



State Olmstead Planning

NYAPRS Annual Executive Seminar

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April 26, 2022

Section 504 of the 1973 Rehabilitation Act

- Section 504, banned discrimination on the basis of disability by recipients of federal funds, and was modelled after previous laws which banned race, ethnic origin and sex based discrimination by federal fund recipients.
- Previously, it had been assumed that the problems faced by people with disabilities, such as unemployment and lack of education, were inevitable consequences of the physical or mental limitations imposed by the disability itself.
- Enactment of Section 504 evidenced Congress' recognition that the inferior social and economic status of people with disabilities was not a consequence of the disability itself, but instead was a result of societal barriers and prejudices.

Americans with Disabilities Act (ADA)

- The ADA was signed into law in 1990.
- Title II of the ADA covering State and Local Government became effective in 1992.
- ADA amended in 2008 to broaden disability coverage
- Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

Title II of the ADA Regulations

- The regulations implementing Title II of the ADA define an integrated setting as one that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.”
- Integration mandate. Requires public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”
- Reasonable Modifications. Public entities must reasonably modify any policies, practices, and/or procedures to avoid discrimination.
- Fundamental Alterations. A "fundamental alteration" is a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered. If a public entity can demonstrate that the modifications would fundamentally alter the nature of its services, program, or activity, it is not required to make the modification.

Olmstead v. L.C. and E.W

- The Olmstead case was brought in 1995 by the Atlanta Legal Aid Society on behalf of Lois Curtis and Elaine Wilson, women with intellectual disabilities and mental illnesses who were patients in a state psychiatric hospital. The hospital staff recommended that Lois and Elaine be served in community programs, but because community services were in short supply, they remained at the hospital.
- In *Olmstead*, the state of Georgia asked the Supreme Court to decide a central question relating to the civil rights of people with mental disabilities: “[w]hether the public services portion of the federal Americans with Disabilities Act (ADA) compels the state to provide treatment and habilitation for mentally disabled persons in a community placement, when appropriate treatment and habilitation can also be provided to them in a State mental institution.”

SCOTUS Decision - The Mandate for Community Integration

- In the landmark *Olmstead v. L.C.* decision (1999), the U.S. Supreme Court held that states have an affirmative obligation to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- Needlessly isolating such individuals is a form of discrimination based on disability.
- “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.”
- “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”

Implementing the ADA and Olmstead

- The Court stated that if a state had a “....**comprehensive, effectively working plan** for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the state’s endeavors to keep its institutions fully populated, the reasonable modification standard [of the ADA] would be met.”
- For an *Olmstead* Plan to serve as a reasonable defense against legal action it must include, “...**concrete and reliable commitments to expand integrated opportunities....and there must be funding to support the plan.**”
- The Court ruled that Georgia could avoid liability under the ADA by establishing a “fundamental alteration” defense. Such a defense requires that a state or locality establish that integrated community services would be too costly or beyond their capacity in light of “the responsibility the state has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities.”

Recent State Plans – Past 5 Years

- District of Columbia
- Massachusetts
- Minnesota
- Nebraska
- New Jersey (mental health)
- North Carolina
- Texas

Critical Areas for System Planning and Implementation

- Role and focus of leadership
- Stakeholder engagement; key relationships to establish
- Inter- and Intra-departmental collaboration and partnerships
- Assessing strengths, risks, barriers, opportunities
- Identifying gaps and needs
- Establishing concrete and reliable commitments
- Continual assessment of plan performance

Key Olmstead Plan Ingredients

- Populations
- Data
- Addressing racial disparities
- Housing
- Employment
- Education
- Wellness and Integrated Healthcare
- Transportation
- Supports and Services
- Funding – What is it? Where is it? Where will it be directed?
- Policies, Rules and Regulations
- Performance Evaluation and Outcomes
- Training and Workforce Development, including use of peer workforce

Approaches to Olmstead and Community Integration

- Proactive planning and implementation
- Planning with some implementation activity
- Reactive planning and implementation
- Litigation/Settlement Agreements
- No Planning

State Experiences

- Leadership is key
- Community Integration/Olmstead takes resources, new and/or re-allocated
- Working with Governor's office, Budget offices and other State agencies, legislature.
- Stakeholder engagement
- Anticipate and manage resistance
- Talking about it is not a good defense, nor is a plan that sits on a shelf.
- Permanent Supportive Housing, ACT, Employment, and Crisis services are core components of plans and Settlement Agreements
- Criminal Justice activities increasing

Cautions

- Just because it is in the community does not mean it is integrated;
- “Choice” may have different meanings;
- A plan to plan is not a plan;
- Budget cuts and bureaucracy do not trump civil rights;
- Beliefs and opinions regarding whether a person is ready for more independent living or what an integrated setting is may conflict with what the Courts decide.

Takeaways

- An Olmstead Plan is a system change document and generally aligns with other system priorities.
- An Olmstead Plan should be a priority, not shelved due to competing priorities.
- The plan should be developed with stakeholder involvement.
- Be comprehensive, but realistic. A plan should be actionable and achievable.
- Have short and long term goals.
- Track and report on progress.
- All states are vulnerable. States without plans have very limited defense.

Community Integration Defined

“Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual’s choosing; afford individuals choice in their daily life activities; and, provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible. Evidence-based practices that provide scattered-site housing with supportive services are examples of integrated settings.”

U.S. Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.

Community Integration Defined

“By contrast, segregated settings often have qualities of an institutional nature. Segregated settings include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.”

U.S. Department of Justice. Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.

Resources

- US Department of Justice Civil Rights Division: <https://www.ada.gov/>
- US Department of Justice Civil Rights Division complaints: <https://civilrights.justice.gov/report/>
- US Department of Health and Human Services Office of Civil Rights complaints: <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>
- USA.gov Disability Rights: <https://www.usa.gov/disability-rights>

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