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**Joint Comments of the Georgetown University Center for Excellence in Developmental Disabilities and Quality Trust for Individuals with Disabilities on Proposed DC Olmstead Plan (2021-2024)**

2021 marks the thirty-first anniversary of the passage of the Americans with Disabilities Act and the twenty-second anniversary of the Supreme Court's decision in *Olmstead v. L.C.*<sup>1</sup> It is time for the District government to develop and implement a comprehensive effective plan to end the unlawful segregation of people with disabilities and to ensure that DC residents with disabilities can live full and independent lives in the community. The proposed "DC-One Community for All: Olmstead Integration Plan covering calendar years 2021-2024"<sup>2</sup> fundamentally fails to meet the core requirements of an effective working *Olmstead* plan. As organizations dedicated to advancing the rights and interests of people with intellectual and developmental disabilities (IDD), we urge the Office of Disability Rights to lead the DC government to develop a plan that analyzes the interests and needs of people with disabilities in DC; commits to increasing integration and the funding associated with it; establishes specific metrics, goals, and timetables; and promotes equity for residents with disabilities across the District.

Federal Minimum Requirements for *Olmstead* Plans

The U.S. Department of Justice set forth the requirements for a comprehensive effective *Olmstead* plan, emphasizing that an effective plan "must do more than provide vague assurances of future integrated options or describe the entity's general history of increased funding for community services and decreased institutional populations."<sup>3</sup> Rather, the plan must:

- reflect an analysis of the extent to which the public entity is providing services in the most integrated setting,
- contain concrete and reliable commitments to expand integrated opportunities,

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<sup>1</sup> In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court held that title II of the Americans with Disabilities Act prohibits the unjustified segregation of individuals with disabilities. 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-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity.

<sup>2</sup> See <https://dcregs.dc.gov/Common/noticedetail.aspx?noticeId=N107188>.

<sup>3</sup> 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.*, [https://www.ada.gov/olmstead/q&a\\_olmstead.htm](https://www.ada.gov/olmstead/q&a_olmstead.htm).

- have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable, and
- include funding to support the plan, which may come from reallocating existing service dollars.

Further, the plan “should include commitments for each group of persons who are unnecessarily segregated, such as individuals residing in facilities for individuals with developmental disabilities, psychiatric hospitals, nursing homes and board and care homes, or individuals spending their days in sheltered workshops or segregated day programs.”<sup>4</sup>

In addition, “to be effective, the plan must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan.”<sup>5</sup>

DC’s proposed “One Community for All” plan enumerates a variety of programs and services available to DC residents with disabilities to address housing, health care, and employment concerns. However, as described further below, it does not connect the availability of those offerings to any intentional effort to move people from institutional settings into the community. It, therefore, fails the basic requirements to be an effective *Olmstead* plan.

The Proposed DC Olmstead Plan Contains No Analysis of the Extent to Which DC is  
Currently Providing Services in the Most Integrated Setting

In Appendix C, the proposed plan provides limited data concerning the settings in which DC government agencies currently provide services to DC residents with disabilities, focusing primarily on residential service settings. Of the eight settings included in the appendix, data is provided for only five. Data for the remaining settings -- including the number of residents served in nursing facilities, residents receiving services under the Elderly and Persons with Physical Disabilities (EPD) waiver, and residents receiving services from the Rehabilitation Services Administration (RSA) of DC’s Department on Disability Services (DDS) -- are listed as “data pending.” The absence of these data is surprising since the data is within the control of DC government agencies and the proposed plan has been under development for well over a year. Further, the plan does not include either a commitment concerning when the data will be provided or any explanation for the absence.

The proposed plan also fails to provide data concerning DC residents with disabilities who are returning to the community from jails, prisons, or juvenile detention facilities. It also fails to provide data on DC residents with IDD who have co-occurring mental health conditions and are served in St. Elizabeth’s Hospital or data on residents with IDD who are living in adult or pediatric skilled nursing facilities. It also fails to provide disaggregated data on DC residents with IDD and/or mental health conditions who are in funded residential placements outside the District. This missing data prevents the plan from providing a true snapshot of the state of the affairs of integration in the District of Columbia. The absence of data on race, ethnicity, and language prevents the plan from addressing the disparities residents with disabilities continue to experience in DC.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

However, even if these data had been provided, simply listing the number of people served in different settings would be inadequate under federal standards. An analysis of the extent to which residents with disabilities are receiving services in the most integrated setting is a fundamental underpinning of an effective *Olmstead* plan. In not conducting that analysis, DC has failed to take the first critical step to create an effective *Olmstead* plan

#### The Plan Includes No Reliable and Concrete Commitments to Expand Integration

The proposed plan identifies DC government programs that provide housing, health care, and employment supports but fails to make any commitments to expand integration of residents with disabilities through these programs.

While data are provided on the number of residents with IDD who live in some institutional settings, there are no data provided on the number of people with IDD who spend their days in segregated settings. Some people with IDD are employed in non-competitive and non-integrated settings; many others were served in larger day habilitation or employment readiness programs prior to the pandemic. As the pandemic ends and activities in the community reopen, there is a unique opportunity for people with IDD to explore integrated community-based employment and other community-based activities, rather than returning to segregated settings. Yet, the proposed plan does not include commitments to support increased integration in the daily activities of DC residents with IDD.

As the plan fails to make any specific commitments to expand integration, it also fails to meet the standard established by the Department of Justice to include commitments for each specific group of persons who are unnecessarily segregated.

#### The Plan Does Not Establish Measurable Goals or Timeframes

While the proposed plan includes numerous metrics, for most of them, it fails to set measurable goals. The proposed plan does not provide current benchmarks for any of these metrics, and it does not establish timeframes to meet the few goals it does include.

No measurable goals are established for any of the proposed plan's housing or health care metrics. Two of seven employment metrics include goals – i.e., an annual target of 67% is set for metric 3.2 ("number" of people successfully employed who remain employed for 90 days or more), and an annual target of 75% is set for metric 3.3 (the percentage of high school students 16-22 who receive at least one pre-employment transition service each school year). These goals are flawed for several reasons. First, there is no analysis of the current rate of success for these two metrics, and there is no requirement that the rate should increase during each successive year of the four-year plan. Further, neither of these metrics measures *integrated* community employment.

#### Funding is Not Discussed in the Plan

The plan has no discussion of funding to increase community integration. While there is a description of currently existing (and, in many cases, not new) funding streams, there is no concrete analysis of how that funding has resulted in progressively more community integration over time, or how much money is spent supporting people with disabilities in segregated settings or in integrated settings. An effective plan must demonstrate how funding will be used to increase integration, including how funding will be reallocated from supporting people in segregated settings to supporting them in integrated settings.

### Conclusion

In light of the fundamental failings of the proposed plan, the District should not adopt it. Rather, an effort should begin today to create a plan that concretely and measurably seeks to end the unnecessary segregation of DC residents with disabilities, as required by the Supreme Court in *Olmstead* and by the Americans with Disabilities Act, and advances equity for all DC residents with disabilities

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