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October 9, 2014

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Minnesota Olmstead Sub-Cabinet
P.O. Box 64988
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RE: Olmstead Plan Employment Provisions: Minnesota Should Adopt Measureable Goals and Timelines Similar to Rhode Island's Model of Integrated Employment and Day Services by November 10 Deadline

Dear Lieutenant Governor Prettner Solon, Commissioners, and Subcabinet:

As the State faces the November 10, 2014 deadline set by the *Jensen* Court's Order to add measurable goals and timelines to the Proposed *Olmstead* Plan, the Minnesota Disability Law

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Center of Mid-Minnesota Legal Aid (MDLC), now joined by the Minnesota Employment First Coalition and MN APSE, is compelled to follow up on MDLC's letter dated June 19, 2014, as well as our numerous written and oral comments to the *Olmstead* Plan drafts and Proposed *Olmstead* Plan.

In rejecting the State's July 2014 Proposed Plan, the Court held that, "To comply with the Settlement Agreement's measurable goals requirements, the Proposed *Olmstead* Plan must contain concrete, reliable, and realistic commitments, accompanied by specific and reasonable timetables, for which the public agencies will be held accountable. Vague assurances of future integrated options are insufficient; to be effective, the Proposed *Olmstead* Plan must demonstrate success in actually moving individuals to integrated settings in furtherance of the goals." Order dated Sept. 18, 2014, p. 5. The Court went on to use integrated employment measurable goals and timelines as an example of what the Plan must contain in order to pass judicial muster.

This is precisely what we have proposed in our numerous previous communications with the State regarding the *Olmstead* Plan. The Americans with Disabilities Act (ADA) requires the State to adopt measurable goals and timelines to increase integrated, competitive employment for individuals with disabilities, and robust transition services for youth leaving secondary school. In our June 19, 2014 letter, we urged the State to adopt Rhode Island's recent innovations as a ready template for expanding integrated employment opportunities for individuals with intellectual and developmental disabilities in Minnesota. With increased urgency, we again urge the State to adopt this model.

Rhode Island's Settlement Proves a Viable Model for Minnesota

In our June 19, 2014 letter – to which we received no response – we urged the State to incorporate into the *Olmstead* Plan timelines and measurable goals comparable to those in the state of Rhode Island's recent settlement with the U.S. Department of Justice (DOJ) (copy of Consent Decree enclosed.) We highlighted three features of that settlement as readily adoptable by Minnesota: clear annual goals for securing placements for people currently in sheltered workshops, a robust process of assessment with informed choice before individuals choose to enter segregated employment, and strong transition services and integrated employment placements for all transition-age youth.

We note that in its July 2014 Proposed *Olmstead* Plan, the State specifically acknowledged the relevance of Rhode Island's model to Minnesota when it included for the first time a directive and commitment to consider the Rhode Island model of integrating employment. *See* July Proposed *Olmstead* Plan, p. 64. It is time for the State to move beyond this general level of contemplation to action.

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We believe that the State has sufficient resources to enable it to adopt a comparable set of measurable outcomes and goals within the November 10, 2014 deadline. As we emphasized in our June 19 letter, the State need not start from scratch to devise a framework for this process; it can use the DOJ's settlement with Rhode Island as a model for adopting the kind of measurable outcomes *Olmstead* and the Court require. Indeed, as we describe below, pilot projects already implemented here in Minnesota in recent years demonstrate the feasibility of integration efforts in employment now.

The DOJ's April 2014 settlement with Rhode Island aims to reduce the number of individuals in segregated settings by setting up a 10-year plan to move individuals from segregated placements into integrated environments, and to stop the placement of new individuals into segregated settings, including from school. The Rhode Island settlement provides that the state will not provide placements or funding for new entries into sheltered workshops and that the state will, by 2015, provide supportive employment placements to all youth transitioning from school to employment. This will cut off new entries into segregated employment.

The Rhode Island settlement also provides measurable targets for transitioning individuals already in segregated employment to competitive employment. Under the settlement, the state must provide supportive employment placements for individuals in sheltered workshops – 50 new placements each year from 2016 through 2019 and 100 new placements each year from 2020 through 2024. *See* Rhode Island Consent Decree, pp. 7-8. The settlement also provides that the state will provide supportive employment placements for individuals in facility-based day program settings each year – beginning with 25 in 2016 and progressively increasing to 225 by 2024. *See Id.*, p. 8.

The DOJ found that these measures were necessary to move Rhode Island toward compliance with the ADA. Comparable measures are needed in Minnesota. In Rhode Island, approximately 80% of individuals with intellectual and developmental disabilities worked in segregated sheltered workshops or facility-based day programs. The percent of individuals in segregated employment is similarly high in Minnesota. The UMass-Boston Institute for Community Inclusion Report from 2012 indicates that approximately 82.5% of individuals with intellectual or developmental disabilities in Minnesota receive employment services in facility-based settings, approximately 11,500 individuals. The same report indicates that this number has increased in recent years, jumping from approximately 7,000 in 2001. Minnesota has been trending in the wrong direction.

Although we are not aware of Minnesota data about the length of individuals' time in these settings, based on these trends, it is reasonable to assume that the average length of segregated employment placements in Minnesota has been comparable to that in Rhode Island. In Rhode Island, half of the individuals in segregated employment settings had been in that setting for 10 years or more and one-third of the individuals had been there for over 15 years.

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In short, in Minnesota, as in Rhode Island, individuals with intellectual or developmental disabilities are too often placed in segregated employment settings and stay in those settings too long. Furthermore, as in Rhode Island, students in Minnesota too often transition straight into segregated employment settings from secondary school programs.

Minnesota should adopt Rhode Island's approach of both minimizing the number of individuals who initially enter segregated employment and setting realistic quantitative annual goals for the number of individuals who leave segregated employment for competitive, integrated employment. While Minnesota's Proposed *Olmstead* Plan may be unique in its breadth, the ambitious scope cannot excuse a lack of measurable goals and outcomes in any key part of the Plan. The Rhode Island settlement demonstrates that, with regard to employment and youth transition to employment, ambitious, specific goals can and must be set in order to meet *Olmstead's* standard of integration.

We urge the following:

Move Individuals from Segregated into Competitive Employment

The implementation timetable in the State's July 2014 Proposed *Olmstead* Plan includes a goal that, by September 30, 2014, the State will have set "baseline and goals [] to demonstrate progress in increasing competitive employment for adults with disabilities." July 2014 Proposed *Olmstead* Plan, p. 140. As the Court observed in rejecting the State's plan, this is not a concrete, measurable goal. The State must adopt outcomes that will enable it to demonstrate actual progress toward the goal of reducing the number of individuals in segregated settings. We propose that the State commit to securing supported, competitive employment placements for a progressively increasing percent of individuals currently in segregated employment settings each year, starting with, at a minimum, 5% in 2015, increasing by one percent each year until 2020, and continuing with incremental increases of 5% each year through 2025, reaching 35%.

Recent pilot projects in both rural and urban Minnesota demonstrate that this 10-year schedule is achievable. In 2010-2011, Functional Industries, a community rehabilitation program located near Buffalo, Minnesota, collected data from a pilot project funded by the Department of Employment and Economic Development ("DEED"). The project was conducted with Functional Industries employee/vocational services consumers in Wright and Sherburne Counties. The purpose of the project was to move individuals from Functional Industries' facility-based employment program into supported, competitive employment. Success was measured by moving participants into competitive employment situations where they would work an average of 32-40 hours per week and earn wages commensurate with the position. The data collected indicated that of 175 total participants, 94 individuals actually completed intake and proceeded with the program. Of those 94 individuals, 20 (22%) were placed in supported

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employment (11% of the original 175 total). Of the 20 placed individuals, one (.05%) worked an average of 32-40 hours per week and 20 (100%) earned wages at or above minimum wage.

During the same time period, Midwest Special Services in St. Paul conducted a similar pilot program. This program involved 21 individuals, of which 8 were identified as most appropriate for competitive employment and worked one-on-one with a job specialist. The program set a goal that eight individuals would move into competitive employment, and of those eight, three did. Those three individuals worked an average of 21 hours per week, which exceeded the program's goal of 20 hours per week, and their average hourly wage was \$8.75 an hour, which exceeded the program's goal of \$8.00 an hour.

Although there are obvious limitations to these data, the pilots offer insight into the degree of success the State can reasonably expect in its employment integration efforts. Both pilot programs show that goals of moving 5-10% of individuals currently in segregated employment to competitive employment can be achieved, as 11% of the total population in the program at Functional Industries (20 of 175) and 14% of the individuals at Midwest Special Services (3 of 21) successfully attained competitive employment. As the State, service providers, counties and employers gain experience, the process of moving individuals to integrated employment will become easier.

Outcomes based on percentages of target populations will require accurate baseline data about the number of individuals currently in various segregated employment settings. We understand that the State intends to collect such data and, indeed, the Court has ordered it to do so. We urge that the State do so immediately.

Limit New Entry into Segregated Employment

In addition to making competitive employment an option for people currently in segregated employment settings, the State must also set measurable goals and timelines to minimize the initial entry of individuals into segregated employment. The Rhode Island settlement provides that the state will stop providing placement or funding for new entrants to sheltered workshops, and that the assessment process will be administered with a "presumption that individuals with the most severe disabilities can work in integrated settings and receive the services and supports necessary to do so." Rhode Island Consent Decree, p. 6.

Minnesota's July 2014 Proposed *Olmstead* Plan does not include such a clear mandate for minimizing entry into segregated settings and implementing an informed choice process. The Proposed Plan's timetable does state that by July 1, 2015, the State will "[p]romulgate rule change to cap enrollment for non-integrated and subminimum wage programs," and assigns this action to DEED, DHS, and MDE. July 2014 Proposed Plan, p. 147. While this is a positive step forward, the Plan needs to state a specific numerical or percentage cap to ensure that the rule-

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making process will result in a significant reduction of new placements in segregated or sub-minimum wage programs. Of course, adopting a cap without also stating related numerical goals and outcomes is not sufficient.

A central principle that must be included in the *Olmstead* Plan is a presumption that all individuals with intellectual or developmental disabilities can work in competitive employment with adequate support. This is consistent with the Subcabinet's adoption of Minnesota's Employment First Policy, which lists as a guiding principle that "[i]ntegrated, competitive employment is the first and expected service option." Minnesota Employment First Policy, p. 1.

In implementing the Employment First policy, the State should adopt procedures similar to those in the Rhode Island settlement: individuals who are assessed as being eligible for competitive employment may remain in a segregated or sheltered workshop setting only if they are granted a variance after receiving counseling, support, and a trial work experience. See Rhode Island Consent Decree, p. 11. This process will ensure that individuals are acting on adequate information about their choices and opportunities, and will reverse the current default choice of segregated placement.

Ensure Supportive Placements for Transition-Age Youth

As we urged in our June 19, 2014 letter, the State should set concrete goals for minimizing the number of students who enter segregated employment after transitioning from secondary school. Minnesota should emulate the Rhode Island settlement's clear mandate that all transition-age youth leaving school will have access to supportive employment placements, and that the State will provide supported employment placements to all individuals leaving school within a little more than one year after adoption of the mandate.

In contrast to Rhode Island, Minnesota's goals in the July 2014 Proposed *Olmstead* Plan relating to youth transition focus on the practices that schools and local education agencies adopt and the information that students receive, rather than on the impact the State's efforts have on youth. Instead, the *Olmstead* Plan must include benchmarks and numerical goals for the placement of transition-age youth in competitive employment. The State should add to the goal of increasing the number of schools "adopting evidence-based practices for integrated competitive employment" a numerical goal that such practices will result in competitive employment placements for 50% of transition-age youth exiting the school that year. See, e.g., July 2014 Proposed Plan at p. 146 and p. 151. A 50% success rate for evidence-based practices is a reasonable and achievable goal. Adding this measurable outcome to these actions will ensure that the State's and individual schools' efforts are appropriate uses of public resources and contribute to the overall effect of reducing the number of individuals in segregated employment.

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In addition, the *Olmstead* Plan should add numerical goals and outcomes to reduce segregated school placements for students at an earlier age. Children placed early in segregated educational placements most frequently end up in segregated or center-based employment and day programs as young adults. The Plan should also add specific numerical goals for reducing the use of restrictive procedures like seclusion and restraint in school settings, as the lack of appropriate behavioral supports in schools contributes significantly to educational segregation as well as to eventual poor employment outcomes for the affected students.

Conclusion

In rejecting the State's July 2014 Proposed Plan, the Court emphasized that, "[j]ustice requires" that "[m]eaningful progress must be realized across the State," and "many individuals with developmental disabilities and their families" have long awaited improvements the State has promised will be effected by this Plan. Order dated Sept. 18, 2014, p. 7. We urge the State to add measurable goals and timelines to integrate individuals with disabilities into competitive employment and integrated day programs similar to those in the Rhode Island settlement. Should the State fail to do so, we believe that the State and its agencies will be left needlessly vulnerable to the very sort of litigation that the Department of Justice pursued in Rhode Island.

Sincerely,



Pamela Hoopes
Deputy Director/Legal Director, MMLA/MDLC



M. William O'Brien, Miller O'Brien Jensen, P.A.



Jon Alexander, Minnesota Employment First Coalition

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Kelly Nye-Lengerman

Jolene Thibedeau Boyd

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MN APSE Co-Presidents

PH/MWO/JA:nb

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Enclosure

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