Department of Exceptional Education where I teach courses focusing on high school inclusion and transition from school to work. I am the founder and President of Creative Employment Opportunities (CEO),² an employment agency for individuals with disabilities in Milwaukee, WI, which I founded in 1991. Prior to my position at TransCen, I served for six years as the Executive Director of APSE (the Association of People Supporting Employment First),³ a national organization focusing on the advancement of integrated employment for individuals with disabilities, based Washington, DC. I am also an internationally known speaker on integrated employment and transition practices for individuals with disabilities.

III. Materials Reviewed

In preparing this report, I reviewed executive orders, employment first policies/strategic plans, and legislation from the following states: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Kentucky, Illinois, Mississippi, Oklahoma, Ohio, Oregon, New York, New Jersey, Massachusetts, Maine, Minnesota, Texas, and Virginia, as well as white papers and documents from Boston's UMass Institute for Community

¹ www.transcen.org.

² www.ceomke.com.

³ www.apse.org.

Inclusion, APSE, and the State Employment Leadership Network (SELN). A list of the primary documents that I reviewed, other than those online, are included in Appendix 2.

IV. Professional Standards and Evidence-Based Practices

Supported employment is a well-defined approach to assist individuals with the most significant disabilities in finding, obtaining, and maintaining employment in their communities. Supported employment services allow an individual with disabilities to work in a real job for real pay, providing him/her with a sense of purpose and involvement in the community. Unlike the traditional “train and place” model approach, the supported employment model uses a “place and train” method to support individuals with disabilities in integrated employment. Under the “train and place” model, individuals with disabilities are typically are provided training services in work settings that are often situated in segregated settings and do not reflect the conditions or environment of a typical workplace. Only after placement in these settings, often for protracted lengths of time, are individuals assessed to determine if they are “job ready” to move to more typical, integrated workplaces. By contrast, under the “place and train” model, individuals with disabilities are first placed in a typical, integrated work setting, matched to their preferences and skills, and are then given the appropriate training and supports necessary to sustain and maintain employment in this integrated work setting. Researchers have found that job seekers who received supported employment services using the place and train approach were significantly more likely to become employed, remain employed, and/or be employed at or above the minimum wage.⁴

⁴ Dowler & Walls, *A Review of Supported Employment Services for People with Disabilities: Competitive Employment, Earnings, and Service Costs* 80(1) J. of Rehab. 11 (2014).

Under the regulations of the Rehabilitation Services Administration (RSA), the federal agency that administers the VR program and distributes funds to Oregon's VR agency, supported employment is defined as:

Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:

- A. For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
- B. Who, because of the nature and severity of their disabilities, need intensive supported employment services from the designated State unit and extended services after transition is described in paragraph (b)(20) of this section to perform this work; or
- C. Transitional employment, as defined in paragraph (b)(54) of this section, for individuals with the most significant disabilities due to mental illness.”⁵

A. Accepted Service Models and Principles for Supported Employment

Accepted professional practices for serving individuals with intellectual and developmental disabilities (I/DD) dictate that an individualized approach should be used in supported employment. Using an individualized approach – characterized by one employment consultant working with one job seeker to obtain and maintain an integrated employment position of choice – is important because it is the least restrictive and is the most normalizing of all the rehabilitation service delivery models.⁶

Over the past three decades, there have been numerous models and principles established for providing supported employment services to individuals with I/DD. Across all models and

⁵ 34 C.F.R. § 361.5.

⁶ U.S. Dept. of Education, Natl. Inst. on Disability and Rehab. Research, Office of Special Education and Rehabilitative Services, 10(1) Rehabilitative Brief, Supported Employment (1986); Moon, et al., “The Supported Work Model of Competitive Employment for Citizens with Severe Handicaps: A Guide for Job Trainers” (1986).

principles, there is a professional consensus as to several essential and immutable characteristics of supported employment, all of which include the beliefs that:

- Everyone, regardless of the level or type of disability, has the capability and right to an integrated job;
- Employment occurs within the local labor market in community businesses;
- When job seekers with I/DD choose and regulate their own employment supports and services, career satisfaction will result;
- Job seekers with I/DD should earn wages and benefits equal to that of co-workers performing the same or similar jobs;
- Job seekers with I/DD should be viewed in terms of their abilities, strengths, and interests rather than their disabilities and deficits;
- Community relationships both at, and away from, work lead to mutual respect and acceptance between individuals with disabilities and society;
- Individuals with I/DD need to determine their personal goals and obtain assistance in creating the supports necessary to achieve their goals;
- Individuals with I/DD should be connected to formal and informal networks in the community to ensure growth and acceptance; and
- Traditional systems must be changed to ensure customer control, which is vital to the integrity of supported employment.⁷

Several organizations have agreed upon these generally accepted standards and common practices for integrated employment, with many states, including, Virginia,⁸ Massachusetts,⁹

⁷ McDonnell & Hardman, Successful Transition Programs: Pathways for Students with Intellectual and Developmental Disabilities (Sage Publications, 2010) at 301.

New Jersey,¹⁰ adopting these principles based on these generally accepted supported employment values.

1. Individual Placement and Support Model (IPS)

These supported employment practices and values continue to be used across the country as the standard of best practice and, in recent years, have been built upon and expanded. For example, the Individual Placement and Support Model (IPS), which was initially developed in 1996 to assist individuals with mental health issues, has been successfully used with individuals with I/DD. Research has established IPS as an evidence-based practice that focuses on individual strengths and interests, uses a person-centered approach, and views work as a way to promote recovery and wellness as a means of rehabilitation.¹¹ The IPS approach includes the following core principles: (1) zero-exclusion policy, (2) integrated employment (and treatment), (3) competitive jobs, (4) rapid job search, (5) systematic job development, (6) time unlimited support, (7) consumer preferences, and (8) benefits planning. IPS has been successfully used by Oregon to substantially expand supported employment services and has dramatically increased integrated competitive employment at minimum wage or better for hundreds of people with mental illness in the state.¹² Since this model has been effective for individuals with mental health issues, some states are looking at implementing the model for individuals with I/DD. For

⁸ VA Dept. of Behavioral Health and Developmental Services, “Strategic Plan for Employment First: Expanding Employment Opportunities (October, 2012); Virginia’s Olmstead Strategic Plan (2014).

⁹ MA Dept. of Developmental Services, “Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts” (November, 2013).

¹⁰ NJ Dept. of Human Services, Division of Developmental Disabilities, “Standards for Supported Employment Services (2007), “All individuals have the capacity and right to work competitively in an integrated setting.”

¹¹ Bond, et al., *An Update on Randomized Controlled Trials of Evidence-Based Supported Employment* 31(4) *Psychiatric Rehab. J.* 280-290 (2008); Bond, *Supported Employment: Evidence for an Evidence-Based Practice* 27(4) *Psychiatric Rehab. J.* 345-359 (2004); Drake & Bond, *IPS Supported Employment: A 20-Year Update* 14(3) *Amer. J. of Psychiatric Rehab.* 155-164 (2011).

¹² See, OR Supported Employment Center for Excellence, Outcomes: Oregon IPS Supported Employment Outcomes by Quarter, available at: <http://osece.org/outcomes/>.

example, the Illinois' Employment First Strategic Plan¹³ includes the expansion of IPS model to adults and youth with I/DD.

B. Professional Standards for Supported Employment Systems and Providers

Around the same time that IPS was being developed for individuals with mental health issues, an APSE workgroup, including board members, APSE staff, and other experts in the field, developed supported employment competencies focused on individuals with I/DD. The competencies are based on quality indicators and principles, effective practices, and research. The APSE supported employment competencies continue to be used across the country today by States, supported employment provider agencies, and employment service systems as the standard of accepted professional practice. The competencies define supported employment and detail the skills and abilities in the areas of: 1) assessment and career planning, 2) marketing and job development, 3) on the job training and supports, 4) ongoing supports, 5) managing benefits, 6) organizational change, and 7) self-employment.¹⁴ Each competency is discussed in greater detail below.

Assessment and career planning. Assessments and career planning strategies include person-centered planning, functional community-based assessment, and discovery. This method is preferred over traditional vocational assessments, which are generally developed for individuals without disabilities or individuals with less significant disabilities. As a result, traditional vocational services are often used as a screening tool used to identify and reject individuals with I/DD for vocational services,¹⁵ or exclude them from the labor market by

¹³ IL Task Force on Employment and Economic Opportunity for Persons with Disabilities, "State of Illinois Employment First Strategic Plan Draft," (December, 2014).

¹⁴ See Attachment A.

¹⁵ Berven, *Assessment Practices in Rehabilitation Counseling* 15(3) J. of Applied Rehab. 9-14 (1984).

deeming individuals with more significant disabilities as “not job ready.”¹⁶ Individuals who fall into the “not job ready” classification have typically been placed into sheltered workshops.¹⁷ Traditional vocational assessments typically occur in artificial, simulated settings such as sheltered workshops.¹⁸ The assumption that relevant information about the abilities and needs of individuals with significant disabilities can be obtained using artificial settings and simulated tasks has been repeatedly questioned, given the challenges with generalizing skills to real world environments for individuals with I/DD.¹⁹

Instead, assessments should be conducted in the community, in integrated environments, and be driven by the individual job seeker. Situational assessments, paid work trials, volunteer experiences, and job shadowing all allow individuals the opportunity to experience what is available, discover or verify their interests, and determine the skills they have or will need to develop to realize the career in which they are interested and want to pursue. It is important to note that unlike traditional assessments – which are often one-time events – person-centered planning is an on-going process which is used to assist individuals plan for their future. It is most often used as a life planning model, to enable individuals with disabilities, or those requiring supports, to increase self-determination and improve their own independence.

A recently developed and very promising assessment and career planning tool for persons with I/DD is the Positive Personal Profile (PPP).²⁰ A PPP is a way to take an “inventory” of all of an individual’s attributes which will be relevant to his/her job search, employability, job match, retention, and long-range career development. The development of a PPP involves

¹⁶ Rudrud, et al., Proactive Vocational Habilitation (Brookes, 1984).

¹⁷ Id.

¹⁸ Id.

¹⁹ Brown, et al., “The Discrepancy Analysis Technique in Programs for Students with Severe Intellectual Disabilities,” XIV Educational Programs for Students with Severe Intellectual Disabilities 43-47 (1984); Halpern, “Functional Assessment and Mental Retardation,” Functional Assessment in Rehabilitation 61-78 (Brookes, 1984).

²⁰ TransCen, Inc., “Developing a Positive Personal Profile.”

multiple players, using a variety of mechanisms to collect information from a variety of sources, including assessments, observations, interviews, and discussions – with the job seeker and with people who know the job seeker well.

Marketing and job development. It is important to differentiate between “job placement,” where people find opportunities within existing job descriptions and “job development,” which requires employment support professionals to conduct informational interviews with local businesses to identify current and future employment needs. While it is possible for some individuals with disabilities to find employment through common job placement methods, marketing and job development’s “customized strategies” have proven to be more successful. Such strategies involve negotiating job duties or employee expectations to align the skills and interests of a job seeker with I/DD to an employer's needs, which can be done by gathering information from employers using informational interviews,²¹ or worksite analyses.²² Discussing and asking the employer key questions, touring the business, speaking with department heads or managers, and developing an employment proposal²³ -- all incorporate employer negotiations and strategies for matching the needs of the business with the interests and skills of the job seeker.

On-the-job training. Providing systematic instruction aligns with current practices in supported employment and customized employment strategies, and includes the development of job accommodations or adaptations as needed. Developing a “job analysis” which delineates the individualized systematic instructional strategies can be effectively used to support the employee with I/DD and to identify natural coworker supports. On the job training is not only beneficial

²¹ U.S. Dept. of Labor, Office of Disability Employment Policy, “Negotiating with Employers,” available at: <http://www.dol.gov/odep/categories/workforce/CustomizedEmployment/practical/negotiate.htm>.

²² Creative Employment Opportunities, Internship Manual.

²³ Id.

for the employee with I/DD, but also for the employer, supervisor, and appropriate co-workers. It assists all of these stakeholders with understanding the work culture, job design, job analysis, and identifying strategies and supports needed for the individual to maintain employment.

Ongoing supports. The definition of supported employment includes ongoing supports, a critical component in supported employment, because it improves the likelihood of the employee achieving and maintaining job stability. Ongoing supports and services provide for additional employer and employee contact for an extended period of time to provide continued support for the employee, as needed. Ongoing support is usually time limited under vocational rehabilitation (VR), but can be extended and continued long- term through waiver funding or Social Security Work Incentives. A common model in supported employment involves the “fading” of the job coach in the work setting, although some individuals may require monthly check-ins and technical assistance from their “natural supports” (i.e., co-workers and supervisors).²⁴ Ongoing supports and services can include job site training – both on and off site, including expanding job duties –as well as transportation, family support, or other supports necessary to achieve and maintain employment.

Managing benefits. The receipt of SSI/SSDI benefits can be viewed as a barrier to employment. Having an analysis of how work may impact an individual’s benefits is integral to incentivizing integrated employment. Students leaving school with a completed benefits analysis gain an understanding of how working will impact their benefits, which allows them to learn how to utilize work incentives like the Student Earned Income Exclusion (for students in school),

²⁴ Hagner, et al., Facilitating Natural Supports in the Workplace: Strategies for Support Consultants 58(1) J. of Rehab. 29-34 (1992).

Plan for Achieving Self Support (PASS), Impairment Related Work Expense (IRWE), and other Social Security work incentives.²⁵

Organizational Change. Developing an infrastructure within organizations and throughout states to support and fund integrated employment outcomes is a core supported employment competency. Key factors in organizational change include: positive philosophy; policies that focus on integrated employment; adequate funding; capacity building and advocacy efforts; strong, consistent leadership; and data-based decisions.²⁶ In order for organizational change to take place, the following strategies should be employed: (1) establish clear and uncompromising goals; (2) communicate expectations to everyone and often; (3) reallocate and restructure resources; (4): find jobs one person at a time; and (5) develop partnerships with businesses.²⁷ Employing these competencies lead to a greater likelihood of integrated employment.

Self-Employment. Self-employment is a practical means for individuals with disabilities to work and obtain self-sufficiency. Self-employment is community based and customized – providing flexibility and customization in an individual’s work experiences. Supports are customized based upon an individual’s needs, which may include hiring others to assist in managing aspects of the business or providing support in areas where the individual’s unique talents and abilities do not fit.²⁸

²⁵ U.S. Social Security Admin., “2014 Red Book: A Summary Guide to Employment Supports for Persons with Disabilities under the Social Security Disability and Supplemental Security Income Programs,” available at: <http://ssa.gov/redbook/documents/TheRedBook2014.pdf>.

²⁶ Pat Rogan, Ph.D., “Organizational Change From Facility-based to Community-based Employment Services,” Presentation at 7th National Organizational Change Forum (October, 2013).

²⁷ John Butterworth, et al., “Training and Technical Assistance for Providers ‘T-TAP,’ Community Rehabilitation Programs and Organizational Change: A Mentor Guide to Increase Customized Employment Outcomes” (2007).

²⁸ Self-Employment for People with Disabilities, Office of Disability Employment Policy, Department of Labor, December 2013) <http://www.dol.gov/odep/pdf/2014StartUp.pdf>

C. *Professional Standards for Employment Professionals*

In addition to its supported employment competencies for states, providers, and service systems, APSE has also drafted and promulgated core competencies for employment professionals. These core competencies describe the basic skills and understanding that all employment professionals should have to effectively serve individuals with I/DD.

For supported employment to be effective, employment support professionals must be trained and competent. States must ensure that *all* employment support professionals meet accepted professional standards and core competencies. This is particularly important for staff directly responsible for assisting individuals in obtaining and maintaining employment. It is plainly insufficient for only supervisors or selected staff to be trained and certified in the core competencies.

For these reasons, in 2011, ASPE developed the first certification program for Employment Support Professionals, building on the supported employment competencies outlined above and specific professional standards and competencies for professionals who provide discovery, job development, job coaching, benefits counseling, and other related employment services to persons with I/DD.²⁹ The Certified Employment Support Professional (CESP™) certification was created by subject matter experts and leaders in the field of disability employment. The CESP™ exam defines the benchmarks for knowledge and competencies in the field in the following areas: (1) application of core values and principles to practice legislation and funding, (2) individualized assessment and employment/career planning, (3) community research and job development, and (4) workplace.³⁰

²⁹ See Appendix 2.

³⁰ Association of People Supporting Employment First, “Certified Employment Support Professional,” available at: <http://www.apse.org/certified-employment-support-professional/>.

In 2013, the Association of Community Rehabilitation Educators (ACRE) expanded the APSE professional competencies to extend beyond supported employment. ACRE brings together professional training professionals to share training strategies, techniques, and tools to meet the needs in the field. Their expanded competencies incorporate multiple approaches, including competitive employment, customized employment, supported employment, and transitional employment. ACRE, APSE and CESP professional competencies, along with the previously discussed supported employment principles and competencies, provide a guide for accepted standards in training professionals in the field and working with individuals with I/DD.

Employing these expanded competencies and accepted professional standards in the field of supported employment have yielded positive results. In multiple studies analyzing supported employment practices utilizing these principles and approaches, the average hours worked was generally 20 hours per week, included entry level jobs, and the wages employees earned approximated minimum wage.³¹

D. Evidence-Based Strategies for the Effective Provision of Supported Employment to Individuals with I/DD

Employing APSE's and ACRE's professional standards for supported employment providers and professionals is the most effective way to develop, organize, manage, fund, train, and evaluate employment service systems and their constituent agencies. Providing individuals with I/DD with effective, proven employment services requires adherence to additional professional standards, including five evidence-based strategies: (1) customized employment – a flexible process for personalizing the match between the strengths and interests of job candidate

³¹ Lemaire & Mallik, *Barriers to Supported Employment for Persons with Developmental Disabilities* 22(3) Archives of Psychiatric Nursing 147–155 (2008); Mank, et al., *Supported Employment Outcomes across a Decade: Is there Evidence of Improvement in the Quality of Implementation?* 41(3) Mental Retardation 188–197 (2003); Butterworth, et al., “StateData: The National Report on Employment Services and Outcomes,” Inst. for Community Inclusion, Univ. of Massachusetts Boston (2011).

and the business needs of an employer;³² (2) job carving (dividing one existing job position into two or taking one or several tasks from several positions and creating a new position) and job creation (identifying a function not currently being performed) seek to identify an employer's labor needs that might not necessarily be stated or advertised;³³ (3) facilitating natural supports – providing support to an employee in the workplace in a more sophisticated way than traditional job coaching;³⁴ (4) on-site support teams – developing a “map” of significant people at the worksite who can impact the success of a supported employee;³⁵ and (5) networking – utilizing informal and social networks to assist in job development using network mapping, enlisting informal supports in making employer contacts, developing relationships through informational interviews and other forms of networking assistance.³⁶

Any professionally-accepted assessment of Oregon's plan to expand employment services to individuals with I/DD who are in sheltered workshops or are transition age youth should be based upon these principles, service system and training standards, and strategies for implementing supported employment.

V. Governor's Executive Order (13-04)

In April 2013, Oregon Governor John Kitzhaber issued an executive order directing the state Department of Human Services and the Department of Education to work to fulfill Oregon's Employment First Policy by outlining steps the state will take to attempt to increase integrated employment services for individuals with I/DD and implementing policies to achieve this goal.

³² U.S. Dept. of Labor, Office of Disability Employment Policy.

³³ Luecking, et al., “Working Relationships: Creating Career Opportunities for Job Seekers with Disabilities through Employer Partnerships” (2004).

³⁴ Butterworth, et al., *The Changing Role of Community Based Instruction: Strategies for Facilitating Workplace Supports* 8 J. of Voc. Rehab. 9-20 (1997).

³⁵ Gates, et al., *Relationship Accommodations Involving the Work Group: Improving Work Prognosis for Persons with Mental Health Conditions* 21 Psychiatric Rehab. J. 264-272 (1998).

³⁶ Carey et al., *Networking Towards Employment: Experiences of People who use Augmentative and Alternative Communication* 29(1) Research and Practice for Persons with Severe Disabilities 40-52 (2004).

One of the main reasons the 2013 EO is problematic is the fact that many key terms and definitions are not specific enough for the EO to have any real impact on the integrated employment outcomes for individuals with I/DD in Oregon. While these definitions lay some groundwork, many emphasize ineffective strategies, incorrect or outdated methods, or simply focus too much on process and not on outcomes.

a. Definitions

The EO defines “Employment Services” as services “that are intended to assist a person with I/DD to choose, get, learn and keep work in an integrated employment setting.” The EO states that employment services shall be “individualized” meaning that services shall be “individually planned based on person-centered planning principles and evidence-based practices, *where applicable*” (emphasis added). For employment services to be fully effective, however, they must be consistently and individually planned and centered on evidence-based practices at all times, and not implemented on an *ad hoc* basis. As noted above, there are well-established, evidenced-based practices for supported employment which are not referenced, are not required, and are not the expected outcome of the EO.

Further, the definition of employment services omits any mention or definition of employment, supported employment, customized strategies, or any other stated goal or outcome – a cornerstone of best practices for integrated employment. Under this definition, “employment services” could mean anything from simply conducting a vocational assessment to completing a career development or VR employment plan, which may or may not lead to integrated employment. The fact that the definition does not state that the outcome should be assisting individuals with I/DD obtain integrated employment is troubling, at best. The focus of the definition is on process, despite the fact that the outcome of work in integrated settings has been

the well-established professional standards for measuring employment services for over three decades. The definition of employment services should include a clear outcome – including stated goals on the number of hours worked and the wages earned. Otherwise, there is a risk of perpetuating the “prevocational” training model where individuals continue to be in training without movement to integrated employment.

Current literature highlights the relationship between measuring services being provided in integrated settings and successful integrated employment outcomes.³⁷ Studies have shown that prevocational services provided in sheltered workshops may have a detrimental effect on providers’ and job seekers’ expectations on ability and productivity, resulting in reduced hourly wages.³⁸ For employment services to be effective and result in integrated employment state service systems must expect, encourage, provide, create, and reward integrated employment at minimum wage or competitive wages as the first and preferred outcome for working-age youth and adults with disabilities – especially for those with complex and significant disabilities for whom job placement has been limited or has not occurred.³⁹

The original EO’s definition of “career development plan” does not include how – or by whom – the plan will be developed. Further, the definition fails to articulate the activities that will be implemented as part of the career development plan to ensure progress toward the identified employment goals and objectives. Career development plans should be revisited often, and revised, if necessary to ensure progress is being made toward employment goals. The

³⁷ Cimera, *Supported Versus Sheltered Employment: Cumulative Costs, Hours Worked, and Wages Earned* 35 J. of Voc. Rehab. 85-92 (2011); Rinaldi & Perkins, *Comparing Employment Outcomes for Two Vocational Services: Individual Placement and Support and Non-Integrated Pre-Vocational Services in the UK* 27 J. of Voc. Rehab. 21-27 (2007).

³⁸ Nazarov, et al., *Prevocational Services and Supported Employment Wages* 37(12) J. of Voc. Rehab. 119-129 (2012).

³⁹ Niemiec, et al., *Establishing an Employment First Agenda* 31 J. of Voc. Rehab. 139-144 (2009).

definition also omits explanation of what services will be measured to ensure that the employment goals are being fulfilled.

Under the EO, career development plans “must include vocational assessments, and *may also include situational assessments, discovery and other strategies and tools*” (emphasis added). This is problematic because many traditional vocational assessments lack reliability and validity when given to individuals with disabilities.⁴⁰ As noted earlier, traditional vocational assessments are often used as screening tools used to assess the “job readiness” of individuals with disabilities, rather presuming job readiness and seeking to identify an appropriate match between the individual’s preferences and skills and a given job or employer’s unmet needs. Traditional vocational assessments also occur in artificial/simulated settings where individuals are not evaluated as they perform actual work for an employer, and, therefore, are not an adequate or reliable predictor of real world practice and experience. Furthermore, because the setting, the tasks, and the evaluator are all unfamiliar to the person being evaluated, these factors contribute to potential reliability and validity problems.⁴¹ In artificial/simulated employment settings (such as evaluation centers or sheltered workshops), individuals are often inappropriately evaluated and tend to be referred to employment to the very facility in which they were evaluated.⁴²

Research indicates that the most fair and reliable way to evaluate an individual is within the actual work setting using materials that are naturally present.⁴³ Accordingly, as currently designed under the EO, the career development plan process does not appear to ensure that individuals will be assessed or evaluated to work in the most integrated setting appropriate.

⁴⁰ Botterbusch, “A Comparison of Commercial Vocational Evaluation Systems,” Univ. of Wisconsin Stout Materials Development Center (1980).

⁴¹ King, et al., *The Effectiveness of Transition Strategies for Youth with Disabilities* 35(2) Children’s Health Care 155-178 (2006); Niles & Harris-Bowlsbey, *Career Development and Diverse Populations* (Pearson, 2009).

⁴² Murphy & Hagner, *Evaluating Assessment Settings: Ecological Influences on Vocational Evaluation* 54(1) J. of Voc. Rehab. 53-59 (1988).

⁴³ Botterbusch, “A Comparison of Commercial Vocational Evaluation Systems,” Univ. of Wisconsin Stout Materials Development Center (1980).

Though not required to be used in the formation of a career development plan, the permissive use of “discovery” and “situational assessments” could also present challenges. Discovery is a process of getting to know an individual before supporting him/her in developing a plan for employment. It’s a person-centered process which relies on experiential situations in real environments to reveal “clues” about vocational interests. Information is gathered about an individual's interests, strengths, the types of supports that are most effective, the skills the individual has, and the types of environments and activities where this person is at his/her best. This information is gathered through a series of interviews, observations, and activities that occur in natural environments and that are typical to the individual. When applied appropriately, as outlined above, discovery is an extremely beneficial, evidenced-based career planning tool. Yet, the EO does not mandate its use in the creation of career development plans, and the practice in Oregon appears to be that career development plans precede, rather than are built upon, the results of the discovery process.

Situational assessments are another critical component of supported employment practices, because they ensure real work settings are used to explore vocational aptitudes. They assist in demonstrating the necessary support services or accommodations for optimal performance, and assist the individual in realizing and understanding how to acquire specific skills and abilities to perform the work. The fact that situational assessments are not required is problematic. Since the optimal and most effective tools used in the creation of a career development plan are discovery and situational assessments, they should be required when forming a career development plan. Vocational assessments, on the other hand, are less reliable and adequate and should not be required, yet the EO mandates them. Additionally, once these assessments are completed, the EO provides no objective metric of evaluation, beyond a report

with identified goals, and does not even require the collection of data on the results of the career development planning process. As a result, the EO provides no mechanism for ensuring that this critical planning process for integrated employment even occurs, let alone is effective in achieving integrated competitive employment.

The EO's definition of an "integrated employment setting" also is problematic because it includes "group enclaves" and "mobile work crews" which weakens, and arguably undermines the stated goal of individual, integrated employment. There is no description of how or when individuals will move from group employment to an individualized employment setting, or even if that is an expectation. The EO is silent on wages in these group employment settings, the pay rate for the employees, and who will pay them. Finally, there is no limit to the number of individuals with disabilities working in these group settings. These are all critical elements of best practices standards for group employment, where it is permitted. These models are largely recognized as less desirable forms of supported employment because they do not fully integrate an individual with a disability into the workplace. To be consistent with professional standards and federal requirements, group employment, crews or enclaves must: (1) be time limited and include an evaluation component for individuals to move from a group to an individual setting; (2) include a strict limitation on the number of individuals with disabilities in the group (usually no more than 2-3); (3) allow for the individual to regularly work alongside co-workers without disabilities; (4) require that wages be paid by the employer, rather than the adult service provider; (5) mandate compensation at minimum wage or higher, as well as benefits and opportunities for advancement comparable to that offered to non-disabled employees doing similar work, and (6) provide regular and meaningful interaction with non-disabled peers to the same extent as individuals without disabilities have to their peers.

It is widely recognized that group employment models are less effective, because they rarely allow an individual to interact with co-workers without disabilities. While the definition does state that in an enclave or group employment setting an individual must “allow” interaction with non-disabled persons, it does not require or ensure that such interaction regularly occurs, that such interaction is with co-workers or business customers (as opposed to with employment support staff), or that interaction will occur throughout the work shift (as opposed to an occasional siting of a non-disabled employee in an isolated corner of the business).

These omissions are particularly problematic because Oregon has long failed to pay minimum or competitive wages to individuals in group supported employment. Until June 30, 2015, approximately 50% of those receiving group employment services were paid sub-minimum wages. Oregon’s employment data also shows that wages were higher for individual placements and lower for group, and that those who worked in group placements worked more hours.⁴⁴

Several states have put strategies in place to phase out or make group placements less preferred. For example, Massachusetts’ plan includes the gradual phase out of group employment settings that pay less than minimum wage.⁴⁵ Maine’s guidelines state that individual placements are considered “preferred” and group placements are less desirable, but are allowed, provided that any enclave must be a “small group of people with disabilities (no more than 5 people).”⁴⁶

⁴⁴ See, LAN_DDS_322732, Sheet “Chart Data” Document.

⁴⁵ MA Dept. of Developmental Services, “Blueprint for Success: Employing Individuals with Intellectual Disabilities in Massachusetts” (November 2013).

⁴⁶ ME Dept. of Health and Human Services, “Guidelines for use of Employment Services in Medicaid Programs for Developmental Services.”

b. Expansion of Employment Services

A major issue with the 2013 EO is the dismal projected increase of providing employment services through the year 2022. The EO's projected timeline states that 100 individuals would be provided employment services in 2015, 200 individuals in 2016, and from 2017 to 2022, 275 individuals would receive employment services per year. Not only are these numbers extremely low, they are much lower than the annual number of individuals who received employment services in Oregon in years prior. For example, between September 2012 and 2013 – before the Executive Order was issued and before Oregon focused its efforts on expanding employment services – ODDS alone increased the number of persons receiving supported employment and job development by 140. At the same time, OVRS was providing new individual supported employment services to over 175 individuals with I/DD annually.⁴⁷

Moreover, as noted above, since the definition of employment services does not clearly identify any outcomes for these services, the projection of increasing the number of individuals receiving employment services over the next nine years to 2,000 people is not reasonably related to increasing the number of individuals actually achieving integrated employment. The annual expansion of services only requires that an additional number of individuals receive an assessment, a plan, or even simple information that allows them to make choices, rather than obtaining competitive employment in an integrated setting – the professionally-accepted measure of supported employment. The EO wholly fails to project the number of individuals who will obtain competitive, integrated employment as a measure of those services. Absent this expectation and commitment, it is extremely unlikely that the state would increase the number of individuals with disabilities obtaining integrated employment.

⁴⁷ Employment Outcomes Systems Results, "Statewide Oregon Employment Outcomes," available at: <https://spdweb.hr.state.or.us/EOS/ORAll.aspx>.

VI. Revised Executive Order (15-01)

The state's revised 2015 EO does not contain any substantive changes to most provisions of the earlier EO other than some improved definitions and a significant increase in the service expansion projections. Most importantly, it does not shift its focus from providing vaguely defined and largely process-oriented services to actual integrated employment outcomes.

a. *Definitions*

The revised EO more clearly defines group employment and requires minimum wage for Small Group Employment, but not comparable wages and benefits that are afforded to individuals without disabilities. Yet, the EO still does not address who will pay wages (i.e., the employer versus the provider agency). Although the new definition notes that “Competitive Integrated Employment” is the much-preferred and optimal form of employment for Oregonians with I/DD, it omits any reference to time limits or strategies for individuals to move from group employment to individualized employment other than “...the individual must maintain goals to pursue Competitive Integrated Employment opportunities.” While maintaining a “goal” to pursue competitive integrated employment for individuals in group employment settings is important, simply having a goal is insufficient. For many individuals in sheltered workshops, the goal for decades has been rehabilitation and training to transition to integrated employment in the general workforce. Despite the fact that individuals in group employment settings might have a goal of obtaining integrated employment, the harsh reality has long been that they often are never deemed “job ready” to move into the general workforce. So while individuals may have a “goal” to transition to integrated employment in the workforce, they actually are in a long-term placement in the workshop or congregated – and often segregated – group employment.⁴⁸ If

⁴⁸ G. Gersuny and M. Lefton, Service and servitude in the sheltered workshop, *Social Work* 15 (1970), 74–81.

Small Group Employment is to be used at all, it must include some type of formalized plan to move the individual from group employment to individualized integrated employment within a certain time frame. Moreover, groups of eight individuals with I/DD working in enclaves -- usually in separate sections of a business where the individual does not “own” the job -- are not likely to result in meaningful integration nor job retention.

The EO’s definition of Supported Employment, which includes Small Group Employment as defined above, is not consistent with accepted professional standards or definitions in other states. For example, policies from Massachusetts, New York, and Florida require that all employment opportunities for persons with I/DD meet meaningful and accepted professional standards for integration:

Massachusetts -

The individual is hired and paid directly by the employer (i.e., the person is not paid via a subcontract with the service provider).

- Employment takes place in a work place in the community, where the majority of individuals do not have disabilities, and which provides opportunities to interact with non-disabled individuals to the same extent that individuals employed in comparable positions would interact.
- The position is an individual job (i.e., not a group or enclave setting).⁴⁹

New York -

“Competitive integrated employment” shall mean work:

- a. In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- b. For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.⁵⁰

⁴⁹ Massachusetts S. Employment First (Policy #2010-2) (July 20, 2010).

⁵⁰ NY EO No. 136 (September 17, 2014).

Florida –

‘Employment’ for purposes of this Executive Order is defined as integrated employment, including supported employment, customized employment, and self-employment, where an individual is paid by an employer at minimum wage or greater or receives earnings through one's self-employment business, fully integrated in the community workforce, with a goal of maximum self-sufficiency. Employment outcomes shall be based on each individual's measureable vocational goals, skills, and abilities, with the intent to also meet the expectations and hiring needs of the employer.⁵¹

These definitions clearly outline standards for integrated employment that meet professional standards, with Massachusetts going as far to say that group employment does not constitute integrated employment, and Florida omitting the term “group employment” from its definition of employment entirely.

The revised EO addresses some of the earlier concerns in its previous definition of “career development plans”. For example, the revised EO requires the career development plan to “...focus on the strengths of the individual and ... be conducted with the goal of maximizing the number of hours spent working, consistent with an individual’s abilities and choices.” It would be important to include the number of hours spent working in *integrated* settings as an additional requirement and be specific enough to ensure that the individual’s choice is based on experiences beyond the sheltered workshop setting. Often individuals are asked to make a choice about employment when they have nothing to compare it to. The process of discovery and conducting situational assessments can be used to assist individuals in making a more informed choice. As previously stated, it is important that career development plans be revisited often, and revised, as needed to ensure progress is being made toward employment goals. Further, the career development plan should include an explanation of what services will be

⁵¹ FL EO No. 13-284 (October 8, 2013).

measured to ensure that the employment goals are being achieved, leading to the outcome of integrated employment.

The revised EO defines “Comprehensive Vocational Assessment,” but it is not clear who will be conducting these assessments. As noted above, traditional vocational assessments are often used as screening tools to determine job readiness. The revised EO does state that vocational assessments will no longer be purchased if they are conducted in a sheltered workshop. However, there is no specific information about where the vocational assessment will be conducted. Further, it is not clear what will make the vocational assessment “comprehensive”.

The revised EO defines “Competitive Integrated Employment” consistent with the Workforce Innovation and Opportunity Act (WIOA) and includes a requirement that the employment setting be one “where the employee interacts with other persons who are not individuals with disabilities...*to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons...*” (emphasis added). But the definition of “Small Group Employment” only requires interaction “in a *manner typical to the employment setting*” (emphasis added). It is not clear what “a manner typical to the employment setting” means, since unlike the federal WIOA definition, the comparative standard is not persons with disabilities but rather workplace conditions, which well could mean the areas or situations where only persons with disabilities work. The fact that the definition for “Small Group Employment” would not include WIOA’s standard for integration is troubling, and perhaps even more concerning, is that Oregon is still relying on using group employment without a plan or stated timeframe to move individuals into integrated employment settings.

b. *Provision of Employment Services*

Section IV(6) of the new EO attempts to clarify the pervasive ambiguity of the first EO concerning what “counts” as “having received employment services,” by identifying five examples of such services. Notably, four of the five are pre-vocational processes: discovery, assessment, a VR plan, and job development. Only the last – supported employment – is arguably a form of integrated employment, although it includes many of the defects noted above for Small Group Employment. Thus for most employment services, it is still not clear how, if, or when – if ever – these services will lead to individual integrated employment. For example, an individual could receive discovery, vocational assessment, an individual plan for employment, and job development but still not be working in an integrated setting. In fact, they could receive any one or all of these services and never leave a sheltered workshop.

It is most effective and required by accepted professional standards, for individuals to receive all of these services, not “one or more” and that the services eventually lead to integrated employment. The very purpose of employment services provided in this Order is to increase competitive integrated employment or other integrated employment opportunities “for individuals in the... target populations, and to decrease the number of individuals in sheltered workshops.” But there is an absence of any commitment or stated goal in the revised EO of actually placing individuals in supported employment or competitive integrated employment. As with the previous EO, the goal focuses on providing services rather than obtaining outcomes, and there is no clear connection to how providing these services would lead to placements in integrated employment.

c. Expansion of Employment Services

Executive Order 13-04 established the goal of providing employment services to 2,000 individuals by 2022. The revised EO increases that number to 7,000 individuals. According to the Statewide Employment Coordinator, this increase does not reflect any real expansion of individual supported employment or projected outcomes, but simply a different and more accurate way of understanding what was already occurring, and had been occurring, when the initial EO was issued.

VII. November 2013 Integrated Employment Plan (IEP)

While it is important to develop an infrastructure and internal capacity within the state's various departments, Oregon's November 2013 IEP, like the Executive Orders, is more process than outcome focused. Without more clarity and specific processes to develop provider capacity and achieve outcomes, the plan is unlikely to lead to an increase in integrated employment for people with I/DD in Oregon.

The IEP's stated "Plan Goals, Actions, and Activities" implementing the EO lack specificity. There should be a description of "Major Activities" "Responsible Parties" and "Target Dates" aligned with each major activity implementing the EO. Many of the overarching goals and major activities stated are very broad, making them difficult to attain without clearly outlined, smaller, measureable steps. This would allow for continued action versus working on one specific goal over a nine-year period. While the IEP does provide a number of metrics, they are merely targets not commitments, are all limited to persons already receiving ODDS services, are based upon antiquated and restricted data, and are extremely modest – actually less than what Oregon had previously accomplished before the EO.

For example, Metric 1 requires an “increase the percentage of adults with developmental disabilities receiving ODDS employment services who are working in individual integrated employment settings” and uses a 12% baseline. However, in September 2010 and 2011 – well before the Executive Order was even imagined -- the state already was serving 14% of its adults with I/DD. The state’s goals are not much of an increase and mostly a commitment to do less than what they were already doing years ago. The same is true for Metric 2: increasing the number of adults with developmental disabilities receiving employment services, which targets serving 1,503 individuals in June 2015. Yet, ODDS alone served 1,547 individuals with I/DD in 2011.

Providing a plan for increasing outcomes is one of the only means by which an employment service deinstitutionalization plan can be effective. For example, when Governor Cuomo announced a comprehensive employment transformation plan for serving individuals with I/DD in the most integrated setting, the New York Office of People with Developmental Disabilities (OPWDD) developed goals for the number of individuals with I/DD who will receive supported employment in an integrated setting, stating that by April 1, 2014, OPWDD will increase the number of new people with developmental disabilities competitively employed by 700 and that by October 1, 2013, OPWDD will have 250 new people employed.⁵² The New York plan calls for phasing out sheltered workshops over the next 10 years for existing participants, and shifting individuals into competitive employment opportunities. The New York plan is a prime example of planning systems change in outcome oriented manner. Equally noteworthy, its annual commitment for the first two years is 700% higher than the Oregon’s EO

⁵² NY Office for People with Developmental Disabilities, “Road to Reform: Putting People First,” (April 2013).

and IEP (50 by June 30, 2014 and 100 by June 30, 2015), and New York's outcomes are integrated jobs where Oregon's are employment services, often in segregated settings.

Additionally, the 2013 IEP's measurements and metrics do not clearly address some key issues such as provider capacity, the reduction of individuals in sheltered workshop settings, and increasing employment outcomes for students transitioning from school to work.

VIII. Revised Integrated Employment Plan (January 2015)

While the revised IEP includes additional measures and metrics and new strategies that address the previous omissions of sheltered workshops, youth in transition, and provider capacity, the outlined major activities, responsible parties, and target dates are still very broad (e.g., the dates include a 9 year period rather than specific earlier, step by step dates for activities), and remain mostly unchanged.

New to the revised IEP is the addition of Metrics 6 and 7, which measure the increase in individuals receiving ODDS/VR services who achieve new employment in individual integrated settings. Yet, the IEP does not address or give any background information on how the state arrived at its baseline numbers and how it calculated its yearly projections. Significantly, the state provided VR services and closed cases for 185 individuals with ID/D into integrated employment in 2012, and 266 in 2013 – before the EO went into effect.⁵³ The revised IEP only reflects a modest increase – to 290 – in 2014, which actually is far smaller than the prior annual increase *before* the EO was issued. According to the Employment First data analyst, future projections are simply based on demographics and service demand, not any estimate of how many individuals will actually benefit from the EO and related strategies. Moreover, as with the 2013 IEP, the state is using data and projections that mostly reflect what they always were doing.

⁵³ Butterworth, et al., "StateData: The National Report on Employment Services and Outcomes," Inst. for Community Inclusion, Univ. of Massachusetts Boston (2013).

IX. Oregon's Expansion Compared to Other States

In my professional opinion, the plan created by Massachusetts is consistent with accepted professional standards and provide reasonable plans for change. The Massachusetts plan includes clear timelines for discontinuing new referrals to sheltered workshops and to completely phase out the use of sheltered workshops by June 30, 2015. Further, during 2015, their plan identified a designated group of individuals currently in sheltered workshops to gradually transition into individual supported employment, group supported employment, and/or Community-Based Day Services (CBDS) programs.⁵⁴ The Massachusetts Blueprint for Success also outlines plans to provide additional supports to individuals and families, staff development trainings, and technical assistance to increase provider capacity. According to the state's Blueprint Progress Report, "it is expected that approximately 890 individuals (about one-third of those attending sheltered workshops as of June 30, 2014) will benefit from new funding resources to transition to individual or group supported employment and/or CBDS during fiscal year 2015." Recent data from Massachusetts suggests that this target – which far exceeds Oregon's plan for the next three years – is being met.

In addition, as noted above, New York's plan, which includes numerical commitments concerning individuals who will obtain competitive employment in an integrated setting – not merely receive employment services somewhere – far exceeds even Oregon's new EO and revised IEP "targets" for services,

On the other hand, Minnesota's Olmstead Plan (2013),⁵⁵ which provides clear goals and detailed activities, including goals of placing youth in transition and adults with disabilities in

⁵⁴ MA Dept. of Developmental Services, "Creating Conditions for Success: Blueprint Progress Report: Employing Individuals with Intellectual Disabilities in Massachusetts" (October 2014).

⁵⁵ MA Dept. of Developmental Services, "Creating Conditions for Success: Blueprint Progress Report: Employing Individuals with Intellectual Disabilities in Massachusetts" (October 2014).

integrated employment, and which is far more specific and ambitious than Oregon's, was found by a federal court *not to be an effective Olmstead plan*. The plan outcomes four area: expanding integrated employment for students and adults with disabilities; aligning policies and funding to increase integration and expand employment opportunities; providing training, technical assistance, public information and outreach; and ensuring students have interagency supports and services to access integrated employment options before exiting high school. The plan also details steps to build provider capacity through training and technical assistance to ensure increased outcomes in integrated employment for youth and adults with disabilities. Examples from their plan include:

Expanding opportunities for students with disabilities
Timeline:

By June 30, 2014 establish consistent baselines for measuring progress on increased employment of transition-age students; establish goals for annual progress.

By June 30, 2014 establish a baseline for measuring how many students with disabilities have at least one paid job before graduation; establish goals for annual progress.

By June 30, 2015 and each subsequent year, there will be a minimum of 20 additional schools per year adopting evidence-based practices that result in integrated competitive employment outcomes.⁵⁶

X. Summary

Even with the revised definitions and increased number for employment services, the new EO and revised IEP do not constitute an acceptable *Olmstead* plan, particularly when compared to what Oregon was previously doing and what other states are proposing to do in their plans. The primary deficiency in Oregon's plan is setting goals that only measure the number of individuals to receive employment services – rather than the number of individuals with I/DD

⁵⁶ MN Dept. of Human Services, "Putting the Promise of Olmstead into Practice: Minnesota's 2013 Olmstead Plan" (November 2013).

who actually participate in individual supported employment in an integrated setting -- over a nine year period. Similarly, the wholesale absence of any outcomes related to individualization, integration compensation, benefits, and hours worked could result in hundreds of individuals with I/DD being shifted to congregate crews or enclaves for years, with limited opportunities for interaction with non-disabled peers, no equal benefits or workplace accommodations, and no chance of even retaining the job if the employer modifies its contract with the employment provider. Simply receiving employment services will not necessarily result in integrated employment outcomes. Since Oregon has provided employment services to a greater number of individuals in years prior to the EO, it is clearly insufficient for the state's plan to have such low numbers as goals. If the state intends to decrease the numbers of individuals in sheltered workshop settings, a more robust plan should be put in place as demonstrated by other states (e.g., New York, Massachusetts, and even Minnesota). As such, it is clear from its rollout plan that Oregon is neither prepared nor capable of actually assisting individuals with I/DD in obtaining integrated employment in an effective manner. The absence of any clearly delineated outcomes, metrics, or accountability standards reinforces the ineffectiveness of the state's plan.