

# DOJ and Enforcement of Integration Mandate in ADA/Olmstead

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In recognition of the 12th anniversary of the Supreme Court's Olmstead decision, the United States Department of Justice issued an extremely important and comprehensive "Statement on Enforcement of the Integration Mandate" of the ADA and Olmstead.

This is DOJ's "technical assistance guide." All advocates should download it and use it in your advocacy efforts. Quote it in your briefs in Court. Quote it in your meetings with government officials. Cite it in your letters to the editor and opinion editorials. This document represents the official position of the highest law enforcement agency in the country.

**[http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm)**

This Information Bulletin is intended only to wet your appetite. Please read the entire document. We'll summarily quote as much as possible. In the original, there are 18 questions. We've added (arbitrarily) emphases.

DOJ stated: The "goal of the integration mandate to provide individuals with disabilities opportunities to live their lives like individuals without disability has yet to be fully realized. Many people who could and want to live, work and receive services in integrated settings are still waiting for the promise of Olmstead to be fulfilled."

1. What is the most integrated setting?

"Integrated settings are those that provide opportunities to live, work, and receive services in the greater community, like individuals without disabilities. 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; provide the opportunity to interact with nondisabled persons to the fullest extent possible. Segregated settings include, but are not limited to: congregate settings populated exclusively or primarily with individuals with disabilities."

2. When is the ADA's integration mandate implicated?

Anytime a "public entity administers its programs in a manner that results in unjustified segregation" whether by operating segregating programs, or financing them in private facilities, or "funding choices or service implementation practices that promotes or relies upon the segregation in private facilities or programs."

3. What factors are relevant in determining whether an individual does not oppose an integrated setting?

"Public entities must take affirmative steps to remedy this history of segregation and prejudice in order to insure that individuals have an opportunity to make an informed choice. Such steps include providing information about the benefits of integrated settings, facilitating visits in such settings, and offering opportunities to meet with individuals with disabilities living in integrated settings.

4. Does ADA apply to persons at serious risk of segregation?

"Yes. People need not wait until the harm of institutionalization or segregation occurs or is imminent." Persons can show such risk "if a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution or segregation."

5. May the ADA require a State to provide additional services than are provided in their Medicaid program?

"A state's obligations under the ADA are independent from the requirements of the Medicaid program. The ADA may require states to provide services beyond what a state currently provides under Medicaid."

"Caps do not exempt state from serving additional people in the community by seeking a modification of a waiver to remove the cap."

6. Can budget cuts violate the ADA?

"Yes, budget cuts can violate ADA when significant funding cuts to community services create a risk of institutionalization or segregation."

"In making budget cuts, public entities have a duty to take all reasonable steps to avoid placing individuals at risk of institutionalization or segregation including making exceptions to the service reductions or to provide alternative services to individuals who would be forced into institutions as a result of such cuts."

7. What budgetary resources are relevant?

"All money the public entity allots, spends, receives, or could receive if it applied for available federal funding to provide services. All relevant costs, not simply those funded by the single agency that operates or funds the segregated or integrated settings."

8. What about an Olmstead Plan?

It must do more than provide vague assurances of future. Must contain concrete and reliable commitments to expand integrated opportunities.

Must include commitments for each group of persons who are unnecessarily segregated. Must address the needless segregation of the group at issue in the case.

9. What about budgetary shortages?

"Even in times of budgetary constraints, public entities can often reasonably modify their programs by re-allocating funding from expensive segregated settings to cost-effective integrated settings. Whether the public entity has sought additional federal resources available to support the provision of services in integrated settings, such as Medicaid, MFP and federal housing vouchers.

*Steve Gold, The Disability Odyssey continues*

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