



Equity, Opportunity, and Inclusion for People with Disabilities since 1975

September 9, 2015

Vanita Gupta
Principal Deputy Assistance Attorney General
Office of Civil Rights
Department of Justice

Dear Ms. Gupta:

On behalf of TASH—our board, state chapters and members across the country—I would like to thank you and the Department of Justice for your detailed and persistent work to reach a settlement agreement with the State of Oregon to resolve the class action lawsuit, *Lane vs. Kitzhaber*, and put an end to the unnecessary and extensive segregation of people with intellectual and developmental disabilities (I/DD) in sheltered workshops. We are in agreement with your findings that this segregation is a violation of civil rights as determined by Title II of the Americans with Disabilities Act (1990) and confirmed in the Olmstead Decision (1999). We are especially grateful for the Department's focus on the need for the state to adequately serve transition age youth and dedicate the state's resources toward an outcome of competitive integrated employment. It is time to end the state's reliance on ill-informed and outdated transition strategies that lead students to sheltered workshops, which relegates them to a lifetime of poverty.

TASH has advocated for a rebalancing of government priorities and funding toward supported and customized employment strategies for decades, and for an eventual end to the archaic practice of sheltered work and federally-sanctioned subminimum wages. Section 14(c) of the Fair Labor Standards Act was enacted in 1938 for reasons that are far different from the ones that sustain it today. Our concerns regarding the implementation and effectiveness of the sub-minimum wage provision and sheltered workshops are:

Implementation and enforcement. Years of efforts to increase and improve oversight of employers holding 14(c) sub-minimum wage certificates program have failed to ensure people with disabilities are adequately protected from exploitation, either intentional or as the result of incompetence on the part of 14(c) certificate holders. When people with disabilities are only in contact with other people with disabilities and those paid to support them, they are unnecessarily vulnerable to abuse, neglect, and exploitation, to say nothing of the limits such segregation places on opportunities for friendship and community engagement.

Effectiveness. It has become overwhelmingly clear that the intent of section 14(c) has not been realized despite seventy-four years of implementation. While section 14(c) was intended to prevent the curtailment of opportunities for people with disabilities to work in the mainstream workforce, the program has largely become a tool for Medicaid-funded habilitation service providers to maintain segregated work environments which have proven ineffective in enabling individuals with disabilities to gain competencies, skills and

opportunities and transition to employment in the general workforce at competitive wages. Consistent with your findings, these segregated environments also contradict the intent and spirit of the Americans with Disabilities Act and the Supreme Court's Olmstead decision.¹ Other public funding streams and proven rehabilitation strategies now exist for enabling individuals with disabilities, who might otherwise be paid sub-minimum wages, to obtain and maintain employment in the general workforce. There is no longer a need, nor a justification for the continuation of section 14(c).

Barrier to expanding integrated employment opportunities. Research suggests that when offered an informed choice, individuals with intellectual disabilities overwhelmingly express a preference to work in an integrated job in the community (NLTS2, Migliore et al). Segregated sheltered workshops deny people with disabilities the benefits of realizing their full potential as the result of being fully expected and supported to do so.

Thank you for working to ensure that the full promise of the Americans with Disabilities Act is realized across all settings and for all individuals with disabilities. Your attention to these issues adds strength and clarity to the strong civil rights protections of the law, and TASH is especially appreciative of your work.

Sincerely,



Barbara R. Trader
Executive Director

¹ Civil Rights Division, U.S. Department of Justice (June 2011). Statement of the Department of Justice on Enforcement of