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cc: Anne B, Loren C, Alex B, Brownell Mike T. Darlene

June 19, 2014

DEPARTMENT OF HUMAN SERVICES
JUN 23 2014
COMMISSIONER'S OFFICE

Lt. Governor Yvonne Prettner Solon
Office of the Governor
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75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

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Commissioner's Office
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Minnesota Olmstead Sub-Cabinet
P.O. Box 64988
St. Paul, MN 55164-0988

**RE: Olmstead Plan Employment Provisions: Minnesota Should Adopt Rhode Island's Model of Integrated Employment and Day Services**

Dear Lieutenant Governor Prettner Solon, Commissioners, and Subcabinet:

This letter is to follow up on Mid-Minnesota Legal Aid/Minnesota Disability Law Center's (MMLA/MDLC) numerous comments to the Olmstead Plan and prior discussions with the State

stressing the need to increase integrated, competitive-wage employment for individuals with disabilities, with appropriate supports. In addition, within the Olmstead Planning process and elsewhere, we have consistently advocated for robust transition services for youth leaving secondary school, and for integrated activities of daily living. The State's lack of progress toward a detailed plan that will advance the goals of community integration and informed choice with appropriate supports in these areas falls short of the requirements of the *Jensen* consent decree and is not consistent with *Olmstead*. To comply with *Olmstead*, the State needs to move forward with a detailed plan now.

Rhode Island has a detailed plan that Minnesota should adopt as a model for individuals with intellectual and developmental disabilities and incorporate into our Olmstead Plan. Rhode Island's plan is focused solely on individuals with intellectual and developmental disabilities (I/DD), and came about as a result of a Department of Justice investigation into Rhode Island's overreliance on segregated employment and day programs. The Department of Justice found that Rhode Island's system violated the Americans with Disabilities Act (ADA) integration mandate. The Department of Justice and Rhode Island entered into a consent decree in April 2014 that sets out a detailed road map over the next ten years to move to an integrated system. The consent decree focuses on individuals with I/DD who are in sheltered workshops and in facility-based programs, and youth with I/DD in transition from secondary school. It contains a timeline that establishes clear annual goals for securing placements for a prescribed number of people currently in sheltered workshops and for providing supported employment placements for all transition age youth. It also contains provisions ensuring informed choice for individuals who choose to remain in segregated programs after vocational assessment, trial work experience, outreach information and benefits counseling.

A copy of the consent decree and a Department of Justice fact sheet summarizing it are attached for your reference. We must stress that our focus here on individuals with I/DD does not signal lack of urgency for the situation of individuals with other disabilities. Scarcity of integrated employment opportunities at competitive wages is a problem for individuals with all types of disabilities in Minnesota, and remedies to address this problem for all types of disabilities must be addressed in detail in the Olmstead Plan.

Minnesota and Rhode Island share key features that make the Rhode Island model an appropriate one. In Minnesota, as in Rhode Island, individuals with I/DD are most often served in segregated settings and often work for sub-minimum wage. As there is no one source of data for facility- or center-based services in Minnesota, it is difficult to confirm the number of individuals with I/DD in these settings. Data also vary by county. However, based on various data sources, it is reasonable to estimate that approximately 10,000 Minnesotans with I/DD are in facility-based employment. Approximately 83% of individuals are served in sheltered workshops, with approximately 18% in integrated employment, according to UMass-Boston ICI data from 2010. Based on available county data, it is likely that about half of the individuals who participate in

day training and habilitation (DT&H) facility-based employment also participate in some other types of employment services that are more integrated. The other half remain in the DT&H/facility-based employment for the entire day. Individuals in facility-based employment appear to work about 5-10 hours per week and do not earn more than $3-4 per hour. They often earn less.

In Minnesota, as in Rhode Island, students with I/DD coming out of high school are too often channeled into this segregated system, placing them at risk of long-term segregated employment and segregated day programming. Here, as in Rhode Island, DT&H non-work activities are also largely facility-based rather than integrated into the community; they are not typically based on the interests and choice of the persons with disabilities.

Overall, Minnesota facility-based employment is paid for with a combination of Medicaid Waiver funds (approximately $153,400,000) and county funds (approximately $22,000,000) which supplement the waiver funds and vocational rehabilitation extended employment funds. Most, if not all, subminimum wage certificate holders (14(c) certificates) are DT&H providers and many also provide supported employment services.

Applying the Department of Justice's analysis of Rhode Island's service system to Minnesota, it is clear that the segregated nature of the facility-based employment, lack of robust transition services for youth, and the scarcity of community integration and choice in DT&H non-work activities are not consistent with the *Olmstead* integration mandate or with Minnesota's Employment First policy. Minnesota, like Rhode Island, has over-relied on segregated service settings to the exclusion of integrated alternatives. This violates *Olmstead.*

As Minnesota's designated Protection and Advocacy entity, Mid-Minnesota Legal Aid/Minnesota Disability Law Center has consistently advocated for the State to comply with *Olmstead* by adopting a vigorous, comprehensive plan to end the overuse of segregated employment and day programs in Minnesota and by committing to providing the most integrated employment and day services programs appropriate for the needs of individuals with disabilities. We have urged the State to take vigorous steps ensuring that transition age youth will not be funneled into segregated employment and day programs without choice. Although we are pleased that the State has adopted an Employment First policy, it will not be effective without a detailed implementation plan.

In short, the Rhode Island consent decree provides a reasonable and detailed template that Minnesota should use to shift to an integrated system over a ten-year period. We believe that the State should adopt this template and incorporate it into our Olmstead Plan. If Minnesota stays its current course, and if the Olmstead Plan is not made markedly more robust in this area, the State runs the substantial risk of facing an *Olmstead* challenge of the sort that Rhode Island faced.

We urge you to consider this proposal. We look forward to discussing it with you.

Sincerely,

Pamela Hoopes
Deputy Director/Legal Director, MMLA/MDLC

Bud Rosenfield
Supervising Attorney for Community Services and Integration, MMLA/MDLC

Dan Stewart (PSH)
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cc: Cathy Haukedahl, Executive Director, MMLA/MDLC
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Shamus O'Meara, O'Meara, Leer, Wagner & Kohl, P.A.

Enclosures

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**UNITED STATES DISTRICT COURT**
**DISTRICT OF RHODE ISLAND**

**UNITED STATES OF AMERICA,** Case No. CA14-175

Plaintiff,

v.

**STATE OF RHODE ISLAND,**

Defendant.

# CONSENT DECREE

## I. INTRODUCTION

A. This Consent Decree is entered into between the United States of America ("United States"), Plaintiff, and the State of Rhode Island ("State"), Defendant (hereinafter collectively "Parties"). The Parties stipulate that this Consent Decree does not subsume or replace the Interim Settlement Agreement in United States v. State of Rhode Island and City of Providence, No. 1:13-cv-00442 (D.R.I. July 11, 2013). This Consent Decree specifically addresses the statewide day activity service system for individuals with intellectual and developmental disabilities ("I/DD"), and constitutes a complete and exclusive statement of the terms of this Consent Decree between the Parties with respect to its subject matter. The State shall continue to comply with the terms of the Interim Settlement Agreement, and any amendments thereto, in a manner that is consistent with and complementary to this Consent Decree; however, the Interim Settlement Agreement and Consent Decree impose separate and distinct requirements upon the State.

B. On January 14, 2013, the United States Department of Justice ("United States") notified the State that it had initiated an investigation into whether the State has violated Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131, et seq., as interpreted by the United States Supreme Court in Olmstead v. L.C., 527 U.S. 581 (1999), through its administration and operation of its day activity service system, including employment, vocational, and day services, 46-1-14 R.I. Code R. § 43.0, for individuals with I/DD.

C. On January 14, 2013 and March 4, 2013, the United States requested documents from the State as part of its investigation into Rhode Island's day activity service system, including employment, vocational, and day services, 46-1-14 R.I. Code R. § 43.0, for individuals with I/DD. Also, as part of this investigation, the United States participated in numerous in-person meetings with the State in February and March 2013, conducted on-site interviews with providers, including sheltered workshop, supported employment and integrated day providers, as well as individuals with I/DD participating in employment programs, and met

with numerous stakeholders and advocacy organizations. From March through May 2013, the United States communicated its findings in person and by telephone regarding two providers in the State, Training Thru Placement and the Harold A. Birch Vocational Program at Mount Pleasant High School, and sent the State written findings on June 7, 2013. To resolve those findings, the United States entered into an Interim Settlement Agreement with the State and the City of Providence, United States v. State of Rhode Island and City of Providence, No. 1:13-cv-00442 (D.R.I. July 11, 2013). The United States and the State continued to meet a number of times throughout the remainder of 2013, following the entry of the Interim Settlement Agreement, to resolve the statewide findings.

D. In November 2013, the United States continued discussions with the State regarding the State's statewide day activity service system, including its transition, employment, vocational, and day services and its unnecessary over-reliance upon segregated sheltered workshops and facility-based day programs. On January 6, 2014, the United States sent its written findings to the State.

E. This Consent Decree resolves the United States' findings of violations of Title II of the ADA by the State with respect to the State's statewide day activity service system. The Parties expressly acknowledge and agree that compliance with this Consent Decree will remedy any and all violations of the integration mandate of Title II of the ADA and Olmstead that were identified as a result of the United States' investigation to date of the State's day activity service system.

F. This Consent Decree also is intended to ensure that the State will timely meet the requirements of the integration mandate of the ADA and the Olmstead decision as it pertains to the statewide day activity service system, which require that the State's day activity services, including employment and day services, for individuals with I/DD be provided in the most integrated setting appropriate to meet their needs.

G. Through this Consent Decree, the Parties intend that the goal of community integration will be achieved for individuals with I/DD being served in, identified for referral to, or at risk of entering sheltered workshops and facility-based day programs throughout Rhode Island.

H. The State has cooperated with the United States in reviewing and responding to the United States' findings. The Parties agree that it is in their mutual interest to avoid litigation.

## II. DEFINITIONS

A. For the purposes of this Consent Decree only, the following terms have the following meanings:

1. A "career development plan" is a plan that identifies the individual's employment goals and objectives, the services and supports needed to achieve those goals, the persons, agencies, and providers assigned to assist the person attain those goals, and the obstacles to the individual working in an individualized job in an integrated employment setting at competitive wages, and seeks to identify the appropriate services and supports necessary to overcome those obstacles.

2. "Discovery" is a time-limited process by which an employment planning team assists an individual to identify his/her interests, strengths, and abilities relating to employment, with the goal of attaining and maintaining employment in a competitive integrated employment setting, including self-employment.

3. "Evidence-based" means well-defined practices, including, but not limited to, Individual Placement and Support ("IPS") and customized employment, which have been demonstrated to be effective through research studies.

4. A "facility-based day program" is a facility-based service that congregates individuals with I/DD. Facility-based day programs are operated by service provider entities. In general, a facility-based day program provides services to only individuals with I/DD or other disabilities except for service support staff. In facility-based day programs, individuals with I/DD typically perform organized group activities like coloring, completing puzzles, watching movies, playing games, and arts and crafts. Individuals in facility-based day programs are not paid a wage for the activities that they perform. In facility-based day programs, individuals with I/DD have limited or no engagement with nondisabled peers, except for provider agency support staff. Facility-based day programs may be co-located with sheltered workshops. As part of facility-based day programs, some individuals with I/DD may be transported from the facility to public spaces in a group, typically in vans, with only other individuals with I/DD, other than paid staff, also providing individuals with limited or no engagement with non-disabled peers.

5. "Individuals with intellectual or developmental disabilities" (I/DD) are defined, for the purposes of this Consent Decree, as persons who are eligible or likely to be found eligible, for publicly-funded developmental disability services through the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals ("BHDDH") as defined in Rhode Island General Laws § 40.1-21-4.3(5) or students who are eligible or likely to be found eligible for transition services and supports under the Individuals with Disabilities Education Act, and who meet the definition found at 34 C.F.R. § 300.8(c)(6).

6. An "Individual Learning Plan" is a document consisting of (1) post-secondary plans aligned to career goals; (2) documentation of the range of college and career readiness skills a student has developed; and (3) a process that enhances the relevance of school and out-of-school learning opportunities, and provides the student access to career development opportunities that incorporate self-exploration, career exploration, and career planning and management skill building activities.

7. "Integrated Day Services" are services and supports provided in the amount, duration, and intensity to allow persons with I/DD to engage in self-directed activities in the community at times, frequencies, and with persons of their choosing, during hours when they are not receiving employment or residential services.

8. "Person-centered planning" is the formal process that organizes services and supports around a self-directed, self-determined, and goal-directed future, and includes the process by which an individual, with the assistance of an employment planning team, identifies the direction of his/her future vocational, employment related, and day activities based on

his/her skills, interests, strengths, and abilities, regardless of whether the individual has the verbal ability to express such information.

9. "Rhode Island" or "the State" means the State of Rhode Island, including BHDDH and the Office of Rehabilitation Services ("ORS"), as administered through the Department of Human Services, the Rhode Island Department of Education ("RIDE"), and the Executive Office of Health and Human Services ("EOHHS").

10. A "sheltered workshop" is a facility-based service that congregates individuals with I/DD who perform work tasks inside of the facility. Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with I/DD or other disabilities except for service support staff. Individuals with I/DD are frequently paid less than minimum wage for work performed. In sheltered workshops, individuals with I/DD have limited or no engagement with nondisabled peers, coworkers, and customers, except for provider agency support staff.

11. A "situational assessment" is a vocational assessment that is administered on-site in integrated employment settings, where individuals are evaluated in the performance of work activities that are typical to the setting where the assessment is administered.

12. A "Summary of Performance" is a plan developed for a student with a disability at the secondary level whose eligibility for special education services terminates because of graduation or reaching the maximum age of eligibility for special education services. The Plan must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his or her postsecondary goals.

13. "Supported Employment Services" are employment services provided in the amount, duration, and intensity that allow persons with I/DD to work the maximum number of hours consistent with their abilities in a competitive integrated employment setting. Supported Employment Services include services necessary to place, maintain, and provide ongoing support to an individual with I/DD in an integrated employment setting.

14. "Transition-age youth" or "eligible youth" are youth with I/DD who attend, or in the future will attend, a Rhode Island secondary school and are between the ages of fourteen years old and twenty-one years old (14-21 years old).

15. A "trial work experience" is the opportunity to work in a real job in an integrated employment setting alongside non-disabled coworkers, customers, and/or peers, with the appropriate services and supports for a sufficient period of time to establish whether an individual's interests, skills, and abilities are well-suited for the particular job, but for no shorter than 60 days. The trial work experience shall be selected through a person-centered planning process and shall be individually tailored to each person.

16. A "vocational assessment" is an assessment administered to provide employment-related information essential to the development of, or revision of, an individual's employment-related planning documents, including the Individual Plan for Employment ("IPE"), Individual Support Plan ("ISP"), Individual Education Plan ("IEP") and/or Individual Learning Plan ("ILP"), where applicable. The primary purpose of all vocational

assessments shall be to determine an individual's interests, strengths, and abilities, in order to identify a suitable match between the person and a competitive integrated employment setting.

## III. SCOPE OF THE CONSENT DECREE AND TARGET POPULATIONS

A. The following individuals will be eligible for Supported Employment Services, Integrated Day Services, and/or transition services under the Consent Decree:

1. Individuals with I/DD that receive day activity services in settings where they perform sheltered workshop tasks or have received day activity services in such settings within the previous year ("Rhode Island Sheltered Workshop Target Population");

2. Individuals with I/DD that receive day activity services in facility-based day program settings or have received such services in the previous year ("Rhode Island Day Target Population");

3. Individuals with I/DD that are transition-age youth according to current Rhode Island law, currently attending a Rhode Island secondary school ("Rhode Island Youth Transition Target Population"); and

4. Individuals with I/DD that are transition-age youth who have exited or who will exit a Rhode Island secondary school during the 2013-2014, 2014-2015, or 2015-2016 school years ("Rhode Island Youth Exit Target Population").

## IV. OUTCOMES

1. By January 1, 2015, the State will provide all individuals in the Rhode Island Youth Exit Target Population person-centered planning resulting in a career development plan including the services and supports described in Sections V(A)(1)-(2) necessary and appropriate to introduce them to work in integrated settings, according to the youth transition process and milestones set forth in Sections VIII(4)-(10), and they will become eligible for a Supported Employment Placement, as provided in Section V, upon their exit from secondary school.

2. By October 1, 2014, and by September 1st of every succeeding year of this Consent Decree, the State will provide all individuals in the Rhode Island Youth Transition Target Population the appropriate services and supports described in Sections V(A)(1)-(2) necessary to introduce them to work in integrated settings, according to the youth transition process and milestones set forth in Sections VIII(4)-(10).

3. The State will engage in an annual person-centered planning process with all individuals in the Rhode Island Youth Transition Target Population; such person-centered planning will be coordinated with the transition planning that is mandated by State law to begin at age 14, and will result in a career development plan for each transition-age student with I/DD that consolidates the planning recommendations of school transition specialists and staff, ORS, and BHDDH representatives. The career development plan will be updated annually. The person-centered planning process will at a minimum include the standards and milestones set forth in Section VIII, including the opportunity to access integrated

transition work placements and information about post-secondary work in integrated settings. In addition, individuals with I/DD will be offered meaningful options for post-secondary Supported Employment and Integrated Day Services beginning no later than the start of the school year in which they will turn 18. Such individuals and their families must be provided information through the person-centered planning process sufficient to make a meaningful informed choice between such services and remaining in school.

4. Effective March 1, 2013, by Order of the Director of BHDDH, the State ceased providing placement or funding, and approving ISPs or Interim Individual Support Plans ("IISPs") for new entrants to sheltered workshops, and the State will continue not to provide placement or funding for new entrants to sheltered workshop settings. The State has taken no action to cease placement or to cease funding for new entrants to facility-based day programs.

5. By January 1, 2015, the State will provide career development plans, as described in Section VII, for each individual in the Rhode Island Youth Exit Target Population. By January 1, 2016, the State will provide career development plans, as described in Section VII, for each individual in the Rhode Island Sheltered Workshop and Rhode Island Day Program Target Populations. However, the provision of Supported Employment Services and/or Placements will not be delayed or denied due to the lack of a career development plan.

6. By no later than the year in which an individual is scheduled to transition to a Supported Employment Placement and Integrated Day Services as set forth in Sections V-VI, and typically upon obtaining an offer of employment, for all individuals in the Rhode Island Youth Exit, Rhode Island Sheltered Workshop, and Rhode Island Day Program Target Populations, such persons shall receive benefits planning information and counseling from a qualified professional who is experienced and certified in Social Security and SSI regulations and who will review an individual's personal benefit levels and produce a written analysis ("benefits plan"), providing information to the individual and his or her family or guardian about the impact of earned income on the individual's public benefits. Individuals will also receive information about their eligibility for the State's Medicaid Buy-in Program, or the "Sherlock Plan," and assistance with enrolling in that program. Benefits counseling will be rolled out consistent with when each individual in the Target Populations is scheduled to enter supported employment. Each person's benefits plan may be adjusted thereafter, subject to review by the Monitor for this Consent Decree ("Monitor"), for six months following its completion.

7. By September 1, 2014, BHDDH will issue a directive to ensure that the Supports Intensity Scale ("SIS") assessment process, set forth under Project Sustainability, is administered with the presumption that individuals with the most severe disabilities can work in integrated settings and receive the services and supports necessary to do so. BHDDH shall ensure an active role for essential participants, including family members and guardians, in the SIS administration process for individuals in the Target Populations, and will require that individuals administering the SIS assessment are knowledgeable about, and have experience working with, individuals with I/DD, and have received an appropriate level of training and certification, consistent with Section IX of this Consent Decree. BHDDH shall ensure that resource allocation decisions are made by BHDDH

staff in a manner that is consistent with individuals' support needs. The BHDDH staff who administer the SIS assessment ("surveyors") will work in a separate, autonomous unit from the BHDDH staff who administer the resource allocations. Said resource allocations are currently and will continue to be annually reviewed by Burns & Associates or a similar consulting group. Any and all written reports, including those authored by Burns & Associates, pertaining to BHDDH's administration of the SIS tool and/or resource allocation decisions will be made available to the Monitor on an ongoing basis. The State will also provide the Monitor with documents demonstrating the level of training and certifications for surveyors.

8. The State will provide Supported Employment Placements and Integrated Day Services, as described in Sections V-VI, for individuals in the Rhode Island Sheltered Workshop and Rhode Island Youth Exit Target Populations, according to the following schedule:

   a. By January 1, 2015, the State will provide Supported Employment Placements to at least 50 individuals in the Rhode Island Youth Exit Target Population who left during the 2013-2014 school year.

   b. By July 1, 2015, the State will provide Supported Employment Placements to all remaining individuals in the Rhode Island Youth Exit Target Population who left, or will leave, school during the 2013-2014 and 2014-2015 school years.

   c. By January 1, 2016, the State will provide Supported Employment Placements to at least 50 individuals in the Rhode Island Sheltered Workshop Target Population.

   d. By July 1, 2016, the State will provide Supported Employment Placements to all individuals in the Rhode Island Youth Exit Target Population who left school during the 2015-2016 school year.

   e. By January 1, 2017, the State will provide Supported Employment Placements to at least an additional 50 individuals in the Rhode Island Sheltered Workshop Target Population.

   f. By January 1, 2018, the State will provide Supported Employment Placements to at least an additional 50 individuals in the Rhode Island Sheltered Workshop Target Population.

   g. By January 1, 2019, the State will provide Supported Employment Placements to at least an additional 50 individuals in the Rhode Island Sheltered Workshop Target Population.

   h. By January 1, 2020, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Sheltered Workshop Target Population.

   i. By January 1, 2021, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Sheltered Workshop Target Population.

j. By January 1, 2022, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Sheltered Workshop Target Population.

k. By January 1, 2023, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Sheltered Workshop Target Population.

l. By January 1, 2024, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Sheltered Workshop Target Population.

9. The State will provide Supported Employment Placements and Integrated Day Services, as described in Sections V-VI, for individuals in the Rhode Island Day Target Population, according to the following schedule:

a. By January 1, 2016, the State will provide Supported Employment Placements to at least 25 individuals in the Rhode Island Day Target Population.

b. By January 1, 2017, the State will provide Supported Employment Placements to at least an additional 25 individuals in the Rhode Island Day Target Population.

c. By January 1, 2018, the State will provide Supported Employment Placements to at least an additional 50 individuals in the Rhode Island Day Target Population.

d. By January 1, 2019, the State will provide Supported Employment Placements to at least an additional 50 individuals in the Rhode Island Day Target Population.

e. By January 1, 2020, the State will provide Supported Employment Placements to at least an additional 75 individuals in the Rhode Island Day Target Population.

f. By January 1, 2021, the State will provide Supported Employment Placements to at least an additional 100 individuals in the Rhode Island Day Target Population.

g. By January 1, 2022, the State will provide Supported Employment Placements to at least an additional 200 individuals in the Rhode Island Day Target Population.

h. By January 1, 2023, the State will provide Supported Employment Placements to at least an additional 200 individuals in the Rhode Island Day Target Population.

i. By January 1, 2024, the State will provide Supported Employment Placements to at least an additional 225 individuals in the Rhode Island Day Target Population.

10. The State will document for continuous review by the Monitor and in accord with Section XIX(7), Construction and Termination, its efforts in offering Supported Employment Placements and Integrated Day Services to individuals to fulfill its responsibilities under Sections IV(8)-(9).

11. The individuals eligible for relief pursuant to Section IV(8) are not the same individuals eligible for relief pursuant to Section IV(9); accordingly, no individual can receive relief under both Section IV(8) and Section IV(9) pursuant to this Consent Decree.

## V. SUPPORTED EMPLOYMENT SERVICES AND PLACEMENTS

A. "Supported Employment Services" include the following community services and supports that the State shall make available to satisfy the requirements of this Consent Decree:

1. Vocational and related services, such as job discovery and development, job-finding, job carving, job coaching, job training, job shadowing, co-worker and peer supports, re-employment supports, benefits counseling and transportation services; as well as those environmental modifications and environmental accessibility adaptations; behavioral supports; personal care services; case management services; assistive technology; social skills training; self exploration; career exploration; career planning and management; job customization; soft skill development; time management training; self-employment opportunities and supports; adaptive behavior and daily living skills training directly related to job placement and support necessary to allow individuals with I/DD to participate in a competitive integrated employment setting; and

2. In addition, for transition-age youth with I/DD, transitional services and supports, including: instruction; community experiences; the development of employment and other post school adult living objectives; school-based preparatory experiences; career preparation; and integrated work-based learning experiences such as site visits, job shadowing, soft skill and job skill development, internships, part-time employment, summer employment; youth development and leadership, including training in self-advocacy, self-determination and conflict resolution skills, peer and adult mentoring, and, where appropriate, daily living skills; and connecting activities, including exposure to post-school educational and community services, transportation, benefits planning, and assistive technology.

B. Supported Employment Services shall be individualized and flexible, and shall be available as needed and desired by the individual, but shall not be mandated as a condition of working or receiving services in an integrated employment setting.

C. Supported Employment Services shall be provided in the amount, intensity, and duration necessary to place, maintain, and provide ongoing support, including ongoing professional development, to an individual in a Supported Employment Placement, as set forth below in Sections V(D)-(E).

D. "Supported Employment Placement," for the purposes of this Consent Decree, is defined as the provision of Supported Employment Services in an integrated employment setting:

1. Where the individual is compensated at or above Rhode Island's 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 without disabilities;

2. Where the individual works the maximum number of hours consistent with his/her abilities and preferences;

3. That allows individuals with disabilities to interact with individuals without disabilities in an employment setting to the fullest extent possible for the individual; and

4. That offers individuals with disabilities the same opportunity as non-disabled individuals:

   a. To access community opportunities at times, frequencies, and with persons of their choosing during appropriate times when the individual is not working, such as on breaks, during lunch, and before and after the work day;

   b. For promotion and/or advancement opportunities; and

   c. To perform tasks or work activities that match the interests, preferences, and skills of the worker.

E. All Supported Employment Placements shall be based on an individual's capabilities, strengths, and preferences, and shall be individually tailored to each person and may include self-employment. Working from an individual's home as part of self-employment may be a Supported Employment Placement if made as an informed choice by the individual, and is subject to review by the Monitor.

F. The State, including BHDDH, ORS, and RIDE, will establish and implement a policy or policies that include the presumption that all individuals covered by this Consent Decree are capable of working in integrated employment settings.

G. Supported Employment Placements made available under this Consent Decree cannot be in sheltered workshops, group enclaves, mobile work crews, time-limited work experiences (internships), or facility-based day programs.

H. Individuals may participate in employer-sponsored training programs or provider-subsidized trial work experiences in integrated settings, of a duration no longer than 4-8 weeks, prior to placement in jobs that would qualify as a Placement under this Consent Decree. Employment compensated by any entity other than the employer (e.g., employment in which the provider pays or subsidizes the individual's wages) will not qualify as a Placement under this Consent Decree. In cases in which an individual leaves a position in which he or she has been placed under this Consent Decree and returns to the same Placement after an absence, or is placed in a different position, such secondary Placement shall qualify as re-employment support, as set forth in Section V(A)(1), but shall not qualify as an additional Placement under this Consent Decree.

I. All individuals who receive a Supported Employment Placement under this Consent Decree shall work the maximum number of hours consistent with their abilities and have access to integrated day services in sufficient amount, duration, and intensity to complement their employment and to provide them with an ISP that affords them the opportunity to participate in integrated settings at times when they are not working during a normative 40-hour work week.

J. By May 1, 2016, and thereafter, all individuals in the Rhode Island Youth Exit Target Population that receive a Supported Employment Placement shall average, as determined by

a point-in-time survey, work in an integrated employment setting for at least 20 hours per week.

K. By May 1, 2018, and thereafter, all individuals in the Rhode Island Sheltered Workshop and Rhode Island Day Target Populations that receive a Supported Employment Placement shall average, as determined by a point in time survey, work in an integrated employment setting for at least 20 hours per week.

L. Any individual eligible for a Supported Employment Placement, but who makes an informed choice for placement in a facility-based work setting, group enclave, mobile work crew, time-limited work experience (internship), or facility-based day program, or other segregated setting may seek a variance allowing such placement. Variances may only be granted after an individual has:

1. Participated in at least one vocational or situational assessment, as defined in Sections II(11) and (16);

2. Completed one trial work experience, as defined in Section II(15);

3. Received the outreach, education, and support services described in Section X; and

4. Received a benefits counseling consultation, as described in Section IV(6).

M. If a variance is granted, the individual must be reassessed by a qualified professional, and the revised employment goal reevaluated, within 180 days, and annually thereafter, for the individual to have the meaningful opportunity to choose to receive Supported Employment Services in an integrated work setting. The Parties and the Monitor shall create a process that governs the variance process within 30 days of entering this Consent Decree.

N. Individuals who seek a variance from this Consent Decree, but who are unable to participate in a trial work experience, pursuant to Section V(L), due to a documented medical condition that poses an immediate and serious threat to their health or safety, or the health or safety of others, should they participate in a trial work experience, may submit documentation of such a condition to the Monitor to seek exemption from Section V(L)(2). Exemptions from trial work experiences will be subject to the Monitor's approval.

O. The State will ensure that individuals currently in sheltered workshops who receive a variance pursuant to Section V(M) will continue to receive employment services.

## VI. INTEGRATED DAY SERVICES AND PLACEMENTS

A. "Integrated Day Services" include the appropriate services and supports necessary to allow individuals with I/DD to participate in and gain membership in mainstream community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities, as well as other non-facility based activities of a person's choosing that are provided in integrated settings during the day with the appropriate services and supports.

B. Integrated Day Services will be provided to all individuals in the Rhode Island Sheltered Workshop, Rhode Island Youth Exit, and Rhode Island Day Target Populations who receive a Supported Employment Placement, for the remainder of all time set forth in an individual's ISP in a 40-hour work week in which such individuals are not in school or supported employment. Integrated day settings must:

1. Allow individuals with disabilities the opportunity to interact with individuals without disabilities in a community setting to the fullest extent possible for the individual; and

2. Offer individuals with disabilities the same opportunity as non-disabled individuals:

   a. To engage in non-work activities that match the interests, preferences, and goals of the participant; and

   b. To do so at times, frequencies, and with persons of their choosing during the day, when an individual is not working or receiving residential care or educational services.

3. Integrated Day Services shall be individualized, flexible, purposeful, and productive daytime activities; shall be individually tailored to a person's interests, abilities, and goals; and shall afford individuals the services and supports necessary to interact with non-disabled individuals to the fullest extent possible during the day.

4. Integrated Day Services must be individually selected and designed by the service recipient through person-centered planning and include the services and supports necessary to allow individuals to participate in an array of group and non-group, structured and unstructured, activities and to facilitate meaningful choice by individuals with I/DD between group and non-group activities and structured and unstructured activities.

5. Integrated Day Services shall not be services provided as part of a sheltered workshop, day services, group home, or residential service provider's on-site program.

6. For working-age adults with I/DD, Integrated Day Services must complement, supplement, and promote integrated employment outcomes by aiding the development of social capital, including broad personal and professional networks, and individuals' active participation and membership in integrated settings. Integrated Day Services for working-age adults with I/DD must include an adequate mix of leisure, employment-related, and daily life activities that are comparable to those activities engaged in by working-age non-disabled peers, and will include the availability of paid and natural supports.

7. Retirement-age adults with I/DD who are eligible for Integrated Day Services will have access to supported retirement activities, including a mix of leisure, meaningful senior-related activities, and daily life activities that are comparable to those activities engaged in by retirement-age non-disabled peers, and will include the availability of paid and natural supports.

8. Individuals in the Rhode Island Day Program Target Population may select an Integrated Day-Only Placement in lieu of a Supported Employment Placement. An "Integrated Day-Only Placement," for the purposes of this Consent Decree, is the provision of Integrated Day Services in an integrated non-work setting to a person who has made the informed choice not to participate in an integrated employment setting, where the placement is individually tailored to a person's interests, abilities, and goals pertaining to productive and meaningful day-time activities in the community, and where integrated day services allow an individual to interact with non-disabled individuals in integrated day settings for the maximum number of hours possible for the individual during the day, as set forth in an individual's ISP. Individuals in the Rhode Island Day Program Target Population may select an Integrated Day-Only Placement only after being fully informed of their eligibility for a Supported Employment Placement and if they have:

   a. Received information about and the opportunity to participate, should they desire to, in: (1) at least one vocational or situational assessment, as defined in Sections II(11) and (16); and (2) one trial work experience, as defined in Section II(15);

   b. Received the outreach, education, and support services described in Section X; and

   c. Received a benefits counseling consultation, as described in Section IV(6).

9. If an individual chooses an Integrated Day-Only Placement, the individual must be reassessed by a qualified professional, and the revised employment goal reevaluated, within 180 days, and annually thereafter, for the individual to have the meaningful opportunity to choose to receive Supported Employment Services in an integrated work setting.

10. For individuals in the Rhode Island Day Target Population who do not select to receive a Supported Employment Placement, they must be offered integrated day services in an Integrated Day-Only Placement for all time set forth in an individual's ISP in a 40-hour work week.

## VII. CAREER DEVELOPMENT PLANNING

1. By January 1, 2015, the State shall adopt and implement policies and procedures for developing career development plans for each individual in the Rhode Island Sheltered Workshop, Rhode Island Day, and Rhode Island Youth Exit Target Populations. The policies will include a presumption that all individuals covered by this Consent Decree are capable of working in an integrated employment setting and that a rapid search process for employment should be implemented for individuals eligible for Supported Employment Services under this Consent Decree. The policies will also include the presumption that all individuals covered by this Consent Decree will be ensured an active and leading role in the career development planning process. The policies also will include a provision that no readiness criteria shall be used in pre-eligibility or eligibility determinations to assess an individual's ability to work in an integrated setting. All individuals covered by this Consent Decree will be presumed ready for employment.

2. The State shall adopt evidence-based vocational assessments and vocational eligibility criteria that are person-centered and appropriate for individuals with I/DD; based on the presumption that with the appropriate services and supports individuals with I/DD can work; and designed to reveal information about an individual's skills, interests, strengths and abilities, regardless of whether the individual has the verbal ability to express such information.

3. For the purposes of this Consent Decree, no vocational or situational assessments, including those conducted by BHDDH, ORS, and RIDE, or any vendors or contractors of the State, shall be conducted in segregated work settings, including in sheltered workshops or in any setting that does not meet the definitions and standards set forth in Sections V(D)-(E).

4. The State shall ensure that all assessments:

   a. Are conducted by appropriate and trained staff;

   b. Maintain fidelity to an asset-based assessment model (like MAPS, PATHS, or VAPS);

   c. Are available for all individuals eligible for relief under this Consent Decree to be assessed in several different integrated employment settings, should they desire to be assessed in more than one community employment setting; and

   d. Are conducted with the appropriate accommodations, services, and supports necessary for individuals eligible for relief under this Consent Decree to be assessed performing work activities in integrated employment settings.

5. A career development plan shall be formulated and/or revised at least annually in conjunction with the ISP or IEP process through an asset-based, person-centered planning process including discovery, vocational assessment, and situational assessment conducted with the goal of maximizing the number of hours spent working, consistent with an individual's abilities, in settings that meet the definitions and standards set forth in Sections V-VI. The career development plan shall:

   a. Set forth the individual's skills, interests, strengths, and abilities;

   b. Be integrated into the individual's IPE, ISP, IEP, and ILP and Summary of Performance ("SOP"), where applicable; and

   c. Identify the nature and scope of services needed by the individual to remove obstacles to obtaining and keeping an individualized job in an integrated employment setting and participating in Integrated Day Services meeting the definitions and standards set forth in Sections V-VI.

6. Translation and interpretation services, including sign language interpretation, shall be accessible and available to all individuals in the Target Populations and their families who require such services during all career and transition planning meetings and during

the entire assessment, career planning, and placement process, including during the administration of the SIS assessment. The State will ensure that individuals in the Target Populations who are deaf and eligible for a Supported Employment or Integrated Day-Only Placement receive the necessary interpretation services to allow them to work or fully participate in integrated activities in their Placements under this Consent Decree. Further, all individuals covered by this Consent Decree will have access to the services and supports necessary to make informed decisions pertaining to this Consent Decree.

7. If, after discovery, and a vocational or situational assessment, an individual expresses that a particular work setting does not match his/her interests, strengths, or abilities, the person-centered planning process shall resume, the reasons that the individual did not prefer the work placement shall be documented, and all planning shall proceed with goals that have been adjusted based on the information revealed through the discovery and assessment process.

8. The State shall implement a rapid job search process for each individual eligible for a Supported Employment Placement under this Consent Decree.

9. At minimum, the State shall ensure that the rapid job search process:

   a. Begins within 10 days of the completion of an individual's vocational assessment;

   b. Includes an individualized job search; and

   c. Includes job development and job carving, as needed.

## VIII. TRANSITION PLANNING FOR YOUTH

1. RIDE shall adopt an Employment First Policy, making work in integrated employment settings the first and priority service option for youth seeking transition work placements and for transition-age youth's postsecondary vocational planning objectives. RIDE's Employment First Policy will set forth values for the State's transition planning process that reflect the State's expectations for supporting youth in transition to integrated employment settings through a systemic and collaborative framework.

2. By July 1, 2014, the State's respective agencies, including RIDE, BHDDH, and ORS, shall amend and modify their existing interagency agreement to include the promotion and implementation of a school-to-work transition planning process that includes specific timelines and benchmarks for all transition-age youth (14-21 years of age) with I/DD, as set forth in Section VIII(4), and providing for students' access to the services and supports set forth in Sections V(A)(1)-(2). The interagency agreement also will designate, inter alia, ORS as responsible for the trial work experience requirements of Section VIII(6) of this Consent Decree and RIDE as responsible for ensuring that the trial work experience requirement of Section VIII(6) is embedded and incorporated into the existing IEP planning process.

3. The State, including RIDE, BHDDH, and ORS, shall promote the involvement, availability, and use of career planning teams in each school district. Career planning teams shall at a minimum include a qualified vocational rehabilitation counselor,

qualified school transition specialist, qualified State representative, where applicable, and the eligible youth with I/DD. Family and/or guardian participation in all planning meetings should be required. The eligible youth shall be ensured an active and leading role in all of his/her planning meetings.

4. The transition planning process for students in the Rhode Island Youth Transition Target Population shall begin by age 14, as required by state law, shall include a career planning team, and shall include access to ORS and Medicaid Waiver services, if the individual is eligible for such services. The transition planning process shall be designed to ensure that each youth and his/her family has been informed about, and been given opportunities to experience, Supported Employment Services and trial work experiences. The transition planning process, as set forth by interagency agreement in Section XIII, shall be inclusive of specific and relevant planning milestones for all students in the Rhode Island Youth Transition Target Population. At minimum, these milestones shall include:

   a. Assignment, by age 14, to an employment planning team, as defined in this Section;

   b. No later than during the first year of entry to a Rhode Island secondary school, and with the assistance of the career planning team during the annual IEP planning process, the formulation of the employment-related recommendations of the IEP to discover and record students' personal interests and goals for postsecondary employment and/or postsecondary education. Such goals will be re-evaluated and adjusted according to a student's preferences during each subsequent year of a student's secondary school participation;

   c. No later than the year in which a student turns 16 years of age and, during the annual IEP planning process with the assistance of the career planning team, a comprehensive introduction to or enrollment in State services, if an individual is eligible or will be eligible, and also with the assistance of the employment planning team, the formulation of the employment-related recommendations of the IPE and ISP, where applicable;

   d. No later than the year in which a student turns 18 years of age, during the annual IEP planning process, a meeting with the career planning team to facilitate possible post-secondary employment placements, and to ensure that an eligible youth has been introduced to numerous and specific options to receive Supported Employment Services in a community-based long-term placement in an integrated employment setting meeting the definitions and standards set forth in Sections V(D)-(E), and that the eligible youth has (or will have) experienced the opportunity to be placed in such a setting, and to begin working there, prior to the end of his or her participation at a Rhode Island secondary school; and

   e. No later than during the year prior to exit from secondary school, all individuals in the Rhode Island Youth Transition Target Population shall receive benefits planning information, according to the standards set forth in Section IV(6).

5. All youth in transition shall have a meaningful opportunity to experience one or more vocational and/or situational assessments in an integrated employment setting prior to

exit from a Rhode Island secondary school, pursuant to the standards set forth in Sections II(11) and (16).

6. All youth in transition shall have a meaningful opportunity prior to exit from a Rhode Island secondary school to experience at least two trial work experiences, where each trial work experience is approximately 60 days in duration, in an individualized, integrated employment setting meeting the definitions and standards set forth in Sections V(D)-(E) with supervision and appropriate services and supports. Such trial work experiences may be exempt from the requirement of Section V(D)(1), and may include full-time, part-time, or seasonal work on a paid or unpaid basis, including internships, summer work experiences, or volunteer/community service experiences. Such trial work experiences cannot be positions of employment that are controlled by an employer that is a provider or school for the purpose of employing individuals with disabilities; instead, they must be provided in typical work settings meeting the definitions and standards set forth in Sections V(D)(2)-(4) and V(E).

7. A person-centered career development plan shall be developed by the employment planning team for each youth in transition, to inform the employment-related goals and recommendations of the youth's ISP, IEP, IPE, ILP, and SOP, where applicable, and to provide ongoing coordination of the employment-related recommendations of those plans.

8. The State, including BHDDH, ORS, and RIDE, shall prohibit vocational assessments of transition-age youth in segregated work settings, and shall issue a directive that no youth in transition will be assessed in segregated settings or in settings that do not meet the definitions and standards set forth in Sections V(D)-(E).

9. The State, including BHDDH, ORS, and RIDE, shall ensure that the appropriate services and supports are available to transition-age youth who choose to work in the community before their 21st birthday rather than remaining in school. To this end, BHDDH will update its policies and administrative rules to facilitate individuals who are eligible to access State services, including Supported Employment Services, by age 18. ORS will update its policies and administrative rules to facilitate individuals who are eligible to access vocational rehabilitation services beginning at age 16. RIDE will issue a statewide directive that local school districts comply with State law to begin the transition planning process at age 14.

10. The State, including RIDE, shall take affirmative steps to ensure that all youth in transition, as defined in Section II(14), are not excluded from the benefits and opportunities of transition academies, and other post-secondary planning, education, and employment resources in a student's assigned school district following their exit from school. Also, RIDE will take affirmative steps to link the parents and families of transition-age youth with I/DD, as defined in Section II(14), with information about supported employment and integrated day services and parent information networks and groups during the school year that the transition-age youth is age 14.

## IX. TRAINING

1. By September 1, 2014, the State will establish competencies, and will develop and implement a competency-based and value-based training program for:

   a. Sheltered workshop and facility-based day program staff;

   b. All members of career planning teams as defined under Section VIII;

   c. Youth service professionals; and

   d. State agency staff, including for BHDDH, RIDE, and ORS staff.

2. The competency-based and value-based training program, as set forth in Section IX(1), will pertain to the development of vocational assessment/profiles, career development plans, and transition plans; job development, job coaching, employment support, benefits counseling, and Supported Employment and Integrated Day Services and Placements; intake and vocational rehabilitation services; and service coordination. The State will ensure that all persons involved in the discovery and assessment process, the preparation and implementation of career development plans, and the provision of Supported Employment and Integrated Day Services and Placements for members of the Target Populations have completed the necessary training, have attained and retain the required competencies, and are otherwise qualified (as specified in Section X) to perform their respective responsibilities with respect to employment and day services. To do so, the State will rely upon a range of resources which may include State and local accredited training programs, and nationally-recognized and accredited training programs.

3. The State will ensure that all persons involved in the discovery and assessment process, the preparation and implementation of career development plans, and the provision of Supported Employment and Integrated Day Services and Placements for members of the Target Populations receive training specific to providing services and supports to individuals with I/DD.

4. The Monitor will be required to approve the competency-based and value-based training program prior to its implementation, and will be available to provide guidance and suggestions in the formulation of the program.

## X. OUTREACH, EDUCATION, AND SUPPORT

1. By September 1, 2014, the State will develop an outreach, in-reach, and education program that explains the benefits of supported employment, that addresses concerns of families and perceived obstacles to participating in supported employment programs, and that is designed to encourage individuals with I/DD in Rhode Island day activity service programs, including in sheltered workshops and facility-based day programs, and their families to seek Supported Employment Services and to understand the objectives of the State's Employment First Policy, receive benefits planning consultation, and participate in other related initiatives. The Monitor will be required to approve the outreach, in-

reach, and education program prior to its implementation, and will be available to provide technical assistance in the formulation of the program. As part of its outreach, in-reach, and education program, the State will ensure that:

a. Individuals are educated about the ways in which Integrated Day Services can complement employment in integrated settings, and will develop opportunities for individuals and families to learn about the benefits of Integrated Day Services;

b. Individuals in the Target Populations are provided the opportunity to visit and observe integrated employment and day settings where individuals with I/DD receive Supported Employment and Integrated Day Services; and

c. The outreach, in-reach, and education program is available to individuals with I/DD and their families by no later than September 1, 2014, however, the State will ensure that ongoing efforts are made during the length of this Consent Decree to sustain the outreach, in-reach, and education program.

2. The State will support personal networks and use family to family and peer to peer programs to link families and individuals with I/DD who obtain competitive integrated employment with families and individuals with I/DD at sheltered workshops and facility-based day programs, in order to explain the benefits and opportunities of supported employment and integrated day services.

3. By no later than May 1, 2014, the State will create an Employment First Task Force that will include, but will not be limited to, representatives of the technical assistance entities discussed in Section XII, the Community Provider Network of Rhode Island, the Paul V. Sherlock Center on Disabilities at Rhode Island College, the Rhode Island Disability Law Center, the Rhode Island Developmental Disabilities Council, the Rhode Island Parent Information Network, the Rhode Island Business Leadership Network, individuals with I/DD, and parent and family representatives. The Employment First Task Force will:

a. Meet with the Monitor on a quarterly basis to identify and discuss barriers to successful implementation of this Consent Decree, best practices, and corrective actions to ensure that individuals in the Target Populations can successfully transition to integrated employment and day settings;

b. Meet with relevant State officials, including the Directors of DHS, BHDDH, RIDE, and ORS, on a quarterly basis to identify and discuss barriers to successful implementation of this Consent Decree, best practices, and corrective actions to ensure that individuals in the Target Populations can successfully transition to integrated employment and day settings;

c. Produce policy recommendations, research, and publicly disseminated information, based on the experience of Task Force Members in working with individuals with I/DD, pertaining to successfully assisting individuals in the Target Populations to transition to integrated work and day settings; and

d. Have an active role in providing in-reach, outreach, education, transition, and linkage activities to individuals in facility-based sheltered workshops, day programs, and secondary schools.

## XI. PROVIDER CAPACITY

1. The State, including BHDDH and ORS, will ensure that it supports and maintains a sufficient capacity to deliver Supported Employment and Integrated Day Services to individuals in the Rhode Island Sheltered Workshop, Rhode Island Day Program, and Rhode Island Youth Exit Target Populations, including qualified supported employment providers and integrated day providers, consistent with the terms of this Consent Decree.

2. The State, including BHDDH and ORS, will ensure that the supported employment providers and/or integrated day providers have a sufficient array of trained staff, adequate staff supervision, appropriate policies and procedures, a quality improvement program, and the capacity to deliver Supported Employment and Integrated Day Services consistent with the terms of this Consent Decree.

3. By September 1, 2014, the State, including BHDDH and ORS, will establish, implement, and enforce pre-qualification requirements for all Supported Employment and Integrated Day Services providers that supply services to individuals in the Rhode Island Sheltered Workshop, Rhode Island Day Program, and Rhode Island Youth Exit Target Populations, consistent with the terms of this Consent Decree.

4. Effective upon signing this Consent Decree, the State will be responsible for creating incentives to encourage the transition of individuals from sheltered workshops, facility-based day program settings, and Rhode Island secondary schools to integrated employment and integrated day settings that meet the definitions and standards of Sections V(D)-(E). The State will implement these incentives through public-private partnerships with persons with I/DD, family members, employers, employment providers, community organizations, and additionally by other means that are approved by the Monitor.

5. The State will provide monitoring, oversight, and technical assistance to ensure supported employment providers use evidence-based employment practices, have adequate staffing, organizational support and supervision, and use effective business models to meet the goals and outcomes of this Consent Decree. The State will develop and publicize its oversight process and provide mechanisms for individuals with I/DD, their families, service providers, and advocates to file complaints which will be timely addressed by the State.

6. The State will require the supported employment provider(s) used to transition individuals with I/DD from Rhode Island sheltered workshop and facility-based day service providers into Supported Employment Placements to:

   a. Identify and promote Supported Employment Placements in state and federal agencies and in private industry on a statewide basis; and

b. Develop relationships with public and private employers based on the benefits to businesses of hiring people with disabilities.

7. By July 1, 2015, the State will establish public and private sector initiatives to support the integrated employment of individuals in the Target Populations.

8. By July 1, 2015, the State will develop procedures to require provider staff to assist in the transition of individuals from Rhode Island sheltered workshop settings and facility-based day settings to Supported Employment Services and Placements. The procedures will provide incentives and support to qualified providers of sheltered workshop services upon the effective date of this Consent Decree to begin to convert their employment programs to Supported Employment Services so that the providers' services are converted primarily to Supported Employment Services once the terms and conditions of this Consent Decree are met, at the expiration of this Consent Decree.

9. By October 1, 2014, the State will establish a Sheltered Workshop Conversion Institute. The Parties have jointly selected the Paul V. Sherlock Center on Disabilities at Rhode Island College to administer the Sheltered Workshop Conversion Institute. The Sheltered Workshop Conversion Institute will be designed to assist qualified providers of sheltered workshop services to convert their employment programs to include Supported Employment Services. The Sheltered Workshop Conversion Institute will provide individual analysis, technical assistance, and support to each qualified provider of sheltered workshop services, and will work together with the technical assistance entities discussed in Section XII, to support individual providers in a process of conversion and transformation of service options. The Sheltered Workshop Conversion Institute shall operate based on authority and under guidelines that are mutually agreed upon by the Parties and the Monitor by no later than October 1, 2014.

10. By October 1, 2014, the State, including BHDDH and ORS, will establish and begin distributing a Sheltered Workshop Conversion Trust Fund in the amount of $800,000, to provide upfront start-up costs to providers that have agreed to convert their services from primarily sheltered employment to primarily Supported Employment Services. The Sheltered Workshop Conversion Trust Fund will be administered by the Director of DHS ("Sheltered Workshop Trust Fund Administrator") or her/his designee, the Associate Director of ORS, and the funds appropriated shall only be used by qualified sheltered workshop providers for the initial costs associated with converting from a primarily facility-based service model to an integrated service model. Among the qualifications to become eligible for start-up funds from the Sheltered Workshop Conversion Trust Fund, a provider must:

    a. Receive ongoing technical assistance and guidance from the Sheltered Workshop Conversion Institute, set forth in Section XI(9); and

    b. Submit a detailed Conversion Plan to the Sheltered Workshop Trust Fund administrator, including budgetary projections, and multi-year projections for the number of service recipients to be served by the provider in the sheltered workshop, in segregated group enclaves, and in integrated employment settings, and the number of service recipients per year transitioned to integrated employment settings meeting

the standards set forth in Sections V(D)(1)-(4) of this Consent Decree. To be approved, at minimum, a Conversion Plan must specify the critical steps that the provider will take to ensure that its services will be converted to meet the standards for integration set forth in this Consent Decree.

11. If any service gaps or obstacles are identified through the process set forth in Section XV, the Monitor may recommend the necessary actions to remedy these gaps and address these obstacles, including increasing the number of trained and qualified vocational rehabilitation counselors, transition specialists, job developers, job coaches, benefits counselors, job placement specialists, case managers, youth service professionals, and other community employment professionals, in order to allow for successful transition of individuals with I/DD in Rhode Island sheltered workshops, facility-based day programs, and individuals exiting Rhode Island secondary schools to integrated employment and integrated day settings and to ensure the full implementation of the goals and outcomes of this Consent Decree.

## XII. STATE AND OTHER AGENCY ACTIONS

1. By July 1, 2014, the State, including BHDDH, ORS, and RIDE, will identify and pursue a contract with a technical assistance provider, or access the services of an existing technical assistance provider, to provide leadership, training, and technical assistance to employment providers and to the State staff involved in assessing, planning, and providing Supported Employment Services, in order to support the goals and outcomes of this Consent Decree.

2. The technical assistance provider set forth in Section XII(1) will assist and support employment providers to transition individuals, programs, staff, and resources from Rhode Island sheltered workshops and facility-based day programs to Supported Employment Services meeting the definition and standards set forth in Sections II(13), V, and VI of this Consent Decree; will assist and support the development of new providers of Supported Employment Services; and will work collaboratively with the Sheltered Workshop Conversion Institute set forth in Section XI.

3. By July 1, 2014, the State, including BHDDH, ORS, and RIDE, will identify and pursue a contract with a technical assistance provider, or access the services of an existing technical assistance provider, to provide leadership, training, and technical assistance to day services providers and to the State and provider staff as well as all caseworkers involved in assessing, planning, and providing Integrated Day Services and Integrated Day-Only Placements, in order to support the goals and outcomes of this Consent Decree. If a separate entity other the entity set forth in Section XII(1) is retained to perform this function, the technical assistance provider shall work collaboratively and in concert with the technical assistance provider set forth in Section XII(1), to provide information about the manner in which Integrated Day Services can complement and strengthen individuals' employment goals and to develop concrete recommendations for converting facility-based day services to a meaningful and purposeful service model for employment and integrated day services.

4. The technical assistance provider(s), set forth in Sections XII(1) and (3), cannot be a sheltered workshop provider, facility-based day program provider, supported employment provider, or integrated day provider in Rhode Island.

5. The technical assistance provider(s) set forth in Sections XII(1) and (3) will assist and support service providers to transition individuals, programs, staff, and resources from the facility-based sheltered workshop and day programs to Supported Employment and Integrated Day Services, meeting the definition and standards set forth in Sections II(7), II(13), V, and VI of this Consent Decree.

## XIII. INTERAGENCY COLLABORATION

1. By October 1, 2014, the State will develop and implement one or more interagency agreements or memoranda of understanding between BHDDH, ORS, and RIDE designed to ensure the full implementation of this Consent Decree that addresses:

   a. Allocation of responsibility, funding commitments, and authority for conducting and ensuring the quality of all efforts to meet requirements of this Consent Decree, including career planning, transition planning, outreach, in-reach, and education, training and professional development, Supported Employment and Integrated Day Services, and data collection, sharing, and reporting;

   b. Supported employment outcomes through coordination and collaboration between BHDDH, ORS, and RIDE;

   c. The compatibility of ORS and RIDE services with services funded through BHDDH by clarifying and streamlining interagency procedures and allowing for the blending and braiding of funding; and service gaps resulting from the transition from one funding stream to another funding stream (e.g., ORS funding to BHDDH funding or special education funding to ORS funding), enabling individuals with I/DD to maintain uninterrupted integrated employment without unnecessary delays in services;

   d. Individual tailoring of the vocational rehabilitation assessment and job placement activities to serve people with the most significant disabilities, and other day activity service provider facilities, who are eligible for ORS funding; and

   e. Coordinated outreach and in-reach efforts to individuals in the Target Populations conducted by vocational rehabilitation counselors and BHDDH representatives.

## XIV. FUNDING

1. The State shall ensure that all individuals in the Rhode Island Sheltered Workshop, Rhode Island Day, and Rhode Island Youth Exit Target Populations with a career development plan have an ongoing allocation from available funding/budgets that is dedicated to supports for gaining, maintaining, or improving employment outcomes and for integrated day services.

2. The State will reallocate resources expended on Rhode Island sheltered workshop programs and segregated day programs to fund supported employment and/or integrated day services as individuals in the Target Populations transition from sheltered workshops

to supported employment and/or integrated day only placements, in order to have funding "follow the person."

3. The State shall timely fund the services and supports necessary to comply with this Consent Decree for the eligible members of the Rhode Island Sheltered Workshop, Rhode Island Day, Rhode Island Youth Transition, and Rhode Island Youth Exit Target Populations according to the standards and timelines set forth in this Consent Decree.

4. By January 1, 2015, the State shall develop and implement performance-based contracts for Supported Employment Services to individuals in the Target Populations, linking funding to the provider's achievement of numerical targets and implementation timelines.

5. The State will ensure that its reimbursement model for day activity services is sufficiently flexible to allow providers to be reimbursed for costs (e.g. transportation to the job site, employer negotiation, counseling clients by telephone) that are: (1) directly related to providing Supported Employment Services to individuals in the Target Populations, and (2) provided when service provider staff is not face-to-face with a client.

6. The State shall timely fund, and provide an ongoing allocation from available funding/budgets, the transportation services—including travel training services and supports—necessary for individuals in the Target Populations to obtain and maintain Supported Employment and Integrated Day-Only Placements under this Consent Decree.

## XV. QUALITY IMPROVEMENT

1. By November 1, 2014, the State will develop and implement a statewide quality improvement initiative to ensure that individual, integrated Supported Employment Services and Supported Employment Placements, and Integrated Day Services and Integrated Day-Only Placements as defined and described in Sections V-VI, are developed in accordance with this Consent Decree; to evaluate the quality and quantity of Supported Employment and Integrated Day Services provided to persons with I/DD under this Consent Decree; and to ensure that individuals in the Rhode Island Sheltered Workshop, Rhode Island Day, and Rhode Island Youth Exit Target Populations who receive Supported Employment Placements and Integrated Day Services under this Consent Decree receive services and supports that are adequate and sufficient to achieve integration, increased independence, and increased economic self-sufficiency.

2. By November 1, 2014, the State will establish detailed program standards for transition planning and services, career development planning, benefits planning, Supported Employment Services, Integrated Day Services, and Supported Employment and Integrated Day-Only Placements, that at least incorporate the definitions, standards, and processes set forth in Sections V, VI, VII, and VIII.

3. Through its quality improvement initiative, the State will regularly conduct on-site reviews of day activity service programs, including of integrated community-based employment and day programs, to evaluate the services provided to individuals with I/DD against the program standards described above.

4. The State will regularly publish reports from its reviews describing its findings and recommendations, identifying any program deficiencies, and requiring a plan of correction, where appropriate. If a plan of correction is required, details of the plan's requirements will be included in the report.

5. The State will conduct appropriate follow-up reviews to determine if plans of correction have been implemented and to ensure that any identified deficiencies have been corrected in a timely manner. The State will issue reports pertaining to any follow-up reviews.

## XVI. DATA COLLECTION AND REPORTING

1. Upon execution of this Consent Decree, the State shall monitor and collect data.

   a. The State will report on a monthly basis from October 1, 2014 through October 1, 2015, and quarterly thereafter, the progress of implementation of this Consent Decree.

   b. Between the date of execution of this Consent Decree and October 1, 2014: (1) the Monitor and the State will jointly develop reporting protocols and processes for reporting; and (2) upon the request of the Monitor, the State will provide the Monitor with access to data and reports, as set forth in Section XVI(2), reflecting progress under this Consent Decree.

2. Pursuant to Section XVI(1), the State shall collect data and report to the Monitor and to the United States on the following unduplicated data for individuals with I/DD in the Target Populations:

   a. The number of career development plans in place for members of the Target Populations;

   b. The number and reason for any readmissions to any Rhode Island sheltered workshop program;

   c. The number and reason for any readmissions to any Rhode Island facility-based day program;

   d. The number of individuals moving from Rhode Island sheltered workshop programs to another sheltered workshop setting, facility-based day services setting, group enclave, mobile work crew, time-limited work experience (internship), or other segregated setting, the reasons for such moves, and the number of variances granted;

   e. The number, hours worked or served, wages earned, age, and tenure of all individuals in the Rhode Island Sheltered Workshop, Rhode Island Youth Exit, and Rhode Island Day Program Target Populations;

   f. The number of individuals referred to and receiving Supported Employment Services as defined in Sections V(A)-(C) and Supported Employment Placements as defined in Sections V(D)-(E), and from which setting (e.g. a sheltered workshop or facility-based day program setting or school) they have been referred;

g. The number of individuals participating in Integrated Day-Only Placements as defined in Section VI(B)(8), and from which setting they came;

h. The number of hours worked per week, hourly wages paid, and tenure of all members of the Target Populations in an integrated employment setting, as set forth in Section V;

i. The number of hours spent per week, and tenure of all individuals in the Target Populations receiving Integrated Day Services or in Integrated Day-Only Placements, including the name of that service setting, the provider of Integrated Day Services, and the specific activity(ies) that the individual is engaged in (i.e., art classes, health club, etc.);

j. The number and reason(s) for lost jobs and/or terminations from employment along with plans for re-employment;

k. The number of youth in the Rhode Island Youth Transition Target Population who have vocational objectives;

l. The number of youth in the Rhode Island Youth Transition Target Population who are exiting or graduating, or otherwise expected to exit or graduate each year, their career planning goals, and where they transition to following their exit;

m. The number of qualified and trained individuals who develop assessments and transition plans for youth with I/DD across Rhode Island, and who participate on employment teams;

n. The number and client capacity of supported employment providers providing services to the Target Population;

o. The number and client capacity of integrated day providers providing services to the Target Population;

p. The number of qualified and trained individuals for each category of supported employment professionals, including job coaches, job developers, employment specialists, and benefits counselors providing services to the Target Population;

q. The number of qualified and trained vocational counselors who assess and assist persons with I/DD for Supported Employment Services across Rhode Island; and

r. The number of in-reach, out-reach, and education programs and efforts offered to the Target Population(s).

3. The State shall take the following steps related to Data Collection and Monitoring:

a. The State will regularly collect, aggregate, and analyze data described above, will identify problems or barriers to placement in or retaining jobs in individual, integrated employment settings, and will recommend to the Directors of DHS, BHDDH, RIDE, and ORS remedial actions to resolve the problems or barriers. The State will review this information on a monthly basis upon execution of this Consent

Decree through October 1, 2015 and quarterly thereafter and develop and implement effective measures to overcome the problems and barriers identified; and

b. The State, on a quarterly basis, will analyze service data, monitor services and service gaps, report on any service gaps, and identify and address any obstacles to the implementation of the goals and outcomes of this Consent Decree.

## XVII. MONITORING AND ENFORCEMENT

1. The Parties have jointly selected Charles Moseley as the Monitor. The State will contract with the Monitor to provide monitoring services pursuant to this Consent Decree, subject to applicable purchasing laws, and the State will fulfill all obligations under that contract. In the event that the Monitor resigns or the Parties agree to replace the Monitor, the Parties will select a replacement. If the Parties are unable to agree on a replacement within 30 days from the date the Parties receive a notice of resignation from the Monitor, or from the date the Parties agree to replace the Monitor, they shall each submit the names of up to three candidates to the Court and the Court shall select the replacement from the names submitted.

2. The Monitor shall conduct the factual investigation and verification of data and documentation necessary to determine whether the Parties are in compliance with this Consent Decree, on a regular cycle, to be agreed upon by the Parties by no later than May 1, 2014, and continuing during the pendency of the Consent Decree. The Monitor may hire staff and consultants, in consultation with and subject to reasonable objections by the Parties, including but not limited to the economic efficiency of the Monitor or other budgetary requirements, to assist in his/her compliance investigations. The Monitor and any hired staff or consultants are neither agents nor business associates of the State, or the United States Department of Justice.

3. The Monitor shall provide a written report to the Parties regarding the State's compliance with the terms of this Consent Decree every 90 days from April 1, 2014 through April 1, 2015, and every 180 days thereafter. The first report shall be issued two months from the effective date of this Consent Decree. At the request and with the consent of the Parties, the Monitor may hold an informational and review meeting after the filing of each written report. The Monitor shall provide the Parties a draft of his/her report at least 7 days before issuing the report. The Parties shall have the opportunity to review and comment on the proposed report. The Parties may agree to allow the Monitor an additional 5 days to finalize a report after he/she receives comments from the Parties.

4. In order to determine compliance with this Consent Decree, the Monitor and any hired staff or consultants shall have full access to the people, places, documents and materials that are necessary to assess the State's compliance with this Consent Decree, to the extent they are within the State's custody or control. This shall include, but not be limited to, access to the data and records maintained by the State pursuant to Section XVI. The Monitor and any hired staff or consultants may also interview individuals receiving services under this Consent Decree with the consent of the individual or his/her authorized representative. The Monitor's access to people, places, documents and materials shall continue until the Consent Decree is terminated. Any individually

identifying health or education information that the Monitor and any hired staff or consultants receive or maintain shall be kept strictly confidential.

5. The Monitor shall also have access to any and all:

   a. Data collected by the State;

   b. Information necessary to determine that placements, pursuant to the terms of this Consent Decree, meet the definition and standards set forth in Sections V-VI;

   c. Information necessary to ensure that the Consent Decree outcomes set forth in Section IV are met; and

   d. Information necessary to evaluate the quality and quantity of Supported Employment Services provided to persons with I/DD under this Consent Decree.

6. The Monitor, and any hired staff or consultants, may:

   a. Have ex parte communications at any time with the Court, the Parties, including counsel for the Parties, and employees, agents, contractors and all others working for or on behalf of the State or the United States to implement the terms of this Consent Decree;

   b. Request meetings with either or both Parties. The purpose of these meetings shall include, among other things, prioritizing areas for the Monitor to review, scheduling visits, discussing areas of concern, and discussing areas in which technical assistance may be appropriate;

   c. Speak with stakeholders with such stakeholders' consent, on a confidential basis or otherwise, at the Monitor's discretion;

   d. Speak with anyone else the Monitor and any staff/consultants deem necessary for completing the compliance evaluations and reports required by this Consent Decree. However, the State has no obligation to require any individual who is not a State employee or contractor to speak with the Monitor;

   e. Offer guidance and suggestions to the State regarding any issue related to compliance with this Consent Decree;

   f. Attempt to resolve any dispute arising out of a Party's position with regard to the construction or implementation of this Consent Decree; and

   g. Testify in this case regarding any matter relating to the implementation, enforcement, or dissolution of the Consent Decree, including the Monitor's observations, findings and recommendations in this matter. The Monitor may not voluntarily testify as an expert witness against the State in any other administrative or civil proceeding of

whatever nature brought before any federal or state court or other administrative or judicial tribunal.

7. The Monitor and any hired staff or consultants shall not be liable for any claim, lawsuit, or demand arising out of its duties under this Consent Decree. This paragraph does not apply to any proceeding before this Court for enforcement of payment of contracts or subcontracts for reviewing compliance with this Consent Decree.

8. The Monitor and any hired staff or consultants shall not be subject to formal discovery, including, but not limited to, depositions, requests for documents, requests for admissions, interrogatories, or other disclosures. The Parties are not entitled to access the Monitor's records or communications, or those of his/her staff and consultants, although the Monitor may provide copies of records or communications at the Monitor's discretion.

9. Reimbursement and Payment Provisions

   a. The cost of the Monitor, including the cost of any consultants and staff to the Monitor, shall be incurred by the State. The allocation of the cost of the Monitor, including the cost of any consultants and staff to the Monitor, shall be determined by the State, based upon utilization of the Monitor's services. All reasonable expenses incurred by the Monitor in the course of the performance of his/her duties as set forth in the Consent Decree shall be reimbursed by the State. If a dispute arises regarding reasonableness of fees or costs, the Monitor shall provide an accounting justifying the fees or costs.

   b. The approved budget of the Monitor shall not exceed $300,000 in any State Fiscal Year during the pendency of this Consent Decree, inclusive of any costs and expenses for hired staff and consultants, without the approval of the State or the Court.

   c. Within 10 business days of his/her appointment, the Monitor shall submit to the Parties for approval a proposed budget for the first six months of operations. Before the conclusion of the first six months, the Monitor will submit a proposed budget for the following year and then submit proposed budgets annually thereafter.

   d. The Parties shall raise with the Monitor any objections they may have to the draft of the proposed budget within ten days of its receipt. The Parties and the Monitor shall work to resolve any objections within ten days of an objection being raised. If the objection cannot be resolved, a Party may thereafter file the objection with the Court.

   e. At any time, the Monitor may submit to the Parties for approval a proposed revision to the approved budget, along with any explanation of the reason for the proposed revision. Budget revisions will be effective upon approval by the Parties.

10. The Monitor, including any hired staff or consultants, shall not enter into any contract with the State while serving as the Monitor. If the Monitor resigns from or does not continue in his/her position as Monitor, he/she may not enter into any contract with the

State on a matter related to the Consent Decree during the pendency of the Consent Decree without the written consent of the United States.

11. The Monitor, and any hired staff or consultants, shall refrain from any public oral or written statements to the media, including statements "on background," regarding this Consent Decree, its implementation, or the State's compliance.

## XVIII. GENERAL PROVISIONS

1. This Consent Decree does not resolve any claims other than those alleged by the United States Department of Justice, Civil Rights Division, under the integration mandate of Title II of the ADA, as interpreted by the U.S. Supreme Court in Olmstead v. L.C., 527 U.S. 581 (1999), in the State's administration and operation of its day activity service system, including sheltered workshops and facility-based day programs, for people with I/DD. No other agency of the U.S. government, group, or individual is bound by or waives or resolves any claims herein. Nor are any other claims affected by this Consent Decree.

2. The signatures below of officials and attorneys representing the United States and the State signify that these Parties have given their final approval to this Consent Decree. Each Party to this Consent Decree represents and warrants that the person who has signed this Consent Decree on behalf of his or her entity or client is duly authorized to enter into this Consent Decree and to bind that Party to the terms and conditions of this Consent Decree.

3. This Consent Decree is binding upon the Parties, by and through their officials, agents, employees, and successors for the term of this Consent Decree. If the State contracts with an outside provider for any of the services provided in this Consent Decree, the Consent Decree shall be binding on all contracted parties, including agents and assigns. The State shall ensure that all contracted parties and agents take all actions necessary for the State to comply with the provisions of this Consent Decree.

4. No person or entity is intended to be a third party beneficiary of the provisions of this Consent Decree for purposes of any civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Consent Decree in any civil, criminal, or administrative action. No person or entity may assert any claim or right as a beneficiary or protected class member under this Consent Decree if they do not reside in the State of Rhode Island and, therefore, do not maintain eligibility for the State's day activity service system.

5. This Consent Decree and any documents incorporated by reference constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

6. This Consent Decree may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Consent Decree, notwithstanding that each Party is not a signatory to the original or the same counterpart.

All references to signature or execution of the Consent Decree shall be calculated from the date on which the last Party executed the Consent Decree.

7. The Parties represent and acknowledge that this Consent Decree is the result of extensive, thorough and good faith negotiations. The Parties further represent and acknowledge that the terms of this Consent Decree have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of any and all claims or allegations set forth by the United States Department of Justice as a result of its investigation and findings made about Rhode Island's statewide day activity service system, including sheltered workshops and facility-based day programs.

8. The United States will bear the cost of its own fees and expenses incurred in connection with this Consent Decree.

9. This Consent Decree shall be interpreted in accordance with federal law and the laws of the State of Rhode Island. The venue for all legal actions concerning this Consent Decree shall be in the United States District Court for the District of Rhode Island.

10. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1345; and 42 U.S.C. §§ 12131-12132. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

## XIX. CONSTRUCTION AND TERMINATION

1. The Parties agree to jointly file this Consent Decree with the United States District Court for the District of Rhode Island.

2. The implementation of this Consent Decree shall begin immediately upon the Effective Date, which shall be the date on which this Consent Decree is approved and entered as an order of the Court. The Parties anticipate that Rhode Island will have complied with all provisions of the Consent Decree by the end of State Fiscal Year 2024, unless this Consent Decree is otherwise terminated, cancelled, or extended. Substantial compliance is achieved where the State has implemented all of the provisions of the Consent Decree for all individuals in the Target Populations. Any violations of the Consent Decree that are minor and occasional and are not systemic shall not be deemed noncompliance. The Court shall retain jurisdiction of this action for all purposes until the end of State Fiscal Year 2024, unless:

   a. The Parties jointly ask the Court to terminate the Consent Decree before the end of State Fiscal Year 2024, provided Rhode Island has complied with this Consent Decree and maintained compliance for one year; or

   b. The United States disputes that Rhode Island is in compliance with the Consent Decree at the end of State Fiscal Year 2024. The United States shall inform the Court and Rhode Island by January 1, 2024, that it disputes compliance, and the Court may

schedule further proceedings as appropriate. In any such proceedings, the burden shall be on the State to demonstrate substantial compliance.

3. Any Consent Decree deadline may be extended by mutual agreement of the United States and the State. Within 30 days after the Consent Decree is signed, the Defendant, through the Office of the Governor, shall select and appoint a Consent Decree Coordinator to oversee compliance with this Consent Decree and to serve as a point of contact for the Monitor, and shall provide notice to the Monitor and to the other Parties of the Consent Decree Coordinator's name, title, address, telephone number, and e-mail address. The individual serving as the Consent Decree Coordinator shall remain except upon cause or by mutual decision of the Parties. The Consent Decree Coordinator may be the same person as the State's Interim Settlement Agreement Coordinator in the matter of United States v. State of Rhode Island and City of Providence, No. 1:13-cv-00442 (D.R.I. July 11, 2013).

4. Throughout the pendency of this Consent Decree, the United States and the State will coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. In the event of any dispute over the language or construction of this Consent Decree or its requirements, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution prior to initiating any court proceeding.

5. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of individuals receiving services under this Consent Decree, if the United States believes the State has failed to fulfill any obligation under this Consent Decree, the United States shall, prior to initiating any court proceeding, notify the State in writing of any alleged non-compliance with the Consent Decree and request that the State take action to correct such alleged non-compliance. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of individuals receiving services under this Consent Decree, the State shall have 15 days from the date of such written notice to respond to the United States in writing by denying that noncompliance has occurred, or by accepting (without necessarily admitting) the allegation of noncompliance and proposing steps that the State will take, and by when, to cure the noncompliance. If the State fails to respond within 15 days, denies that noncompliance has occurred, or provides a proposal for curative action that is on its face insufficient, the United States may seek an appropriate judicial remedy.

6. If the State responds by proposing a curative action by a specified date that is not on its face insufficient, the United States may accept the State's proposal or offer a counterproposal for a different curative action or deadline. If the Parties reach an agreement that varies from the provisions of this Consent Decree, the new agreement shall be in writing, signed and filed with the Court. If the Parties fail to reach agreement on a plan for curative action, the United States may seek an appropriate judicial remedy.

Any modification of this Consent Decree must be consented to by the Parties, and shall be executed in writing by the Parties, and the Parties will file the agreed upon modification jointly with the Court. The Parties shall promptly notify each other of any judicial or administrative challenge to this Consent Decree or any portion thereof, and shall defend against any challenge to the Consent Decree.

7. If the United States, having satisfied the requirements of Sections XIX(5)-(6) above, initiates a court proceeding based on the State's failure to meet the Outcomes specified in Section IV, then the State will have a defense in the proceeding if it can demonstrate both that: (1) it is performing its obligations under Sections V ("Supported Employment Services and Placements"), VI ("Integrated Day Services and Placements"), VII ("Career Development Planning"), VIII ("Transition Planning for Youth"), IX ("Training"), X ("Outreach, Education, and Support"), XI ("Provider Capacity"), XII ("State and Other Agency Actions"), XIII ("Interagency Collaboration"), XIV ("Funding"), XV ("Quality Improvement"), and XVI ("Data Collection and Reporting"); and (2) it was impossible to meet the relevant Outcome or Outcomes in Section IV because factors beyond the State's control impeded the effect of the services and supports that the State provided under Sections V-XVI.

8. Failure by any Party to enforce this entire Consent Decree or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver.

9. The State shall maintain sufficient records to document that the requirements of this Consent Decree are being properly implemented and shall make such records available to the Monitor or the United States for inspection and copying upon request. The Monitor or the United States may require additional written reports from the State with regard to the State's compliance with the terms of this Consent Decree. The State will cooperate and comply with those requests.

10. The State will work collaboratively with the United States to provide full access for the United States and the Monitor to the people, places, and documents that are necessary to assess the State's compliance with and/or implementation of this Consent Decree, subject to applicable federal and state law.

11. The Parties agree that, as of the date the Court approves and enters this Consent Decree as an order of the Court, for purposes of the Parties' preservation obligations pursuant to Federal Rule of Civil Procedure 26, litigation is not "reasonably foreseeable" concerning the matters described in the Findings Letter issued to the State pertaining to the statewide day activity service system, including sheltered workshops and facility-based day programs. To the extent that either Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Findings Letter issued to the State on January 6, 2014, the Party is no

longer required to maintain such a litigation hold. Nothing in this paragraph relieves the United States or the State of any other obligations imposed by this Consent Decree.

12. "Notice" under this Consent Decree shall be provided by overnight courier to the following or their successors:

Chief of the Disability Rights Section
United States Department of Justice
Civil Rights Division
1425 New York Avenue NW
Washington, DC 20005

Office of the Secretary, Executive Office of Health & Human Services
Louis Pasteur Building
57 Howard Avenue
Cranston, RI 02920

Office of the Commissioner, Rhode Island Department of Education
255 Westminster Street
Providence, RI 02903

SO ORDERED THIS 9th day of April, 2014.

\s\ Ronald R. Lagueux
Senior U.S. District Judge

FOR THE UNITED STATES:

/s/
PETER F. NERONHA
United States Attorney
District of Rhode Island

/s/
JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

EVE L. HILL
Deputy Assistant Attorney General
Civil Rights Division

REBECCA B. BOND
Section Chief
SHEILA M. FORAN
Special Legal Counsel
ANNE S. RAISH
Deputy Chief
Disability Rights Section
Civil Rights Division

REGINA KLINE
H. JUSTIN PARK
Trial Attorneys
Disability Rights Section
Civil Rights Division
U.S. Department of Justice

FOR THE STATE OF RHODE ISLAND:

/s/
HONORABLE LINCOLN D. CHAFEE
Governor for the State of Rhode Island

/s/
CRAIG S. STENNING
Director
Department of Behavioral Healthcare,
Developmental Disabilities and Hospitals

/s/
STEVEN M. COSTANTINO
Secretary of Health and Human Services

/s/
SANDRA M. POWELL
Director
Rhode Island Department of Human Services

/s/
DEBORAH A. GIST
Rhode Island Commissioner of Education

# FACT SHEET

## Rhode Island Supported Employment and Integrated Day Services Consent Decree

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**Background**

The consent decree resolves the Civil Rights Division's Jan. 6, 2014, findings that the State of Rhode Island violated the Americans with Disabilities Act (ADA) and the Supreme Court's decision in *Olmstead v. L.C.* by failing to serve individuals with intellectual and developmental disabilities (I/DD) in the most integrated day activity service setting appropriate for their needs, and by placing transition-age youth at serious risk of segregation. The consent decree focuses on three target populations: (1) individuals in sheltered workshops; (2) individuals in facility-based day programs; and (3) youth in transition from secondary school.

**Frequently Used Terms**

- A sheltered workshop is a segregated facility that exclusively or primarily employs persons with I/DD. Sheltered workshops are usually large institutional facilities in which persons with I/DD have little or no contact with non-disabled persons besides paid staff. People with I/DD in sheltered workshops typically earn wages that are well below minimum wage.

- Facility-based day programs are programs in which people with disabilities participate in segregated non-work activities during the day. These services are often provided by the same service providers and in the same buildings as sheltered workshops.

- Supported employment services allow persons with disabilities to work in typical jobs in the community at competitive wages. Such services include job discovery, vocational assessment, job coaching, and job training. These services enable individuals with I/DD to access jobs in typical work settings where they can interact with non-disabled coworkers, customers, and peers, and enjoy the same benefits of employment that their non-disabled peers enjoy.

- Integrated day services allow persons with I/DD to engage in self-directed activities in the community at times and frequencies and with persons of their choosing, and to interact to the fullest extent possible with non-disabled peers. For instance, integrated day services allow persons with I/DD to participate in and gain membership in mainstream community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities.

**Employment and Day Services in Rhode Island**

In Rhode Island, day activity services for individuals with I/DD include sheltered workshops, facility-based day programs, integrated supported employment, and integrated day services. The state plans, funds, and administers these services through provider agencies licensed by the state.

**The Finding:** In Rhode Island, approximately 80 percent of the people with I/DD receiving state services, about 2,700 individuals, are placed in segregated sheltered workshops or facility-based

day programs. By contrast, only about 12 percent, or approximately 385 individuals, participate in individualized, integrated employment. The investigation found that the state has over-relied on segregated service settings to the exclusion of integrated alternatives.

Placement in segregated settings is frequently permanent: nearly half (46.2 percent) of the individuals in sheltered workshops have been in that setting for ten years or more, and over one-third (34.2 percent) have been there for fifteen years or more. Individuals with I/DD in sheltered workshops in Rhode Island reportedly earn an average of only about $2.21 per hour.

**The Remedy:** Under the consent decree, the state has pledged a sustained commitment to transform its service system over the next 10 years, providing relief to approximately 3,250 people. Rhode Island will provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school.

Supported employment placements must provide persons with I/DD with supported employment services in integrated employment settings where they (1) are paid at least minimum wage, (2) work the maximum number of hours consistent with their abilities and preferences, and (3) interact with peers without disabilities to the fullest extent possible. As a group (not individually), persons receiving supported employment placements under the consent decree will average 20 hours of work per week in integrated employment settings. All persons receiving supported employment placements will also be provided with integrated non-work services, ensuring that individuals have access to integrated work and non-work hours for a total 40 hours per week.

To ensure informed choice, individuals with I/DD may remain in segregated programs if they request a variance after they have received a vocational assessment, a trial work experience, outreach information and benefits counseling.

**Transition-Age Youth**

**The Finding:** The ADA and *Olmstead* prohibit public entities from placing individuals, including young people with I/DD, at serious risk of unnecessary segregation. According to state data, among youth with I/DD who transitioned out of Rhode Island secondary schools between 2010 and 2012, only about five percent transitioned into jobs in integrated settings, even though many more of these youth are able to work in integrated employment and are not opposed to doing so.

**The Remedy:** Under the consent decree, the state will provide transition services to approximately 1,250 youth between the ages of 14 and 21. Also under the consent decree, the Rhode Island Department of Education (RIDE) will adopt an employment first policy, making work in integrated employment settings a priority service option for youth. State agencies will promote the implementation of a school-to-work transition planning process that will include specific timelines and benchmarks for all youth between the ages of 14 and 21. Youth in transition will receive integrated vocational and situational assessments, trial work experiences, and an array of other services to ensure that they have meaningful opportunities to work in the community after they exit school.

**Other Provisions**

Outreach, Education and Support:

- The state will develop an outreach, in-reach and education program that explains the benefits of supported employment and addresses families' concerns about participating in supported employment.
- The state will create an employment first task force of local stakeholders, advocacy organizations, parent and business leadership networks, individuals with I/DD and family representatives.

Provider Capacity:

- The state will establish a sheltered workshop conversion institute to assist qualified providers of sheltered workshop services to convert their employment programs to supported employment services.
- The state will establish a sheltered workshop conversion trust fund of $800,000 to assist with upfront start-up costs to providers that have agreed to convert their services from primarily sheltered employment to primarily supported employment services.
- The state will pursue a contract with technical assistance providers to provide leadership, training and technical assistance to employment and day services providers and to state staff.

Interagency Collaboration:

- The state will implement interagency agreements among the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals (BHDDH), the Office of Rehabilitation Services (ORS) and RIDE.

Funding:

- The state will reallocate resources currently expended on sheltered workshop and segregated day programs to instead fund supported employment and/or integrated day services as an individual transitions from segregated to integrated service settings, allowing funding to follow the person without an increase in cost.
- The state will ensure that its reimbursement model for day activity services is sufficiently flexible to allow reimbursement for costs such as transportation, employer negotiation and counseling clients by phone. This will enable providers to support and provide services to individuals in supported employment placements even when the provider staff is not face-to-face with a client.

Quality Assurance:

- The state will implement a statewide quality improvement initiative and will regularly conduct on-site reviews of its day activity service programs and publish reports describing its findings and recommendations, identifying any program deficiencies and requiring a plan of correction, where appropriate.

Data Collection and Monitoring:

- The state will collect data and report on a variety of data points and report to the United States periodically.
- Compliance with the consent decree will be overseen by a monitor jointly selected by the parties.