

OLMSTEAD: HOW FAR WE HAVE COME AND WORK LEFT TO DO

Disability Policy Seminar, 2019

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The Road to the Olmstead Decision

1990: ADA Title II

Public entities are prohibited from excluding qualified individuals from programs or activities due to their disability.



1993: DOJ Integration Rule

“Public entities must administer programs, and activities in the most integrated setting appropriate.”

This creates a civil right to be free from unnecessary segregation.



1995: Helen L. v. Didario

PA argued woman had to remain on waiting list for PAS, even though it meant she had to stay in expensive nursing home.

3rd Circuit said it was reasonable modification and required under ADA to provide PAS so she could go home.

The Olmstead Mandate is Evolving

1999: Olmstead

Community is required when: (1) professionals determine that community is appropriate; (2) the individual does not oppose placement; (3) placement is reasonable when balanced with the need of others with disabilities.



2003: Olmstead applies to individuals at risk of institutionalization

Fisher v. OK: Olmstead would be meaningless if people were required to segregate themselves before they could challenge a discriminatory law.



2009: *Disability Advocates v. N.Y.*

NY District Court says large board and care homes are not community since they have rules identical to institutions.

The first court to discuss what community “looks like.”

Case Law Continues to Push the Olmstead Mandate Forward

2012: Olmstead applies to Sheltered Workshops

Lane v Kitzhaber

Oregon District Court said it violates Olmstead to spend more on sheltered workshops than on integrated employment.

2016: Olmstead applies if state policy increases isolation in ones own home

Steimal v Wernart (Ind. District Court –

Individual more isolated in his own home b/c of voluntary policy change to reduce waiver services

DOJ says Olmstead applies to segregated schools

Court may rule this way in *SS v. Springfield, MA.* (no ruling yet)

Kids with MH needs placed in separate unequal school,

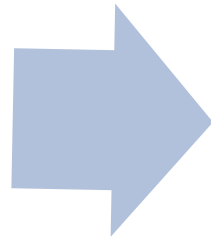


Olmstead Caselaw in the works

DOJ says Olmstead applies to segregated schools

Courts may rule this way in *SS v. Springfield, MA*. (no ruling yet)

Kids with MH needs placed in separate unequal school, e.g. no access to extracurricular activities



Use Olmstead's mandate for community services to divert people with MI from arrest

U.S. v. GA settlement requires police training to divert people from arrest to services

What do Olmstead settlements commonly require?

- Reduce admissions by diverting people to community settings
- Fill gaps in community supports by specific amounts and dates, e.g.
 - Increase scattered-site, individual, supported housing;
 - Develop more transition planning, crisis services, ACT teams, peer supports, wrap-around, case management, respite, and PAS
 - Expand supported, competitive employment options
- Collect data on quality of services and recidivism
- Mandate independent monitoring of transitions and settings
- Require special outreach to at risk populations, e.g. homeless, seniors, former offenders, kids in foster care.

We must fight the Olmstead backlash and corruption

- Pro-institution groups are misrepresenting the meaning of “Choice” in the Olmstead decision -
 - They argue the decision requires a choice of institutions or the community
 - **Reality:** the choice created by Olmstead is the choice to have community options – not just the right to institutional placement
- Pro-institution groups are intervening in Olmstead cases to make “reverse Olmstead” arguments –
 - They argue state plans to close institutions constituent discrimination against people with I/DD who need ICFs
 - **Luckily:** No Court has accepted this argument since the ADA is about unnecessary segregation as discrimination.

Going forward advocates must demand...

- Continued monitoring of settlements to ensure critical supports and services are in place in the community prior to and post transition.
- Building of scattered site individualized housing close to transportation and services
 - Group homes should not be the only option and we must stop the push to build “disability only” communities and farmsteads.
- Federal support for education of new lawmakers about the true meaning of Olmstead and “choice” to live in the community.
- DOJ Prioritization of Olmstead cases - The DOJ has not filed any new Olmstead cases since 2017



Photo of Lois Curtis



The Department of Justice and the ADA's Integration Mandate:

April 8, 2019

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Overview

- DOJ's Enforcement of Title II of the ADA's Integration Mandate
- Cases in Litigation
- Cases in Compliance



Important Principles in DOJ *Olmstead* Enforcement

- Relief designed to create integrated, quality community based alternatives—not just about moving people out of segregated settings
- Ensure that people have opportunities for integration in all aspects of their lives: where they live and how they spend their days
- Engagement of a range of stakeholders – consumers, families, advocates, providers – is essential to successful outcomes

DOJ *Olmstead* Cases in Litigation

Steward v. Perry

Background

- Alleges that Texas unnecessarily segregates individuals with intellectual or developmental disabilities (IDD) in nursing facilities.
- Two-year interim settlement agreement expired in 2015 and litigation resumed.
- Trial was held in October-November 2018.

Steward v. Perry

DOJ Conclusions of Law

- United States has the authority to bring suit under Title II of the ADA
- ADA obligations are not limited by the scope of the Medicaid requirements.
- Community placement is “appropriate” (1) when the state is serving persons in the community whose disabilities and support needs are similar to residents of the institution or (2) when the person previously lived in the community with supports that adequately addressed similar needs.

Steward v. Perry

DOJ Positions (cont'd)

- The ADA requires that states provide sufficient, individualized information and opportunities that allow individuals to make an informed choice whether to remain in or enter a segregated setting.
- An effectively working *Olmstead* Plan cannot ignore specific groups of people in particular institutions.

**Select DOJ *Olmstead* Cases
in Compliance**

U.S. v. Virginia

- Parties entered into a ten-year settlement agreement in 2012; relief for more than 5,000 people
- Goals of the Agreement:
 - Prevent unnecessary institutionalization of individuals with DD who are living in the community, including thousands of individuals on waitlists for community-based services
 - Ensure that people in institutions have a meaningful opportunity to receive services that meet their needs in the community



U.S. v. Virginia

- Topics in Settlement Agreement:
 - HCBS waivers
 - Discharge planning
 - Individual and family supports
 - Crisis system
 - Integrated housing
 - Integrated employment
 - Family to family and peer programs
 - Case management
 - Quality assurance
 - Oversight and accountability

SEGREGATED EMPLOYMENT SERVICES

DOJ Enforcement of Title II in Employment Service Systems

- *United States v. Rhode Island and the City of Providence (2013)*
- *United States v. Rhode Island (2014)*
- *Lane v. Brown (formerly Lane v. Kitzhaber) (2015)*

U.S. v. Rhode Island and the City of Providence

Settlement (2013):

- Involved one sheltered workshop for adults and one school
- Relief for 200 individuals
- Opportunities for competitive, integrated employment
- Integrated day services

U.S. v. Rhode Island

Statewide Settlement (2014):

- Provides opportunities to 2,000 people with I/DD to transition to integrated employment
- Provides transition services to 1,250 youth
- Builds provider capacity
- Requires Employment First policies, person-centered planning and benefits plans, and outreach, education, and training

Lane v. Brown (cont'd)

Statewide Settlement (2015):

- Provides 1,115 working-age individuals with I/DD with services so that they will obtain integrated employment
- Provides 4,900 youth ages 14-24 years old with supported employment services



Filing an ADA Complaint - ADA Resources

- File a Complaint at:

ADA ■ gov

- Call the ADA Information Line:
- **800-514-0301** (voice) or 800-514-0383 (TTY)