



U.S. Department of Justice

Civil Rights Division

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Washington, D.C. 20530

JUN 07 2013

**VIA U.S. MAIL AND E-MAIL**

Mr. William J. Conley, Jr., Esq.  
Law Office of William J. Conley, Jr.  
670 Willett Avenue  
East Providence, RI 02915

Re: **Rhode Island Title II ADA Investigation of Training Thru Placement and the Harold A. Birch Vocational Program**

Dear Mr. Conley:

We write to report the findings of the Civil Rights Division's investigation of the State of Rhode Island's system of providing day activity services, including employment, vocational, and day program services to persons with intellectual or developmental disabilities ("I/DD"). Before proceeding with our findings, we would like to thank the State for the assistance and cooperation extended to us in this investigation. We would also like to acknowledge the courtesy and professionalism of Director Craig Stenning, Ms. Jane Morgan, Mr. Stephen Brunero, Mr. David Sienko, and all the other State officials and counsel who have been involved in this matter.

We report here on the State's reliance upon the segregated sheltered workshop and day program services provided by Training Thru Placement, Inc. ("TTP"), and the serious risk of unnecessary segregation imposed upon students in the sheltered workshop at the Harold A. Birch Vocational Program ("Birch") for students with I/DD at Mount Pleasant High School. We have assessed the State's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, as it applies to services provided at TTP and Birch. We are continuing to investigate the remainder of the State's day activity service system for people with I/DD. However, in recognition of the urgency surrounding TTP and Birch, we are reporting our current findings regarding those two providers here.

The Department of Justice is authorized to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133. We write to memorialize the extensive oral notice that we provided to the State in February and March 2013 regarding ADA violations and the minimum remedial measures that the State must take to address those violations.<sup>1</sup> Under separate cover, we

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<sup>1</sup> See 28 C.F.R. §§ 35.172-174.

provided written notice to the City of Providence of our findings and the minimum remedial steps that it must take to rectify ADA violations regarding the City's transition service system at Birch.

## **I. Investigation**

On January 14, 2013, the Department notified the State that we were opening an investigation into whether the State's reliance on day activity services provided in facility-based settings, including sheltered workshops and day programs, violated Title II of the ADA. On January 22, 2013, our staff, along with our consulting expert, visited TTP and spoke with TTP's then Executive Director, as well as TTP staff and service recipients. Our staff and consulting expert also toured the TTP premises. We observed TTP service recipients engaged in activities typical to their normal schedules and routines. On February 14, 2013, our staff, along with our consulting expert, visited Birch and spoke with Birch's then principal, as well as Birch teachers, staff, and students. Our staff and consulting expert also toured the Birch and Mount Pleasant High School premises, including the in-school sheltered workshop. We observed Birch students engaged in activities, including in the sheltered workshop, typical to their normal school schedules and routines. Our investigation also included the extensive review of documents provided by the State and City regarding services provided at TTP and Birch, and interviews of consumers, family members, and others.

## **II. Findings of Fact and Conclusions of Law**

Title II of the ADA requires that services, programs, and activities provided by public entities, including states, be delivered in the most integrated setting appropriate to the needs of persons with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). Such a setting is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. Pt. 35, App. B at 673. Based on Title II and its integration mandate, the United States Supreme Court held that the "unjustified isolation" of persons with disabilities by States constitutes discrimination under Title II. Olmstead v. L.C., 527 U.S. 581, 600 (1999).

In Olmstead, 527 U.S. at 587, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment, and (c) community services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. Id. at 607. The Olmstead analysis applies to segregated employment programs such as sheltered workshops. In Lane v. Kitzhaber, the court found that the "broad language and remedial purposes of the ADA" support the conclusion that the integration mandate applies to employment services.<sup>2</sup> The court also "conclude[d] that the risk of institutionalization addressed in ... Olmstead ... includes segregation in the employment setting."<sup>3</sup> Accordingly, the unnecessary segregation of

<sup>2</sup> Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1205 (D. Or. 2012).

<sup>3</sup> Id.; see also "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." at 3 (June 22, 2011), available at: [www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).

individuals with disabilities in segregated, non-residential employment and vocational programs violates Title II of the ADA and Olmstead. The civil rights of people who can and want to receive employment services in the community are violated when they are unnecessarily segregated, or placed at serious risk of unnecessary segregation, in sheltered workshops.

The United States has concluded that the State discriminates against people with I/DD by planning, administering, and funding its systems for providing transition, vocational, and habilitation services in a manner that unnecessarily segregates individuals with I/DD at TTP, and that places Birch students at serious risk of placement at TTP.

The United States' investigation found that TTP, one of the State's largest providers of employment and day services, does not provide persons with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible. TTP is a segregated setting with many of the hallmarks of other segregated settings: the physical layout is institutional in nature without access to the general community; individuals work in fixed, highly regimented schedules and routines; individuals with I/DD do not have private or personal space and are separated from spaces for managers and staff without disabilities; individuals have very limited choice over the activities they engage in during the day; individuals remain at the facility for long periods of time; and individuals with disabilities are not able to interact with individuals without disabilities to the fullest extent possible. In addition, individuals at TTP are paid extremely low wages not in keeping with community-based jobs. We concluded that most, if not all, of the individuals with I/DD at TTP could be served in more integrated settings, such as supported employment and integrated day services, and that the majority would not oppose working in supported employment or receiving integrated day services if given the opportunity to do so.

In addition, we concluded that students with disabilities exiting Birch are at risk of placement at TTP because of the lack of integrated transition services, integrated employment experiences, and appropriate referrals by State agencies to prepare students for transitions into integrated work.

Finally, the United States concluded that providing TTP and Birch service recipients with integrated supported employment and integrated day services can be reasonably accommodated. The types of services needed to support people with I/DD in integrated supported employment and integrated day settings already exist in Rhode Island's day activity service system. The State could redirect and expand funds that it already spends to support people at TTP and Birch, to support them with services in integrated employment and day settings.

### **III. Remedies**

The United States has already discussed at length and with great specificity the minimum remedial steps that the State of Rhode Island must take to meet its obligations under the ADA. To summarize those remedial steps, the State must:

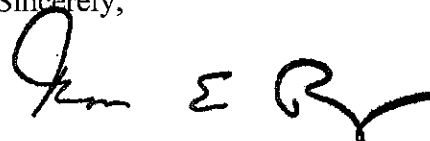
- Develop sufficient integrated supported employment and integrated day services to enable those who are unnecessarily segregated at TTP to receive services in the most integrated setting appropriate for them.

- Develop sufficient integrated supported employment and integrated day services to enable students leaving Birch to receive employment and day services in the most integrated setting appropriate to their needs.
- Ensure sufficient integrated transition services are provided to prepare students at Birch to participate in employment and day services in the most integrated setting appropriate to their needs upon leaving Birch.
- Develop and implement effective discharge and transition processes to assist individuals served at TTP and Birch to transition to integrated employment and integrated day services consistent with their needs and informed choices.

Please note that this findings letter is a public document. In the future, it may be posted on the Civil Rights Division's website.

We thank the State of Rhode Island for engaging in rapid efforts to address the immediate needs of the individuals with disabilities at TTP and Birch. We hope to continue working with Rhode Island in an amicable and cooperative fashion to resolve our outstanding concerns with respect to the services the State provides to persons with I/DD statewide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom E. Perez', with a stylized flourish at the end.

Thomas E. Perez  
Assistant Attorney General

cc: Peter F. Neronha  
United States Attorney, District of Rhode Island

Michael Iannotti  
Assistant United States Attorney, District of Rhode Island