

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

PAULA LANE, et al.,

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

Plaintiffs,

v.

KATE BROWN, et al.,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff- Intervener

v.

STATE OF OREGON,

Defendant.

EXPERT REPORT OF LYNNAE RUTTLEDGE

I. Purpose of Review

This expert report is submitted in support of the class action lawsuit of Lane v. Kitzhaber. The report is a systems overview of the public vocational rehabilitation program and Oregon's ineffectiveness in providing supported

employment services to interested individuals with intellectual and developmental disabilities, thereby denying the opportunity to participate in competitive employment in integrated settings rather than sheltered workshop placements.

II. Background and Experience

I am a person with a significant disability resulting from a birth anomaly. As an eligible applicant, the Michigan Vocational Rehabilitation program successfully served me from 1967-1971. My public service career in the states of Oregon and Washington and at the national level has focused on disability employment policy, program development, evidence based practices and research.

Relevant to this report, I served as the initial Supported Employment program coordinator for the Oregon Department of Human Services, Mental Health Division (DD Services) from 1986-1987. From 1987-2001, I served in various vocational rehabilitation program management and executive administrative capacities with the Oregon Office of Vocational Rehabilitation Services (OVRs) including Independent Living program coordinator, Quality Assurance Manager, Field Services Assistant Administrator, and Executive Team Program and Policy Manager. From 2001-2003, while employed by Oregon Health & Science University, I served as a Governor's appointed member of the State Rehabilitation Council. In 2003, I returned to OVRs and again served as a member of the executive team as the Policy and Program Manager.

My vocational rehabilitation expertise broadened further by serving as Director of the Washington Department of Social and Health Services, Division of Vocational Rehabilitation from 2005-2009. In December 2009, I was confirmed by the US Senate and appointed by the President to serve as the Commissioner of the US Department of Education, Rehabilitation Services Administration (RSA); I served in that capacity at the federal level from 2010-2012. RSA is the federal agency that administers the public vocational rehabilitation program.

Since my retirement in 2012, I have continued my involvement in disability employment policy as a presidentially appointed member of the National

Council on Disability starting in January 2013. Additionally, I provide independent policy consultant and training services to state and tribal vocational rehabilitation agencies, state and county developmental disability agencies as well as state independent living and state rehabilitation councils.

A copy of my curriculum vitae is attached as Appendix 1.

III. Materials Reviewed and Information Collected

In preparing this report, I reviewed federal, multi-state and Oregon data reports available on the Internet, as well as various documents provided to me by the plaintiffs. A list of the documents I reviewed is attached as Appendix 2.

IV. The Vocational Rehabilitation Services System

A. The Purpose and Obligations of the Federally Funded Vocational Rehabilitation Services Program

The public vocational rehabilitation services program was authorized by federal legislation just after World War I as a means of providing vocational rehabilitation services for civilians. The program was initially created by Congress in 1920 through the Smith-Fess Act and established as a permanent federal program as a part of the Social Security Act of 1935. Subsequent federal legislative actions continued to refine the nature, scope and funding structure of the program resulting in the Rehabilitation Act of 1973.

The Rehabilitation Act of 1973 provides the legislative foundation for today's program. The Rehabilitation Act of 1973 emphasized priority of services to individuals with the most significant disabilities and the 1986 Amendments authorized the provision of supported employment services. The Rehabilitation Act is incorporated in its entirety into the nation's workforce legislation, known as the Workforce Investment Act of 1990 and now its successor legislation, the Workforce Innovation and Opportunity Act of 2014. However, for ease of reference, the Rehabilitation Act is recognized as the enabling legislation that governs the public vocational rehabilitation program.

The construct of the Rehabilitation Act clarifies that one of the purposes of the Act is to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, inclusion and integration into society. In the findings section, Congress cited that individuals with disabilities, including individuals with the most significant disabilities, have demonstrated their ability to achieve gainful employment in integrated settings if appropriate services and supports are provided.

The Rehabilitation Act authorizes the public vocational rehabilitation (VR) program. Program success is defined by the achievement of competitive, integrated employment outcomes. The expectation of achieving an integrated employment outcome is for all disability populations that the Vocational Rehabilitation program serves, including individuals with intellectual and developmental disabilities (IDD).

Vocational rehabilitation program services are delivered through state structures by designated state agencies and designated state units. The state VR agencies are required to submit state plans that describe their intended methods and strategies for compliance with federal requirements. One of the key elements of quality in assessing the performance of the vocational rehabilitation program focuses on the number of hours program participants with IDD work in both competitive employment and in supported employment at the time the case is closed.

The US Department of Education, Rehabilitation Services Administration (RSA) conducts annual reviews and periodic on-site monitoring to determine if the state VR agency is complying with the provisions of its state plan and to assess the quality of its outcomes. The RSA Monitoring and Technical Assistance Guide is used in preparation for and during federal monitoring, and provides the basis for the following analysis of the state VR agency program's overall performance in relation to employment outcomes:

- Review the quality of competitive employment outcomes achieved by all individuals who exited the VR program, including, but not limited to, average hourly wages earned, hours worked per week and employer-provided medical insurance, for the most recent fiscal year. How have the numbers and percentages changed over the five-year period? How

does the VR agency's performance compare to that of similar type VR agencies for the most recent fiscal year?

- What trend in Supported Employment outcomes can be discerned? What factors may be driving this trend? How does the trend for the VR agency compare to that for all similar type agencies nationally?

State VR agencies must meet a high legal standard ('clear and convincing evidence') when determining that an individual is not eligible for VR services because the person is incapable of benefiting from vocational rehabilitation services as a result of the severity of their disability. The VR agency must conduct an exploration of the individual's abilities, capabilities and capacity to perform work in real work situations. A written plan must be developed that uses trial work experiences which must be provided in the most integrated setting possible and must be of sufficient variety and over a sufficient period of time to make a reliable determination of eligibility. Annually, the VR agency must report the number of individuals determined, on the basis of clear and convincing evidence, to be too severely disabled to benefit in terms of an employment outcome from vocational rehabilitation services.

RSA requires the submission of annual program data by the state vocational rehabilitation agencies. The data is collected and reported on federal forms, most notably the RSA 911, with key data available publicly at www.rsa.ed.gov.

B. Responsibilities of State VR Agencies

The state VR agency is responsible for recruiting, hiring, training and retaining qualified professional staff to provide services to eligible program participants, including those with intellectual and developmental disabilities (IDD). The role of the VR counselor is to determine eligibility for VR services, to presume eligibility for applicants who are SSI/SSDI beneficiaries and want to work, and then to work in collaboration with the consumer and their support team, which may include their family members (as appropriate), the Developmental Disability services case manager (as appropriate when the consumer has IDD), the employment services provider (for competitive and/or supported employment with extended services), a benefits planner and education personnel for transition-age students. Further, the role of the VR counselor is to provide counseling and guidance in

the development of the employment plan and to work together with the consumer to assess the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

It is important to recognize that VR services are individualized and time-limited. Commonly, VR facilitates and funds community assessments and vocational exploration, job development, job placement and job coaching until the consumer is stabilized on the job for at least 90 days. At that point, if appropriate, VR closes the file. For program participants with IDD in supported employment, the extended services provider maintains the consumer in the job from that point forward. The VR file can be reopened at any time for post-employment services or to pursue a new employment goal.

Ideally, youth transition services begin while the youth with an intellectual and developmental disability is still in secondary education and receiving special education services under an IEP (individualized education program). As appropriate, VR counselors are invited to join the transition team and attend IEP and transition planning meetings before the student leaves high school. Through this process, VR counselors are better able to assess a student's eligibility for VR services. Once determined eligible, the student, their VR counselor, often in partnership with a schools transition specialist and the family, develop the employment plan that identifies the vocational goal and needed VR services. There is an expectation that the VR employment plan is in place by the time the youth with a disability exits secondary education.

State VR agencies are required to partner with other federal, state and local resources to coordinate, leverage and help meet the cost of vocational rehabilitation services. There are additional funding streams that can be leveraged to supplement funding of employment and extended services for individuals with IDD. For example, the Social Security Administration administers the Ticket to Work program that is designed to enhance the employment options for Social Security beneficiaries through designated Employment Networks. State VR agencies can serve as Employment Networks and many partner with other state and local resources to coordinate and leverage resources that fund employment and extended services for individuals with IDD and other significant disabilities.

C. Federal Requirements for Supported Employment State Plans

State VR agencies must submit and have an approved State Plan to access their annual allocation of available federal funds. Sec. 361.34 requires that the state VR agency submit a Supported Employment (SE) State Plan supplement that describes the intended use of funds for the cost of services designed to lead to successful supported employment outcomes. The Supported Employment State Plan must be submitted as a supplement to the State Plan.

The State Plan's provisions for supported employment describe the scope of SE services to be provided, assuring that statutorily-mandated supported employment services are available; to the extent job skills training is provided, that the training is provided on-site (in the community-based business rather than in a sheltered workshop or facility-based program); and, most importantly, that supported employment services include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice of individuals with the most significant disabilities.

D. Federally Funded Supported Employment Services

Supported employment and supported employment services are defined in the Rehabilitation Act, Section 7. Definitions (34)(35). The term "supported employment" means:

Competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities 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 who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension and extended services after the transition in order to perform such work.

The term "supported employment services" means:

Ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability ... and are provided by the designated State unit for a period of time generally not to extend beyond 18 months.

New provisions in the Workforce Innovation and Opportunity Act have now extended that timeframe from 18 to 24 months.

Supported Employment first received a designated funding stream through the 1986 Amendments to the Rehabilitation Act. The basic vocational rehabilitation program is authorized and funded under Title I of the Rehabilitation Act with a 78% federal share, to be matched at the state level with the remaining 22% share. Oregon received approximately \$300,000 for Supported Employment for FFY 2015; the majority of the SE funds are matched and utilized by OVRs, the remaining 15% are matched and utilized by the Commission for the Blind. State VR agencies have the discretion to fund additional supported employment services with Title I basic VR funds. During my tenure as Director of the Washington VR program, we routinely increased our investment in supported employment by supplementing with additional Title I basic VR funds each year.

The VR program regulations define "extended employment" as "work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act" (34 CFR 361.5(b)(19)). As noted in the preamble to the Final Extended Employment Regulations, state VR agencies were still permitted to serve individuals with disabilities in extended employment when the purpose was to prepare those individuals for employment in integrated settings.

In January 22, 2001, the US Department of Education, Rehabilitation Services Administration issued final regulations revising the definition of "employment outcome" for purposes of the VR program to solely mean employment in an integrated setting (Final Regulations for State VR Services Program, 66 Fed. Reg. 7249 (January 22, 2001) (Final Extended Employment Regulations)). The purpose of the regulations was "to ensure, as we believe

Title I of the Act intends, that participants in the VR program, particularly those with significant disabilities, are afforded a full opportunity to integrate within their communities and participate in jobs that are available to the general population" (Final Extended Employment Regulations, 66 Fed. Reg. 7249, 7251 (January 22, 2001)).

The revised, current definition of "employment outcome," found in 34 CFR 361.5(b)(16) is:

- *Employment outcome* means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in §361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

As a result of this revision, extended employment -- work in a sheltered workshop -- no longer satisfied the definition of "employment outcome" for purposes of the VR program.

For the public vocational rehabilitation program, a successful employment outcome occurs in a setting typically found in the community in which the individual with a disability interacts with non-disabled individuals, other than non-disabled individuals who are providing services to the individual, to the same extent that non-disabled individuals in comparable positions interact with other persons. The focus of the public vocational rehabilitation program is on job placement in individualized competitive, integrated employment settings, not in sheltered workshop placements and not on work crews or in enclaves.

V. Historical Perspective on Oregon's Vocational Rehabilitation program for Individuals with Intellectual and Developmental Disabilities (IDD)

Despite being an early national leader in providing supported employment services and assisting individuals with IDD to achieve successful supported employment outcomes, it is clear that Oregon's VR agency (the Office of Vocational Rehabilitation Services or OVRs) has failed over time to maintain and in fact has reduced its efforts to this population. While Oregon's initiatives in supported employment for individuals with IDD had a very promising start, subsequent program efforts in Oregon have been reduced and program resources have been diverted.

In the mid-1980's, Oregon was rightfully considered a national leader and at the forefront of implementing supported employment services for individuals with IDD. The University of Oregon's Specialized Training Program conducted research and demonstration projects, coordinated the state and national technical assistance centers on supported employment, and influenced national policy on supported employment.

In 1986, during my tenure with OVRs, Oregon was awarded one of the first federally funded state systems change grants, followed by a second systems change grant that together spanned the time period of 1986-1993. The systems change grants were funded by the US Department of Education, Office of Special Education and Rehabilitative Services under funding authority: 34CFR, Part 373 demonstration grants. In the 1990's, Oregon VR additionally co-managed a secondary education transition state systems change grant with the Oregon Department of Education. In my role at OVRs, I served as co-principal investigator.

By the end of the first state systems change grant in 1991, approximately 50% of the roughly 2300 individuals with IDD on the comprehensive waiver at that time were in supported employment. Clearly during that early timeframe, Oregon was a leader in supported employment policy and practice.

The nationally recognized trendsetting growth in supported employment that occurred between the mid-1980's and 1990's since then has not only stalled,

but returned to pre-systems change grant levels. By FY 2008 Oregon ranked 16th of 39 states reporting on integrated employment of individuals with intellectual disabilities. By then, 71% were in facility-based programs.

From 2008-2012, the employment participation rate for working-age individuals (ages 16-64) with any disability who were employed in Oregon decreased from 39.8% (106,346 individuals with any disability employed) to 33.8% (97,662 individuals with any disability employed) while the percentage of individuals with cognitive disability who were employed lagged even further behind in the same time period from 29.9% (35,983 individuals with cognitive disability employed) to 23.5% (29,979 individuals with cognitive disability employed)

From 2006 to 2013, successful supported employment closures for individuals with intellectual and developmental disabilities served by the Oregon Vocational Rehabilitation program compared with those with other disabilities have been disproportionately lower and has resulted in disparate levels of successful supported employment outcomes among disability populations they serve.

Successful supported employment closures for all participants (those with IDD and those with non-IDD) have ranged from 355 in 2006 to a high of 655 in 2013. However, of those closures, closures for individuals with IDD have ranged from a low of 104 in 2009 to a high of 204 in 2013. In 2006, successful supported employment closures for individuals with IDD comprised 47% of the total; by 2013, the percentage had dropped to 31%.

With resources from a federal Medicaid Infrastructure Grant awarded to OVRs, Oregon participated in the launch of the national Supported Employment Leadership Network (SELN). While recognized as one of the early member states when SELN was launched in 2006, Oregon allowed its participation to lapse but just resumed its membership in January 2014.

VI. OREGON'S CURRENT VR SERVICES SYSTEM

A. Oregon and National Data

There are several critical areas where OVRs falls far below the national average of similar type VR agencies in assuring effective services for individuals with IDD. Most notably, OVRs is below the national average percentage in individuals with IDD being determined eligible; it is higher than the national average in the lack of services for those accepted for services; and it has a consistent record of serving fewer transition-age youth and a consistent record of settling for fewer hours worked at case closure. In addition, there are disparities evident in the outcomes for differing disability populations served.

For the past five federal fiscal years (2009-2013), OVRs has consistently determined a much lower percentage of individuals with IDD eligible for services, who then exited the program, than the national average. In 2013, the difference was again significant; in OVRs, only 65.9% of those that exited at application had been determined eligible, while nationally 82.5% had been determined eligible. This would seem to indicate a bias from the very beginning against individuals with IDD.

Consistently over the past five years, OVRs has a significantly higher percentage than the national average of individuals with IDD who, after being determined eligible and entering into an employment plan, then receive no services. In 2013, the national average for participants of similar type VR agencies was 25.74% receiving no services, while OVRs provided no services for 31.54% of similarly situated individuals with IDD.

From 2008 to 2013, the OVRs program has consistently served fewer transition-age youth than the national average of state vocational rehabilitation programs. RSA compares by state and nationally the number of transition-aged youth (ages 14-24 at application) who received services with the total number who received services each year. In each of these six program years, the percentage of transition-aged youth served in OVRs was a full 10% lower than the national average for other VR agencies.

RSA 911 data indicates that for FY 2013, OVRs served a lower percentage of transition age youth/young adults (ages 14-24) than the national average for other VR agencies. The percentage of OVRs participants receiving services that were transition age was 24.05%; the national average for other VR agencies was 36.14%. In FY 2013, for transition age individuals with IDD, Oregon again has a lower percentage than the national average for other VR agencies. The percentage of OVRs transition age participants with IDD receiving services was 45.32%; the national average for other VR agencies was 59.41%.

Another indicator of the quality and, therefore, the effectiveness of a state Vocational Rehabilitation program, is the average weekly hours of work achieved at closure for individuals with IDD, both in competitive employment and in supported employment. In 2013, the national average for weekly hours of competitive employment work for successful VR consumers with IDD was 23.48 hours; the Oregon average was 19.11 hours. Oregon has steadily lost ground with average weekly hours of competitive employment worked at closure for individuals with IDD, from a high of 22.8 hours in 2005 to 19.11 hours in 2013. Even more concerning is the even lower number of hours worked at closure for individuals with IDD in supported employment. In FY 2013, the national average was 19.84, yet Oregon participants with IDD achieved only 15.13 average number of hours worked at closure in supported employment. It is evident, at closure, that OVRs program participants with IDD served in supported employment work substantially lower numbers of average hours per week than the national average of those served in other state vocational rehabilitation agencies.

B. OVRs and Other States

In its 2015 State Plan, OVRs indicates it is working with eight cross discipline Employment First Teams to pilot supported employment activities with a focus on developing best practices to implement across the state. This appears to be a very limited initiative. It would seem more advisable to emulate the success of other state VR agencies that have impressive track records of serving individuals with IDD, but there is no indication that that is being considered by OVRs.

Looking at other state VR agencies and their results for 2011-2013, several states have demonstrated that they can achieve better quality employment outcomes for individuals with IDD, in both competitive employment as well as supported employment, far exceeding the lower results from OVRs and the national average.

From RSA FY 2013 data, I analyzed the data for hours worked at closure in competitive employment for individuals with IDD. For competitive employment outcomes for individuals with IDD, the national average was 23.48 hours worked per week at closure. OVRs' participants achieved an average of only 19.11. Participants with IDD served by the VR agency in the District of Columbia achieved outcomes of 36.73 hours worked per week in competitive employment at closure; in Georgia, participants with IDD worked 30.21 hours per week in competitive employment; in Nevada participants worked 29.56 per week; in Alabama, participants worked 28 hours per week; in South Carolina and Virginia, participants worked 25.90 hours per week; and in Delaware, they worked 25.31 hours per week. By any standard, Oregon is achieving demonstrably lower results than these and other states.

Again from 2013 data, I analyzed the data for hours worked in supported employment at closure for individuals with IDD. The national average was 19.84 hours worked per week. OVRs' participants with IDD in supported employment achieved only 15.13 hours worked per week. Participants with IDD served by the VR agency in the District of Columbia achieved outcomes of 29.50 hours worked per week in supported employment. Other high achieving states included: California (27.72 hours), Nevada (26.77), Georgia (26.50), South Carolina (24.42) and Virginia (22.75).

The outcomes for transition-age youth, not specific to youth with IDD, also indicate a lack of effectiveness by OVRs. Nationally, VR agencies are committing more of their program's effort to serving transition-aged youth. One measure of effectiveness is a comparison of the number of transition-aged youth served, as a percentage of the total of all who received services. Nationally, in 2013, the average was 36.14%. Oregon's percentage was significantly lower at 24.05%. In fact, in comparing similar type VR agencies (those that also serve the general disability population, not including VR agencies that serve individuals that are blind), Oregon ranked last among its peers. This has been a consistent pattern for several years. In 2012, the

national average was 35.22%; Oregon's percentage of serving transition-aged youth was 23.37%, ranking it last among its peers. In 2011, the national average was 34.40%; Oregon's percentage was 23.30%. That year, Oregon again ranked last among similar VR agencies. This puts all of the following similar type state VR programs ahead of Oregon: Arkansas, Connecticut, Delaware, Florida, Idaho, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, South Carolina, South Dakota, Texas, Vermont, Virginia and Washington.

C. Oregon's VR Services for Persons with Mental Illness

There are two primary disability populations that benefit from supported employment services: individuals with IDD and individuals with serious mental illness. Despite its early success in supported employment program development and successful employment outcomes for individuals with IDD, the Oregon Vocational Rehabilitation program has focused most of its capacity building over the past fifteen years on serving adults and youth with mental illness with success that has been noted nationally. Oregon has demonstrated that it has the knowledge and capacity to develop, deliver and improve outcomes for individuals with significant disabilities. If it chose, it could have maintained and sustained its supported employment efforts and employment outcomes for individuals with IDD

OVRs has instead pro-actively partnered with the Oregon Supported Employment Center for Excellence (OSECE), DHS Oregon Addictions and Mental Health, and the Regional Resource Institute for Human Services at Portland State University to expand the availability of supported employment services for adults with mental illness. Created in 2008, OSECE is a part of Oregon's Supported Employment Initiative that is focused solely on individuals with serious mental illness. OSECE provides technical assistance to supported employment providers, conducts fidelity reviews, collects, evaluates and shares outcome data, educates and advises local and State level policy makers and coordinates media coverage of supported employment success stories.

OVRs has been recognized nationally for its utilization of IPS (Individual Placement and Support), a strategy for rapidly engaging individuals with mental illness in the evidence-based practice of supported employment.

Utilization of IPS in Oregon had expanded from 10 programs in 2011 to nearly 30 programs across the state in 2013. The numbers of hours worked at closure for Oregon non-IDD (primarily individuals with mental illness) supported employment participants in 2013 was 18.41 hours per week; the number of hours at closure for Oregon IDD supported employment participants was 15.13 hours.

Oregon's VR program also has a quite different record for youth who do not have IDD. OVRs has played a leadership role in the development, implementation, and evaluation of Youth Transition Program (YTP), a collaborative program with participating school districts across the state that serves students with disabilities *primarily other than IDD*. Since 1990, over 23,000 youth with disabilities have received YTP services. YTP is based on a funding and programmatic partnership model with the Department of Education, participating school districts, the University of Oregon and local VR offices to provide transition services to VR eligible youth with disabilities resulting in competitive integrated employment or further education. In the report capturing the first twenty years of the program (1990-2010), only 10% of the program participants were students with mental retardation (the term used in the report). In 2013, OVRs reported serving 1371 students in YTP. Significantly, of those that were closed in employment, they were working 26 hours per week.

The total number of Oregon's successful supported employment closures has risen significantly in the past three years, but the proportion of those closures by individuals with IDD has not kept pace with that growth. Closures in supported employment have risen from 331 in 2011, to 508 in 2012 and to 655 in 2013. Of those closures, individuals with IDD have steadily fallen in the percentage of closures from 40% in 2011, to 32% in 2012 and 31% in 2013.

The disparities in outcomes across disability populations served by OVRs are startling. Individuals with non-IDD served in supported employment are generally individuals with mental illness. The national average in 2013 for hours worked at closure by individuals with non-IDD was 22.75. Oregon achieved 18.41 hours. While this is unacceptably low, it represents a greater effort, more effectiveness and better outcomes for this disability population than for individuals with IDD. In terms of competitive

employment outcomes, individuals with communications impairments (resulting from hearing loss, deafness, cerebral palsy) achieve a significantly higher employment plan success rate than for individuals with IDD served by OVRs. In 2013, OVRs overall achieved a success rate of 59.8%, with individuals with communications impairments achieving a success rate of 80.7%. There is no indication that OVRs is analyzing these differences nor trying to translate similar success with the IDD population.

VII. EXECUTIVE ORDERS (13-04 and 15-01) AND INTEGRATED EMPLOYMENT PLANS (November 2013 and January 2015)

A. The Executive Orders

The Oregon Governor has now issued two Executive Orders. The first was issued in April 2013 and took effect July 1, 2013 and is now superseded by a second Executive Order that was issued and took effect on February 2, 2015. The most significant differences in the two Executive Orders in relation to vocational rehabilitation services and the expectation of the target population of individuals with IDD to achieve quality employment outcomes include:

- A definition of competitive integrated employment that focuses on employment which meets or exceeds state or local minimum wage requirements, at a location 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 interact with other persons and presents opportunities for advancement that are similar to those for other employees. While laudable in its expectation of at least minimum wages, this definition fails to specify that the wages of the workers with IDD are to be paid by the business as the employer, not a supported employment services provider and fails to specify that benefits provided to other workers will be provided to the worker with IDD.
- In the 13-04 EO, the definition more generally indicated that an integrated employment setting could include a group enclave or mobile work crew. The combination of terms (group enclave or mobile work

crew) was not defined. In the 15-01 EO, the term is now Small Group Employment. In the 15-01 EO, Small Group Employment is identified as work performed in regular business, industry and community settings by groups of two to eight individuals and that the wage paid must meet or exceed State and local minimum wage requirements. The definition fails to identify the employer-employee relationship, is not limited in duration, and does not require that the group include any persons without disabilities. Consequently it is highly likely that, instead of the community-based business serving as the employer, a supported employment services provider will contract with the community-based business, will receive the revenue, will organize the groups, and will pay the wages. The definition also fails to insist that comparable (or any) benefits are provided.

- There is a new definition for Supported Employment that includes competitive integrated employment, self-employment and Small Group Employment. The inclusion of Small Group Employment is contrary to and not compatible with the meaning and definition of supported employment used and required by the OVRs program. OVRs has explicitly indicated to its staff that VR's mandate for the most integrated setting possible for employment placements will not allow placements in enclaves or work crews. For OVRs, Small Group Employment is not integrated supported employment.
- The addition of post-secondary education and/or training is now included in the definition of Employment Services. While this is laudable, the broadening of the definition will likely translate to more individuals with IDD being as receiving Employment Services, but there is no greater likelihood that individuals with IDD will achieve successful employment outcomes - integrated employment.
- A substantial increase in the new EO (without rationale for how or why the number was identified) in that ODDS and VR will now provide Employment Services to at least 7,000 individuals with IDD over the nine year period; an increase of 350% over the initial target of 2,000. Rather than increasing by 275 individuals each year in 2017-2022, the new EO indicates that the increase will be 800 per year. While this increase appears dramatic, it actually represents just a different way

of describing and projecting service utilization for the same individuals who were in sheltered workshops or youth at risk of entering workshops prior to the first EO. As the Statewide Employment Coordinator described, the revised projections for employment services was based entirely on analyzing the flow through workshops in 2013, rather than a snapshot of the sheltered workshop census at a point in time during 2013.

- The 15-01 EO goes further in indicating that any sheltered workshop worker that indicates a desire to work in an integrated employment setting and to receive Employment Services shall receive those Employment Services. The likelihood is that such services will be provided to increasing numbers of individuals either solely through pre-vocational services like discovery or vocational assessments, or, at best, in Small Group Employment, rather than building capacity to achieve competitive integrated employment. There is no specific provision that indicates that the Employment Services need to be provided in integrated settings, resulting in the likelihood that the range of Employment Services by ODDS will be provided in segregated settings.
- The initial proportionality of those being served under the 13-04 Executive Order was that half would be from transition age youth and the other half from sheltered workshop workers. The 15-01 Executive Order abandons this allocation and instead, supposedly leaves it to the Policy Group to decide how to allocate new Employment Services, with no commitment to proportionality. Abandoning the commitment to proportionality appears to diminish the state's commitment to moving forward with both populations simultaneously.
- The 13-04 and 15-01 Executive Orders both indicated that the inter-agency agreements or Memorandum of Understanding (MOU) would specifically include a number of key components, including funding commitments between partners such as OVRs. The original and revised Transition MOU fails to include any funding commitments and appears to reflect a lack of commitment to holding partners accountable for their relevant shares of the resources necessary to assure success of the Executive Order.

- The 15-01 EO additionally indicates that ODDS and OVRs shall collect and report the number of individuals receiving Related Employment Services. This is virtually meaningless for VR. The identified Related Employment Services included in the definition are common services incorporated in employment plans for individuals with IDD such as benefits counseling, transportation support, behavioral supports, assistive technology and/or social skills training. These are services that can be provided by state agency staff and/or purchased from vendors.

Moreover, many of the key deficiencies, omissions, or failures of the initial EO remain. For instance:

- The Executive Orders define integrated employment setting as allowing the inclusion of group employment; this is not an acceptable definition for OVRs. OVRs has clarified that its policy expectation is for the most integrated setting possible for employment placements and will not allow placements in enclaves or work crews. OVRs, by memo to all VR staff on March 31, 2014, clarified that VR's mandate for the most integrated setting possible for employment placements will not allow placements in enclaves or work crews. This is contrary to the provisions in the Executive Orders that specifically define supported employment as including enclaves, crews, and small group employment. These contradictions represent a failure by Oregon to adhere to the driving values behind Employment First that they ostensibly embrace: a belief that all persons with disabilities can work in competitive integrated employment with the provision of the right supports.
- Under the Executive Orders, as of July 1, 2014, OVRs was precluded from purchasing or funding vocational assessments that occur in sheltered workshop settings and by July 1, 2015, OVRs will no longer purchase or fund sheltered workshop placements for transition youth with IDD, newly eligible working age adults with IDD and those already utilizing OVRs who are not already working in a sheltered workshop. It is difficult to assess how much of an impact, if any, this will have on OVRs without any baseline information provided on the

numbers of vocational assessments that occurred in sheltered workshops purchased or funded by OVRs prior to July 1, 2014.

- OVRs is clearly identified as a key partner in the implementation of the Executive Order, yet the expectation of coordination and collaboration amongst partners is not delineated. Without that stated expectation, each of the designated agency partners is likely to proceed in silo efforts that can and likely will cause confusion, lack of consistency and lack of coordination.
- The Executive Orders indicate that OVRs and ODDS will establish and implement a policy that Employment Services shall be evidence-based and individualized. Since OVRs services are already individualized, this will have minimal impact on OVRs.
- Contrary to the focus of the vocational rehabilitation program, the sole expectation of the EOs is the provision of Employment Services, not the achievement of successful employment outcomes (jobs). OVRs and ODDS have historically assisted individuals with IDD to obtain employment. There is no indication in either the Executive Orders or in the Integrated Employment Plans of what the baseline was as of July 1, 2014. There seems to have been no effort to assert that the intent of the Executive Order means to achieve substantially more successful employment outcomes than either or both programs have historically achieved.
- Perhaps most importantly, the Executive Orders only commit to the provision of Employment Services rather than the achievement of employment outcomes. For instance, in the initial Executive Order ODDS and/or OVRs were to provide Employment Services to at least 50 individuals by July 1, 2014. This is a goal that had been met for years. Moreover, an Employment Service can include an array of activities that routinely are provided by OVRs staff, such as conducting a vocational assessment or developing an employment plan. It does not require any real employment activity, like providing job development or supported employment services. Even if it did, OVRs service providers perform such activities to hundreds of participants with IDD each year. This was an extremely low goal and is far less

than the commitment DHS made to the Legislature and the Governor in 2010, through its Key Performance Measure, to increase supported employment outcomes by 5% year each year.

- OVRs has been funded for and has hired eight additional Vocational Rehabilitation Counselors to meet the obligations under the Executive Order. In practice, each additional counselor generally will carry a caseload and assure the provision of an array of Employment Services to approximately 80 participants each year. The stated expectations of the numbers of individuals to be provided Employment Services under the Executive Order are inordinately low. The stated definition of Employment Services encompasses elements inherent in the vocational rehabilitation process: discovery of an individual's interests, strengths and abilities, vocational assessments that provide employment-related information, situational assessments that evaluate performance of work activities, career development plans and person-centered planning. One of the key differences in the way services are conceptualized and delivered is that OVRs services are purposefully provided in integrated settings. The Executive Orders make no distinction that the intent is for the Employment Services to be provided in integrated settings.

Additional OVRs responsibilities include:

- by January 1, 2014, ODDS and OVRs was to establish competencies for the provision of Employment Services and was to adopt and implement competency-based training standards for career development plans, job creation, job development, job coaching, and coordination of those services. There is no indication to date that OVRs will adjust its successor to the 2012-2015 Job Placement Services Contract to reflect competency-based requirements.

This is so even though the current contract includes practices that may serve to screen out supported employment consumers. For example, the current contract indicates that Job Ready Client/Participant refers to any participant of OVRs who meets the minimum standard for employability of motivation, reliability and dependability. Some participants with significant functional limitations

may require that service providers have more specialized skills and strategies to determine their job readiness. The impact of the contract language is regarded as likely screening out supported employment consumers with IDD. The qualities related to motivation, reliability and dependability for consumers with IDD may not be readily apparent. The service provider may need to engage more directly with the consumer and their support system to identify unique barriers the consumer experiences and then use non-traditional approaches and strategies to assess the consumers motivation, reliability and dependability. For many consumers with IDD, they have learned little from their time in a sheltered work environment that translates to the world of work. For consumers with IDD, the more appropriate strategy is to place them in the job and then train the individual in any critical behaviors related to expressing motivation, reliability and dependability

- By July 1, 2016, ODDS and OVRs will purchase Employment Services for people with I/DD only from agencies or individual providers that are licensed, credentialed or otherwise qualified as required by Oregon Administrative Rule. Federal regulations for the VR program historically have required that information and assistance be provided in the selection of vocational rehabilitation services and service providers. The VR program has always been responsible for identifying the relevant accreditation, certification or other information relating to the qualifications of service providers.
- For Outreach and Awareness, by January 1, 2014 OVRs was to partner with ODDS to develop an outreach and information education program. There is no indication that OVRs plans to utilize its next federally mandated comprehensive needs assessment to identify if there are, for example, a sufficient number of qualified employment providers to provide the services and supports necessary for the individuals in the target population. OVRs indicates in its 2015 State Plan that the most recent comprehensive needs assessment was conducted in 2013.
- The Executive Orders indicate that OVRs will be a party to the development and implementation of one or more inter-agency

agreements or MOUs designed to assist in accomplishing the implementation of the Order. The Transition MOU developed and identified as meeting the requirements set out in Executive Order does not meet the established criteria in that it fails to identify funding commitments, specific employment outcomes or offer specifics on coordination of funding to accomplish the goals of the Order.

- The Executive Orders indicate that, starting January 1, 2014, OVRs and ODDS shall collect/report data, report progress, and identify problems or barriers, service gaps and recommend actions to improve services to the Employment Coordinator and the Policy Group in six key areas:
 - Number of individuals receiving Employment Services. This is a core process function of OVRs and the number generated will be essentially meaningless. The provision of an Employment Service has little to no bearing on the achievement of a successful employment outcome - a job. In the 15-01 EO, an individual will be counted as being provided an Employment Service with either a comprehensive vocational assessment through VR or an approved Individual Plan for Employment. Neither of these is equivalent to the achievement of a successful employment outcome - a job.
 - Number of individuals working in competitive integrated employment, self-employment, sheltered employment and small group employment. OVRs will not be contributing data related to sheltered employment nor group employment. When this information is displayed in aggregate, it will not be possible to separate out where the state is placing its efforts. Serving larger numbers of individuals placed in small group employment will increase the overall number but not reflect the achievement of the EO's stated priority of individuals with IDD achieving competitive integrated employment.
 - The number of individuals in supported employment;
 - The number of hours worked per week and hourly wages paid to those individuals. I assume this to mean the average number of hours worked per week and average hourly wages paid.

- The outcomes of Employment Services selected by individuals through the Career Development Planning process, including the selection of non-employment services. It is unclear what outcomes will be considered as successful. It is unclear if, for example, it will be considered a success for the consumer to choose to work only minimal hours per week when they have the skills and abilities to work more.
- Complaints and grievances. Historically, there have been very few complaints or grievances in relation to employment services from participants with IDD to either ODDS or OVRs. Consequently, data from this metric will add little value to the evaluation of the impact of the EO. A more meaningful metric that should be measured is customer satisfaction. There is no indication that the State is contemplating measuring or assessing customer satisfaction.

B. Implementation Plans – the Integrated Employment Plan

The Integrated Employment Plans are primarily about process. There are no specifics on how the State will achieve the Plan Outcomes and Metrics. There are few concrete expectations of the OVRs system and low expectations for hours to be worked by individuals with IDD.

There are significant differences in the information presented between the April 2014 Employment First Report, and the November 2013 and January 2015 versions of the Integrated Employment Plan.

In the April 2014 Employment First Report, there are two illustrative graphs related to employment outcomes provided. The first is titled the 'probability of an ODDS client to exit VR with integrated employment 2011-2013' and seems to indicate that an ODDS client would have a better than average probability of successfully navigating the VR system from application to employment from the Medford, Coos Bay, Corvallis, Eastern Oregon, Springfield, Washington County and Central Oregon branch offices. Branches serving VR consumers in the larger population centers (Portland and Salem) seem to have a lower than average probability of success. Springfield and Eugene, while sharing the same geographic area, rank on either side of the average. There is no indication in the Implementation

Plans of any analysis of why the differences occur or what is being learned from the offices with greater probability of success for the consumer.

The second graph is titled the 'probability of an ODDS client to exit VR with integrated employment 2011-2013' and seems to indicate that an ODDS client would have a better than average probability of successfully navigating the VR system from plan to employment from the Coos Bay, Medford, Springfield, North Salem, Central Portland and Washington County branches. There is no indication in the Implementation Plans of any analysis of why the differences occur or what is being learned from the offices with greater probability of success for the consumer.

There have been no strategies identified in the Integrated Employment Plans that would address these identified disparities in effectiveness across the VR service delivery system.

Between the issuance of the Governor's Executive Order and the November 2013 Integrated Employment Plan and the release of the January 2015 Integrated Employment Plan, the State appeared to dramatically increase its expectations in terms of the numbers of individuals with IDD that will receive Employment Services over the period of the EO from an original commitment to 2,000 to a new commitment of 7,000. But, as noted above, this apparent increase does not represent any new or expanded commitment, but instead, simply a different methodology for analyzing the same individuals who were in, or at risk of entering, sheltered workshops in 2013. If anything, the new figures demonstrate the extraordinary under-estimate of the number of class members who were segregated, or at risk of segregation, in 2013.

Both the November 2013 and the January 2015 Integrated Employment Plans seriously misrepresent what the Executive Order expects and commits to in relation to Employment Services. The Executive Order clearly states that Employment Services shall be evidence-based and individualized. It goes on to indicate that Employment Services shall be based on an individual's capabilities, choices and strengths and shall be tailored to each person. These are two distinctly separate commitments. However, in both the November 2013 and January 2015 Integrated Employment Plans, the stated language compromises those commitments with: Establishing and

implementing employment services policies that are evidence-based or based on individual capabilities, choices and strengths. This apparent alteration of the intent of the Executive Order is troubling.

There also is a troubling expansion of the definition of Employment Services in the January 2015 version to now include post-secondary education and/or training. Oregon needs to be clear that its focus is on achieving additional successful employment outcomes. Pursuit of education and/or training can be an essential step in the process and may help the State reach its revised goal of 7,000, but it must not be seen as an alternative to the focus of individuals with IDD achieving additional successful employment outcomes - more getting jobs.

In both the November 2013 and January 2015 versions of the Integrated Employment Plans, there is a definition of Project SEARCH, but there are no activities or specific commitments to activities involving this evidence-based practice for transition-age students with IDD.

In the grid with overarching goals, action steps, major activities, responsible parties and action and activity indicators, specific expectations of OVRs are barely mentioned. The increase in staffing of VR in anticipation of added referrals is included. It reflects the addition of a Policy Analyst and eight VR counselors specifically to serve this population.

With 8 new VRCs, OVRs will likely contribute at least 640 new employment services each year. Each VR counselor generally carries a caseload of 80 consumers, and each consumer will likely be provided one of the designated VR employment services - either a vocational assessment and or an Individualized Plan for Employment. Thus, the simple staffing increase at OVRs should result in Oregon achieving at least 80% of its annual projected increase in Employment Services, although based upon prior and current practice, most of this increase is likely to be for persons not in segregated employment settings or persons with more significant disabilities. Moreover, each VR counselor has a goal to assist 24 individuals on their caseload each year to achieve a successful employment outcome. Without any additional effort or expansion of services, the 8 counselors will likely contribute to the achievement of approximately 192 new individual integrated employment outcomes each year. Again, this outcome is likely to primarily benefit

persons not already in sheltered workshops and persons with less significant disabilities..

The 2015 Integrated Employment Plan indicates that OVRs intends to add a 3rd tier of rates for customized employment by July 2015. It is unknown if this addresses the need for differences in approach necessary to yield positive outcomes for individuals with IDD and serious mental illness. Additionally, while customized employment is a valued employment placement strategy, it is not the only strategy that can result in successful employment outcomes for individuals with IDD, yet it is the only strategy included.

Plan outcomes and metrics have been expanded from the sole focus of indicating progress in achieving individual integrated employment to now including measures intended to help determine progress in key strategic activities associated with meeting the overall goals. In looking at the progress to date, Oregon's data of actual performance reflects that they have not met the targets in the key quality indicators related to employment outcomes:

1. percentage of individuals working more than 10 hours. The baseline was identified as 20%; the actual at June 30, 2014 was 21%, falling short of the target that was set at 29%.
2. percentage of individuals working more than 20 hours. The baseline was identified as 3%; the actual at June 30, 2014 was 4.4%, falling significantly short of the target that was set at 15%.

Recognizing what other state VR agencies have demonstrated they are able to achieve in terms of numbers of hours worked by individuals with IDD, either in competitive employment or supported employment, the 2015 Integrated Employment Plan falls far short of what OVRs should be expected to achieve.

The new Metric #6 measures the increase in the annual number of adults with DD receiving ODDS/VR employment services that newly achieve employment in an individual integrated employment setting. The actual (baseline) was established at 266. The target for 6/30/14 was 290. The actual for 6/30/14 was 295. The target for 6/30/15 is 315. Oregon's

Statewide Employment First Coordinator indicated that this metric counts the annual number of adults with DD receiving either ODDS or VR employment services that achieve individual integrated employment outcomes. But OVRs Regional Managers and the DHS Employment First Research and Data Analyst indicated that this metric counts the annual number of adults with DD that are jointly served by ODDS and VR. Moreover, the Data Analyst stated that baseline for this metric was drawn entirely from VR historical data - what OVRs was doing before the EO was issued - and the annual projected increases reflected annual demographic and service utilization information, not any reliable assessment of the impact of the EO. Using either understanding, the target numbers are far too low to be a meaningful indication of enhanced effort as a result of the Executive Orders.

The reality is that OVRs has historically served and successfully closed in competitive integrated employment hundreds of individuals with IDD. Metric #6 sets the target for 6/30/15 at 315. Yet the OVRs data provided to the State Rehabilitation Council for their 2014 Annual Report shows indications of much higher routine performance. The numbers of clients with IDD served, by state fiscal year, and the numbers of individuals with IDD successfully closed in competitive integrated employment, by state fiscal year are:

State Fiscal Year	#w/IDD served	#w/IDD w/employment outcomes
2011	1739	213
2012	1831	252
2013	1890	272
2014	2514	400

Further, the 2015 OVRs State Plan sets the following target for Federal Fiscal Year 2015: to increase the number of supported employment outcomes for IDD clients to 350.

By any measure, the Metrics underrepresent what Oregon's Employment First initiative can and should set as its benchmarks if it is serious about increasing employment outcomes for individuals with intellectual and development disabilities.

While Metric #7 is a subset of Metric 6, it suffers from the same flaws and inappropriately low expectations as noted above. Moreover, there is no mention of any focus on adults 18-24 years old with developmental disabilities receiving ODDS/VR employment services in OVRs' 2/11/2015 Supported Employment policy.

VIII. CONCLUSION

It is disheartening to note the failure of the State of Oregon to successfully embrace and implement the intent of the Governor's Executive Orders, at least through the rather limited efforts of its VR agency, which mostly will continue its prior practices and likely produce its prior poor outcomes for persons with I/DD. The continued reliance on the outmoded service delivery model of Small Group Employment (SGE) is contrary to contemporary thinking. SGE is not an evidence-based practice and continuing to allow it demonstrates a clear lack of commitment to competitive integrated employment for all individuals with significant disabilities.

OVRs is below the national average percentage in individuals with IDD determined eligible and it is higher than the national average in the lack of services for those accepted for services. OVRs has a long-standing and consistent record of serving fewer transition-age youth than similar type VR agencies and a consistent record of settling for fewer hours worked at case closure.

Consistent with the 2001 Final Regulations to the VR program, Oregon needs to assure that individuals with IDD are afforded a full opportunity to receive individual integrated, supported employment that will allow them to work in competitive employment settings. Oregon should be expected to do nothing less.