



U.S. Department of Justice
Civil Rights Division

*Disability Rights Section
4 Constitution Square
150 M Street, N.E.
Washington, DC 20002*

June 18, 2024

By First Class Mail and Electronic Mail

Governor Spencer J. Cox
350 N. State Street, Suite 200
P.O. Box 142220
Salt Lake City, UT 84114-2220

Re: United States' Investigation Under Title II of the Americans with Disabilities Act of Utah's Employment and Day Services for Youth and Adults with Intellectual and Developmental Disabilities

Dear Governor Cox:

We write to report the findings of our investigation into the State of Utah's employment and day services¹ for youth and adults with intellectual and developmental disabilities (I/DD).² In response to a complaint, we assessed Utah's compliance with Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–12134, as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999). Title II and *Olmstead* require public entities to administer services to individuals with disabilities in the most integrated setting appropriate to the individuals' needs. Title II authorizes the U.S. Department of Justice (the Department) to investigate, make findings of fact and conclusions of law, attempt to secure voluntary compliance, and file a lawsuit if violations are found. 28 C.F.R. § 35.172.

We have determined that Utah is violating the ADA by unnecessarily segregating adults and youth with I/DD in employment and day service settings that prevent them from interacting with people without disabilities to the fullest extent possible. Utah places other individuals with I/DD at serious risk of unnecessary segregation, including youth with I/DD who are transitioning out of children's services.

This letter describes the Department's findings and outlines steps that the State could take to remedy the ADA violations we identified. We want to thank the State for cooperating with our investigation and for providing helpful and relevant information in response to our questions. We

¹ "Employment and day services" are services that people with disabilities receive during the day. Employment services are services that help people with disabilities find and keep jobs. Employment services may include, for example, career counseling, job skills training, and on-the-job coaching. Day services are services that help people with disabilities fill their days during hours when they are not working. Day services may include help with daily tasks and social, cultural, and educational programming.

² I/DD is any condition that affects a person's physical, intellectual, or emotional development. I/DD includes, for example, Down syndrome, autism spectrum disorders, and cerebral palsy.

appreciate the professionalism and courtesy of all the State employees and counsel involved. We hope to continue working together to resolve the violations described below.

I. Summary of Findings

Utahns with I/DD want to work and spend their days in their communities. With the right services, people with I/DD can find jobs in typical workplaces and work alongside coworkers without disabilities, doing the same work for the same pay. People with I/DD can also spend their leisure time in the community, doing activities they choose like shopping, taking exercise classes, or meeting friends at a restaurant.

On paper, Utah offers all the services that people with I/DD need to spend their days fully integrated into the community. Utah offers employment services that help people with I/DD find and keep jobs. Utah also offers day services that can help people with I/DD decide how to spend their time and participate in activities they choose when they are not working. But in practice, it is difficult for people with I/DD to access these services in integrated settings. Instead, Utah funnels people with I/DD into segregated settings to get services. In these settings, Utahns with I/DD are grouped together and supervised by paid staff. They do not interact with people without disabilities other than staff, and often have little choice in how they spend their time. People with I/DD may stay in these settings for decades with little or no opportunity to work or spend time in the community.

Utah also offers transition services to young people with I/DD. These services help youth with I/DD transition from school to adult life by preparing them for post-school activities like continuing education, employment, and independent living. But Utah's transition services are poorly coordinated, and youth with I/DD often age out of school without the services they need to live fully integrated lives as adults.

Under Title II of the ADA, Utah must provide employment and day services to people with I/DD in the most integrated setting appropriate to their needs. The "most integrated 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 711. In integrated settings, people with I/DD can meet, befriend, and work with people of all abilities. Utah, like all public entities, must provide services in integrated settings when (1) such services are appropriate; (2) the individuals do not oppose integration; and (3) the State can make reasonable accommodations to provide services in integrated settings, given its available resources and the needs of other individuals with disabilities. *Olmstead*, 527 U.S. at 607.

As explained in our findings below, there are three primary barriers to community integration. First, Utah makes it difficult for people with I/DD to learn about and access integrated options. Second, Utah makes it difficult for providers to offer employment and day services in integrated settings. Third, Utah does not connect youth with I/DD to integrated options. Utah can and should make changes to its service system to help people with I/DD get the services they need to work and spend their days in the community.

II. Investigation

The Department received a complaint alleging that Utah funnels people with I/DD into segregated settings during the day instead of serving them in the community. In March 2021, we notified Utah that we had opened an investigation into its service system for people with I/DD. We also requested information from the State. Utah produced over 170,000 documents and

responded to follow-up questions. Utah arranged more than 20 interviews with State employees who are knowledgeable about Utah’s services for people with disabilities.

During our investigation, we reviewed documents produced by the State as well as publicly-available documents and information. We visited 12 programs in various parts of the State that provide employment and day services to people with I/DD in segregated settings, integrated settings, or both. We also visited a segregated school for youth with I/DD. We interviewed people with I/DD and their families, service providers, service coordinators, and advocacy organizations.

III. Utah’s Employment and Day Services for People with I/DD

Utah offers employment and day services for people with I/DD. These services help people with I/DD work and fill their daytime hours when they are not working. Employment and day services can be provided in segregated or integrated settings, as described below.

Three different Utah agencies administer the State’s employment and day services: Utah’s vocational rehabilitation agency, the Utah State Office of Rehabilitation (USOR)³; the Division of Services for People with Disabilities (DSPD)⁴; and the Utah State Board of Education. The vocational rehabilitation agency and DSPD both offer employment services to help people with I/DD find and keep jobs. DSPD also offers day services that help people with I/DD fill their time when they are not working. The State Board of Education offers transition services to youth with I/DD to help prepare them to live and work in the community when they leave school.

A. Employment Services

Utah offers employment services in both integrated and segregated settings. But the way Utah administers these services—including Utah’s failure to coordinate services across the relevant agencies—makes it difficult for people with I/DD to access employment services in integrated settings. Utah therefore provides employment services primarily in segregated settings.

As an example, a Utahn with I/DD who gets employment services in an integrated setting may meet with a career counselor who talks to them about their interests and goals for working. The counselor then helps the person find a job in the community that matches their preferences. Once the person with I/DD starts working, the counselor meets with the person at work and helps them learn how to do their job and build relationships with their boss and coworkers. People with I/DD who receive employment services in integrated settings work in typical workplaces, like local retail stores, offices, and restaurants. They interact with people of all abilities. They receive the same benefits and have the same opportunities for promotion as their coworkers without disabilities. For example, a person with I/DD who wants a job where they can be active might work at a community recreation center, setting up soccer fields and refereeing games.

A Utahn with I/DD who gets employment services in a segregated setting often gets picked up in a van each morning and rides with other people with I/DD to a large, warehouse-like facility sometimes called a “sheltered workshop.” At the facility, the person clocks in and spends hours doing repetitive tasks—like sorting recycling, shredding paper, or folding laundry—often for less than minimum wage. Sheltered workshops sometimes serve more than 100 people with I/DD.

³ Utah’s State vocational rehabilitation agency, USOR, is a division within Utah’s Department of Workforce Services.

⁴ DSPD is a division within Utah’s Department of Health and Human Services.

People who work in a sheltered workshop typically spend their entire day in the workshop. They only interact with other people with I/DD in the workshop, and with staff who are paid to supervise them. Utahns with I/DD might also work in segregated work crews (sometimes called enclaves). Segregated work crews are teams of people with disabilities who are grouped at a job site and complete assignments together.⁵ An example of a segregated work crew is a janitorial team made up of only people with disabilities, except for a supervisor. In a segregated work crew, a person with I/DD usually interacts only with other people with I/DD on their team.

A person with I/DD who wants employment services in an integrated setting must first apply for services from the State vocational rehabilitation agency, USOR.⁶ Vocational rehabilitation includes employment services that help people with disabilities find jobs in the community. These services include career exploration and career counseling to talk about the person’s interests and goals for working, help with finding a job, and on-the-job training.⁷ Vocational rehabilitation services are temporary. Utah generally stops vocational rehabilitation services once a person has worked for 90 days, even if the person needs ongoing services to stay employed.⁸ Utah may provide vocational rehabilitation services to an individual with a “most significant disability” for up to 24 months.⁹

People with I/DD may need employment services for longer than vocational rehabilitation provides them. For example, a person may need regular job coaching to navigate workplace relationships and grow their skills. A person who needs long-term employment services to keep working must get those services from DSPD. DSPD offers employment services in integrated settings through a Medicaid program called the Community Supports Waiver.¹⁰

There are often significant lag times between when vocational rehabilitation services end and DSPD services begin. Utah limits the number of “slots” available on the DSPD Community Supports Waiver. Because there are not enough slots available for all the people who need services, the Community Supports Waiver has a long waitlist. Utahns with I/DD wait an average of 5.4 years to get services from DSPD.¹¹ As of June 2023, approximately 933 people on DSPD’s waitlist have requested employment services.¹² If a person with I/DD loses their job while waiting

⁵ Application to Renew 1915(c) Waiver UT.0158.R07.00, Appendix C: Participant Services (July 1, 2020) (defining the “Enclave/Mobile Work Crew” model of employment services); Utah Dep’t of Health & Human Servs., Div. of Servs. for People with Disabilities, Scope of Work and Special Conditions 94–95 (Apr. 1, 2022), <https://drive.google.com/file/d/1AfCSFzjW48SlzahGq7WRGIVd7-AtrW24/view>.

⁶ States receive federal funding for vocational rehabilitation services through the Rehabilitation Act of 1973, 29 U.S.C. §§ 701–797.

⁷ See 34 C.F.R. §§ 361.48(b)(1)–(21) (identifying federally funded services that each state’s vocational rehabilitation agency must provide).

⁸ Utah State Off. of Rehab., Client Service Manual § 17.4 (Apr. 5, 2018), <https://jobs.utah.gov/usor/vr/about/chapterseventeen.pdf>.

⁹ Utah State Off. of Rehab., Client Service Manual § 30.10 (Dec. 1, 2021), <https://jobs.utah.gov/usor/vr/about/chapterthirty.pdf>.

¹⁰ Application to Renew 1915(c) Waiver UT.0158.R07.00 (July 1, 2020).

¹¹ Utah Dep’t of Health & Human Servs., Div. of Servs. for People with Disabilities, Annual Report 14 (2023), https://dspd.utah.gov/wp-content/uploads/FY23-Annual-Report_01.08.24.pdf [hereinafter DSPD 2023 Annual Report].

¹² *Id.*

for employment services from DSPD, they must re-apply for services from the vocational rehabilitation agency and essentially start over.

DSPD also has a limited, state-funded program called Supported Work Independence. This program helps people with I/DD find jobs in integrated settings while they are on the Community Supports Waiver waitlist. From 2020 through 2023, the Supported Work Independence program helped hundreds of people with I/DD find jobs in the community and earn, on average, above minimum wage.¹³ But the program cannot meet the demand for employment services.

DSPD also offers an employment program called Employment Preparation Services (EPR) through the Community Supports Waiver. EPR includes gathering information about the person's employment goals, working on their job skills, and providing them with work experience.¹⁴ According to the State's own definition, the purpose of EPR is to "prepare an individual for Competitive Integrated Employment."¹⁵ But EPR is mostly provided in segregated settings.¹⁶ For example, some providers report that their EPR clients spend most of their time working in a sheltered workshop for less than minimum wage.¹⁷ Many people receive EPR in facilities where they sit in rooms with other people with I/DD and watch training videos, listen to lectures about social skills, or practice counting money.

B. Day Services

Utah offers day services that help people with I/DD fill their days during hours when they are not working. Day services include helping people with I/DD work on their self-care skills, social skills, and communication skills, and supervising their activities. Day services can be

¹³ Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Annual Report 28 (2020), <https://dspd.utah.gov/wp-content/uploads/2021/02/2020-Annual-Report-Final.pdf> [hereinafter DSPD 2020 Annual Report]; Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Annual Report 27 (2021), https://dspd.utah.gov/wp-content/uploads/2022/01/Annual-Report-2021_final.pdf [hereinafter DSPD 2021 Annual Report]; Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Annual Report 14 (2022), <https://dspd.utah.gov/wp-content/uploads/2023/01/Annual-report-2022.pdf> [hereinafter DSPD 2022 Annual Report]; DSPD 2023 Annual Report, *supra* note 11, at 27.

¹⁴ Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Employment Preparation Services (EPR) Fact Sheet 1 (Nov. 9, 2021), <https://dspd.utah.gov/wp-content/uploads/2021/11/EPR-Guidance-Fact-Sheet-1.pdf> [hereinafter EPR Fact Sheet].

¹⁵ Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Employment Preparation Services (EPR) Recommendations 1 (Feb. 23, 2021), <https://dspd.utah.gov/wp-content/uploads/2021/03/EPR-Guidance-EPR-Recommendations.pdf>. Competitive integrated employment "means that individuals with disabilities work in the community with people of all abilities; and that they are paid at a rate comparable to those people without disabilities who work in the same place." EPR Fact Sheet, *supra* note 14, at 1.

¹⁶ Up to 80% of EPR time can be spent in a segregated setting (like a sheltered workshop or a day program facility), as calculated monthly. EPR Fact Sheet, *supra* note 14, at 1; Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Comparison: Day Supports vs. EPR 1 (Oct. 29, 2021), <https://dspd.utah.gov/wp-content/uploads/2021/11/EPR-Guidance-Comparison-Day-Supports-vs.-EPR.pdf>; *see also* Application to Renew 1915(c) Waiver UT.0158.R07.00 (July 1, 2020).

¹⁷ *See* Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Employment Preparation Service – Orientation to EPR, YouTube (Oct. 13, 2020), https://www.youtube.com/watch?v=9cQGr_Q3J7Y&feature=youtu.be (explaining that because EPR is classified as a prevocational service, any compensation must be less than 50% of minimum wage pursuant to 42 C.F.R. § 440.180(c)(2)(B)).

provided in segregated or integrated settings.¹⁸ But Utah makes it easier and more profitable for providers to offer day services in segregated settings. As a result, there are not enough providers who offer day services in the community.

When day services are provided in the community, they allow people with I/DD to spend their time the same way as people without disabilities, doing activities they choose. Typical activities may include meeting up with friends, taking exercise classes, running errands, or visiting museums. But most of Utah's day services are provided in segregated settings.¹⁹ Segregated settings include, for example, day program facilities where people with I/DD are grouped together and supervised by paid staff. In these facilities, people with I/DD often sit in large groups and color, watch TV, or sit around idle. They may stay at the day program facility all day. They may also go on group outings where they only interact with the other people with I/DD in their group, and with staff who are supervising the outing.

Day services are provided through DSPD's Community Supports Waiver. Between July 2022 and June 2023, 3,402 Utahns with I/DD received day services through the Community Supports Waiver.²⁰ During that same time, only 812 Utahns with I/DD received employment services in integrated settings through the Community Supports Waiver.²¹

C. Transition Services

Utah offers transition services to youth with I/DD. Transition services help students with disabilities (ages 14–22) move from school to post-school activities like continuing education, employment, and independent living. But Utah has gaps in its transition service system, which means many youth with I/DD enter adulthood without the experiences or the services they need to live fully integrated adult lives.

The Utah State Board of Education and the vocational rehabilitation agency, USOR, both administer and oversee the State's transition service system and coordinate with DSPD. A key component of transition is connecting a student with I/DD to the adult service system to make sure that services are in place when the student leaves school. This may include, for example, having representatives from the relevant State agencies attend school meetings with the student to talk about the student's employment goals and plans for the future. But the State agencies do not consistently or effectively coordinate their services, and so youth with I/DD may leave school without any ongoing employment or day services in place. Youth may be placed on DSPD's Community Supports Waiver waitlist, where they often wait many years before receiving services.

Another key component of effective transition is providing youth with I/DD with integrated employment experiences, like internships at local businesses. But Utah does not ensure that students with I/DD have community-based experiences. When youth with I/DD do not have these experiences, they may leave school without the skills they need to work in integrated jobs. As a

¹⁸ Utah Dep't of Health & Human Servs., Div. of Servs. for People with Disabilities, Scope of Work and Special Conditions, 50–54 (Apr. 1, 2022), <https://drive.google.com/file/d/1AfCSFzjW48SlzahGq7WRGIVd7-AtrW24/view>.

¹⁹ See Utah Dep't of Health & Human Servs., DHS90743: Scope of Work 50 (effective Apr. 1, 2022), <https://drive.google.com/file/d/1AfCSFzjW48SlzahGq7WRGIVd7-AtrW24/view> (“Day Supports services typically provide support to groups of Persons.”).

²⁰ DSPD 2023 Annual Report, *supra* note 11, at 27.

²¹ *Id.*

result, Utah youth with I/DD are at serious risk of entering segregated settings because the State does not prepare them for or connect them with options in integrated settings.

IV. Findings

Utah does not provide employment and day services to people with I/DD in the most integrated setting appropriate to their needs, in violation of Title II of the ADA. The State plans, administers, and funds its employment and day services in a way that results in the unnecessary segregation of people with I/DD in segregated employment and day programs. *See* 28 C.F.R. §§ 35.130(b)(3), (d). People with I/DD who are interested in working and engaging in the community often spend their days in facilities, isolated from the public and with few—if any—opportunities to interact with people without disabilities other than paid staff. Other people with I/DD are at serious risk of entering segregated employment and day settings to get daytime support, even though they would rather be in the community. Youth with I/DD are also at risk of entering segregated settings because Utah does not connect them with services that will help them find and keep jobs.

Title II of the ADA prohibits public entities from discriminating on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Public entities may not, based on disability, exclude qualified individuals from participating in, or deny them the benefits of, the entity’s services, programs, or activities. *Id.* In passing the ADA, Congress explicitly found that segregation of people with disabilities is a “form[] of discrimination.” 42 U.S.C. §§ 12101(a)(2), 12101(a)(5). Title II includes an “integration mandate” which states that “a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The “most integrated 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 711. A state therefore violates the ADA when it administers and funds services for people with disabilities—including employment and day services—in a manner that unnecessarily segregates them. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d).

In *Olmstead*, the Supreme Court held that the ADA prohibits unjustified isolation of people with disabilities. 527 U.S. at 597. Public entities that provide services to individuals with disabilities must offer those services in integrated settings when (1) such services are appropriate to the individuals’ needs; (2) the individuals do not oppose integration; and (3) the entity can make reasonable accommodations to provide services in integrated settings, given its available resources and the needs of other individuals with disabilities. *Id.* at 607. The ADA’s integration mandate applies to people with disabilities in segregated settings and those at serious risk of unnecessary segregation. *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003).²² A public entity must modify its policies, practices, and procedures to avoid discrimination on the basis of disability, unless the entity can show that the modifications would fundamentally alter the nature of its services, programs, or activities. 28 C.F.R. § 35.130(b)(7)(i).

Below we describe our findings relating to Utah’s violation of Title II’s integration mandate. In short, Utah relies on segregated settings to serve people with I/DD who are appropriate for, and do not oppose, employment and day services in integrated settings. Utah has

²² *See also Roe v. Cheyenne Mountain Conf. Resort, Inc.*, 124 F.3d 1221, 1230 (10th Cir. 1997) (holding that a plaintiff was entitled to injunctive relief to prevent future violations of the ADA).

shown some support for helping people with I/DD become employed. Utah’s Employment First policy requires the state to “give priority to providing services that assist [people with disabilities] in obtaining and retaining meaningful and gainful employment.”²³ Since enacting its Employment First policy, Utah has taken small steps to help people with I/DD find and keep integrated jobs. And some providers are helping their clients spend more leisure time in the community. But these efforts are not enough to overcome the barriers we identified to accessing integrated settings. Utah can and should modify its service system to help people with I/DD engage and work in the community; for example, by connecting people with I/DD to integrated options, making sure integrated options are actually available to people who want them, reducing the wait time for integrated options, and providing effective transition services to youth with I/DD.

A. Utah Is a Public Entity, and Its Sheltered Workshops, Group Employment Settings, and Day Program Facilities Are Segregated Settings

The State of Utah is a public entity under the ADA. 42 U.S.C. § 12131(1). Public entities must ensure that their services, programs, and activities comply with Title II. Utah is therefore responsible for ensuring that its services comply with the integration mandate, including services that are delivered by private providers. *See, e.g., State of Conn. Office of Prot. & Advoc. for Persons with Disabilities v. Connecticut*, 706 F. Supp. 2d 266, 276–77 (D. Conn. 2010) (rejecting the state’s argument that it could not be held liable under Title II for private nursing facilities’ conduct).

Utah’s sheltered workshops and day program facilities are segregated settings.²⁴ These facilities typically serve large numbers of people with I/DD who are grouped together and supervised by paid staff. Some facilities are school-like, while others are large industrial warehouses. Facility staff decide what their clients will do each day, usually with minimal input from people with I/DD themselves. Some individuals work in groups with other people with I/DD, such as traveling janitorial crews. These segregated work groups keep workers with I/DD separate and apart from the rest of the workplace.

B. Integrated Settings Are Appropriate for People with I/DD, and Utahns with I/DD Want Services in Integrated Settings

The State’s data show that integrated employment and day settings are appropriate for Utahns with I/DD. Data produced by the State show that people with I/DD who are currently receiving services in segregated settings have applied—and been found eligible—for employment services that would help them find and maintain integrated work.²⁵ And the data confirm that people with I/DD who are receiving services in segregated settings have previously worked in the community. For example, 226 individuals who received services only in segregated settings in 2020 received employment services in integrated settings at some point between 2016 and 2019.²⁶

²³ Utah Code Ann. § 35A-3-103.5(2).

²⁴ *See* 28 C.F.R. pt. 35 app. B, at 673; *see also Lane v. Kitzhaber*, 283 F.R.D. 587, 599 (D. Or. 2012) (“With respect to the [defendants’ contention that sheltered workshops can be integrated], plaintiffs’ evidence supports their allegation that no sheltered workshop is truly integrated.”).

²⁵ Utah Response to Request for Information No. 7 (June 17, 2021) (on file).

²⁶ Utah Response to Request for Information No. 6 (Apr. 19, 2021) (on file).

Utah has acknowledged that people with disabilities can successfully be served in the community. Utah’s own policies state that “employment is the first and preferred outcome for working age youth and adults with disabilities, especially for individuals with complex and significant disabilities.”²⁷ Utah’s policies also require the State to help people with disabilities find and keep meaningful, paid employment.²⁸ In a joint report issued to the Utah Legislature in 2018, Utah’s Department of Health and Human Services, Department of Workforce Services, and the Utah State Board of Education collectively acknowledged research which shows “that people with disabilities can work successfully in the community, even those with the most severe disabilities.”²⁹ Utah’s vocational rehabilitation agency has similarly acknowledged that integrated employment can be “appropriate” for people with the “[m]ost [s]ignificant [d]isabilities.”³⁰

And Utahns with I/DD want to work and spend more time in their communities. People who work in segregated settings often want to work in the community alongside their peers of all abilities. They talk about specific jobs that they dream of having, like working at a movie theater or working in the flower department at Walmart.³¹ Many speak fondly of jobs they have had before, like working in construction. Some people with I/DD are already working in the community but want to work more. Some individuals who work just a few hours a week want to work full-time so they can be financially independent. Others would like to find different jobs that pay better and align with their goals and interests. People are also eager to spend more leisure time in the community. Many people with I/DD in Utah’s facilities mill around or sit idly and describe having “nothing to do” and being “bored.” They would prefer to spend time in the community doing activities they choose, like grocery shopping, pursuing individual hobbies, and meeting up with friends.

The State’s data also confirms that people with I/DD want to be in the community. Data produced by the State show that people with I/DD who are currently receiving services in segregated settings are interested in working in the community or learning more about working in the community.³² A recent report³³ similarly found that up to 54% of adults with I/DD in Utah

²⁷ Utah Dep’t of Health & Human Servs., Div. of Servs. for People with Disabilities, Employment First Strategic Plan 3 (2014), <https://dspd.utah.gov/wp-content/uploads/Division-Employment-First-Strategic-Plan.pdf>.

²⁸ Utah Code Ann. 1953 § 26B-6-409.

²⁹ Utah Dep’t of Health & Human Servs., Div. of Servs. for People with Disabilities, Utah Dep’t of Workforce Servs., & Utah State Bd. of Ed., Transition Age Youth with Disabilities & Employment in Utah: Interim Report for Social Services Appropriations Subcommittee 19 (Oct. 1, 2018), <https://le.utah.gov/interim/2018/pdf/00003924.pdf>.

³⁰ Utah State Off. of Rehab., Customized Employment Services 4 (Aug. 2020), <https://jobs.utah.gov/usor/vr/services/customizedemp.pdf>.

³¹ Utah’s data likely underestimates the number of people who would be open to employment services in integrated settings if those services were actually available.

³² See Utah Response to Request for Information No. 6 (Apr. 19, 2021) (on file); Utah Response to Request for Information No. 7 (June 17, 2021) (on file); Utah Response to Req. for Information No. 8 (June 17, 2021) (on file).

³³ National Core Indicators, In-Person Survey (IPS) State Report: Utah Report (2019), https://www.nationalcoreindicators.org/upload/core-indicators/UT_IPS_state_508.pdf. The National Core Indicators program is a voluntary effort by state developmental disability agencies to track their performance using standardized surveys with nationally validated measures. This in-person survey was completed with a random sample of adults (ages 18 and older) with I/DD in Utah who receive at least one publicly-funded service from the state disability service system.

who currently do not have a paid community job would like a job in the community.³⁴ The same report shows that Utahns with I/DD would also like to spend more of their leisure time in the community, participating in activities like shopping and eating at restaurants.³⁵

C. Utah’s Administration of Employment and Day Services Results in Unnecessary Segregation of People with I/DD

Utah’s employment and day service system makes services in segregated settings the default option for people with I/DD. DSPD’s annual reports show that in each of the last five reported years, more than three times as many individuals with I/DD received day services (which are mostly segregated) as received employment services (which may be segregated or integrated).³⁶ Additional data produced by the State show that of the 4,159 people who received employment or day services between January 1, 2016, and December 31, 2020, at least 73% received services that are primarily provided in segregated settings while just 15% received individual employment services in integrated settings.³⁷ In Utah, there are three notable barriers to accessing integrated settings.

1. Utah Makes It Difficult for People with I/DD to Access Integrated Employment and Day Service Settings

Utah makes it difficult for people with I/DD to learn about and access employment and day services in integrated settings. To start, Utah does not make a consistent effort to offer people with I/DD community-based options and then connect them to providers who offer services in integrated settings. People with I/DD may never learn about integrated options, so they never seek out or connect with the services they need to work and spend their days in the community. Utah also fails to move people with I/DD from segregated to integrated settings, even when they can and want to get services in the community.

Some Utahns with I/DD are discouraged from seeking integrated options. Staff within Utah’s service system described certain individuals with I/DD as “unemployable”—sometimes in front of the individuals themselves. Staff also expressed the view that certain people with I/DD can never hold community-based jobs, even though they have the same needs as other people with I/DD who are working in the community with employment services. Staff said that other

³⁴ *Id.* at 35. This statistic includes survey respondents who attend sheltered workshops and day program facilities.

³⁵ *Id.* at 56–59. Adults with I/DD were asked whether they would like to participate in certain activities more, less, or the same amount as the previous month. Of the individuals who were surveyed, 34% wanted to go out shopping more, 39% wanted to go out for entertainment more, 44% wanted to go out to a restaurant or coffee shop more, and 45% wanted to be a part of more community groups. *Id.*

³⁶ Utah Dep’t of Health & Human Servs., Div. of Servs. for People with Disabilities, Annual Report 26 (2019), <https://dspd.utah.gov/wp-content/uploads/2020/10/Annual-Report-2019.pdf> (948 adults with disabilities received employment services while 3,150 adults with disabilities received day services); DSPD 2020 Annual Report, *supra* note 13, at 28 (957 adults with disabilities received employment services while 3,209 adults with disabilities received day services); DSPD 2021 Annual Report, *supra* note 13, at 27 (853 adults with disabilities received employment services while 2,771 adults with disabilities received day services); DSPD 2022 Annual Report, *supra* note 13, at 27 (868 adults with disabilities received employment services while 3,166 adults with disabilities received day services); DSPD 2023 Annual Report, *supra* note 11, at 27 (812 adults with disabilities received employment services while 3,402 adults with disabilities received day services).

³⁷ Utah Response to Request for Information No. 7 (June 17, 2021) (on file). These numbers reflect the number of unique individuals who received day services in a group setting and individual employment services at any point in the specified period. Individuals may have received both services during that period.

individuals cannot spend leisure time in the community because of their needs. But Utah can and does serve these individuals in segregated settings and could provide the same services in integrated settings.

When people with I/DD seek out integrated employment, they struggle to navigate Utah's service system as they are moved back and forth from one agency to another. People with I/DD who want to work in the community must first apply to Utah's vocational rehabilitation agency, USOR. But that agency ends its services after a set amount of time, even if the individual needs a job coach or other ongoing services to stay employed.³⁸ Individuals must then apply to DSPD for long-term employment services. Since these two state agencies do not coordinate or communicate well—and since DSPD has a years-long waitlist for services—there is often a long lag time between the end of vocational rehabilitation services and the start of DSPD's long-term employment services. During that lag time, people may lose their jobs because they are not getting the services they need to stay employed. They must then reapply to USOR for vocational rehabilitation services and start over. And people with I/DD are often unemployed while they are waiting for services on DSPD's waitlist or re-applying for vocational rehabilitation services. When people are not working, they lose their career connections and miss out on chances to maintain and grow their skills. The longer a person is out of work, the harder it becomes to find a job.

People with I/DD also wait for years to receive day services in integrated settings, if they receive them at all. Utah offers day services through the Community Supports Waiver described above. The average wait time for any Community Supports Waiver services is 5.4 years,³⁹ and so many people with I/DD go without any day services for years. When a person with I/DD reaches the top of the Community Supports Waiver waitlist, the person is matched with a support coordinator. The support coordinator's role is to assess the person's needs, identify services to meet those needs, and help the person find providers. But Utah does not ensure its support coordinators have the information and training they need to support an individual's choice to receive services in an integrated setting. If the support coordinator does not tell the person about community-based options, then the person never has a chance to choose integration. Even when a support coordinator recommends integrated options, there are often no services available.

The lack of available services in integrated settings—combined with DSPD's years-long waitlist for services—creates a scarcity mentality. After years of waiting without any services from DSPD, when people with I/DD rise to the top of the waitlist they often accept whatever services are available. People who want services in integrated settings end up accepting services in segregated settings because those are the only options available. People with I/DD on DSPD's waitlist for services are therefore at serious risk of entering segregated settings.

³⁸ Utah State Off. of Rehab., Client Service Manual § 17.4 (Apr. 5, 2018), <https://jobs.utah.gov/usor/vr/about/chapterseventeen.pdf> (Utah's vocational rehabilitation services end after an individual is "stable" in a job for 90 days); Utah State Off. of Rehab., Client Service Manual § 30.10 (Dec. 1, 2021), <https://jobs.utah.gov/usor/vr/about/chapterthirty.pdf> (Utah may provide vocational rehabilitation services to an individual with a "most significant disability" for up to 24 months).

³⁹ DSPD 2023 Annual Report, *supra* note 11, at 14.

2. Utah Makes It Difficult for Providers to Offer Services in Integrated Settings

Utah makes it easier for providers to offer services in segregated settings than in the community. Day services and EPR—which are mostly provided in segregated settings—are administered by DSPD only, so providers can bill for these directly to DSPD and get paid for providing a full day of services. And people with I/DD can receive a full day of EPR or day services without any gaps. Providers can also get paid more for offering day services to groups of people with I/DD in segregated settings, rather than offering individualized services in the community.

Employment services provided in integrated settings are administered by two State agencies, DSPD and USOR, that we were told do not coordinate or communicate well. Each agency oversees and funds a subset of services, so providers must follow a complicated, difficult process with two separate agencies to get paid for the employment services they offer in integrated settings. Providers and support coordinators report that it takes hours of paperwork to request employment services from the State agencies. Each agency may take months to approve services. This process is burdensome and expensive. When the agencies' approval and payment processes take too long, providers must choose between stopping services or providing them for free. Providers who offer day services and EPR in segregated settings can avoid this back-and-forth between the two agencies and save time, receive consistent funding, and provide continuous support to their clients.

Utah also does not support providers who currently offer segregated services but are interested in offering services in the community. Facility-based providers are willing to offer services in the community. But they need guidance, technical assistance, and financial incentives to do so. Utah does not offer providers enough help or resources to make the change.

Since Utah makes it easier for providers to offer services in segregated settings and does not help providers who want to offer integrated options, most of Utah's providers choose to provide services primarily in segregated settings. As a result, Utah does not have enough providers to meet the demand for integrated employment and day settings.

3. Utah Does Not Connect Youth with I/DD to Integrated Options

Utah also does not provide effective transition services for youth with I/DD. Youth with I/DD receive services from their schools until age twenty-two. When youth with I/DD turn twenty-two, they age out of school, and any services they receive through school end. Board of Education officials call this “falling off the cliff” of State services. The State's transition services are supposed to help youth with I/DD connect with adult services and find integrated jobs or pursue higher education when they leave school. Without transition services, youth with I/DD are at serious risk of entering segregated settings to receive necessary services when they become adults.

A key component of transition services is connecting students with State agencies that can help students move into integrated settings when they become adults. But Utah's schools and its adult service agencies do not work together to connect youth with integrated options. The Utah State Board of Education, which is responsible for the State's special education program, provides guidance about when schools should connect students and families with adult service agencies. But the Board of Education does not require schools to include Utah's adult service agencies in students' transition planning. Vocational rehabilitation counselors report that they do not have

any way to proactively identify and connect with transition-age youth with I/DD who may be eligible for vocational rehabilitation services. And vocational rehabilitation counselors and DSPD representatives are rarely part of students' transition planning. Some teachers encourage students with I/DD to apply for vocational rehabilitation services, but Utah rejects these students' applications. Teachers may also try to connect students with DSPD, but because of the agency's lack of resources and long waitlists, DSPD may never participate in a student's transition planning.

Because of these communication breakdowns, students with I/DD may have no contact with vocational rehabilitation or DSPD during their critical transition years. Students may still be on DSPD's waitlist when they leave school and continue to wait for years to receive services. Although two of Utah's relevant State agencies have entered into a cooperative agreement to help transition students with disabilities from school to work, the agreement does not include specific benchmarks for achieving this goal.⁴⁰ Indeed, some schools take students with I/DD on tours of sheltered workshops on the assumption that these students will end up in facilities when they leave school. Youth with I/DD may therefore often enter adulthood without Utah connecting them to services that would help them live and work in the community. Instead, Utah's system funnels them into segregated settings, including sheltered workshops and day facilities.

D. Utah Could Remedy the Violations We Identified

Utah could remedy these violations and help people with I/DD work and engage in the community without fundamentally altering its existing service system. For example, Utah could: (1) connect people with I/DD to integrated options; (2) make sure that the full range of employment and day services are available in integrated settings to people who want them; (3) reduce the wait time for services in integrated settings; and (4) expand transition services so that youth with I/DD can work and engage in the community when they leave school. Utah can and should move people with I/DD from segregated to integrated settings and help others avoid entering segregated settings in the first place.

1. Connect People with I/DD to Integrated Options

Utah could make its existing employment and day services in integrated settings more available to people who want them. To start, Utah could provide comprehensive person-centered service planning to people with I/DD so that they can choose where to receive their services. For example, agency staff could meet with people with I/DD regularly—starting when those individuals are still in school—to talk about the person's interests, skills, and goals for the future; identify services that would help the person achieve their goals; and help the person apply for and receive those services in integrated settings. Utah could develop effective training on its own Employment First policy, including the presumption that all people with I/DD can work. Utah could improve communication and coordination among the relevant State agencies so that people with I/DD are rapidly approved for services in integrated settings and do not experience gaps in services.

⁴⁰ Utah State Off. of Rehab., Utah State Bd. of Ed., & Utah Schs. for the Deaf & the Blind, Interagency Cooperative Agreement: State Level Special Education (2023), <https://jobs.utah.gov/usor/vr/services/student/usorusbe.pdf>. The cooperative agreement does not include DSPD.

2. Ensure That Employment and Day Services Are Available in Integrated Settings to People Who Want Them

Utah could provide resources to expand and maintain a pool of providers that can meet the demand for integrated options. Utah could make it easier for providers to offer services in integrated settings by streamlining its billing and approval processes, so that providers can offer these services with the same ease and flexibility as services in segregated settings.

Utah could also offer training, resources, and support to providers who are interested in offering services in integrated settings. Providers that offer services in primarily segregated settings report that they need guidance, technical assistance, and financial incentives to make the switch to delivering services in integrated settings. Beginning around 2016, Utah received grant funding and technical assistance from the U.S. Department of Labor to increase its integrated employment options. Despite that assistance, Utah's progress on building a pool of integrated service providers stalled. Utah could continue its earlier work by reallocating funds it currently spends on services in segregated settings to help providers switch from segregated to integrated models. By Utah's own estimates, the average daily cost of providing day services in segregated settings (\$81.36/day) is almost double the average daily cost of providing employment services in integrated settings (\$41.90/day).⁴¹ Utah may therefore save money by shifting away from segregated settings. Utah could then invest those savings into increasing integration.

3. Reduce the Wait Time for Services

More than 900 people with I/DD are waiting to receive employment services from DSPD. Yet Utah does not have any numeric benchmarks or other measurable goals for moving these individuals off the waitlist and into integrated employment settings. Since the average wait time for DSPD waiver services (including employment services) is 5.4 years,⁴² people with I/DD often wait for many years with no employment services at all, or receive only time-limited vocational rehabilitation services. During those months and years without employment services, people with I/DD miss opportunities to build their skills and develop their employment history. The longer the person is out of work, the harder it becomes for them to eventually find a job.

The long wait time for DSPD waiver services—combined with the lack of available services in integrated settings—also causes many people with I/DD to enter segregated settings to receive day services. After years of waiting for services, when people with I/DD rise to the top of the waitlist they often end up accepting day services in segregated settings instead of waiting even longer for an integrated option.

To address the long wait times for integrated settings, Utah could take steps to connect growing numbers of people on DSPD's waitlist to providers who offer services in integrated

⁴¹ Application to Renew 1915(c) Waiver UT.0158.R07.00 (July 1, 2020), at Appendix J: Cost Neutrality Demonstration, J-2: Derivation of Estimates – Estimate for Year 5 (waiver was first approved in 2015; waiver year one corresponds to fiscal year 2016 and waiver year 5 corresponds to fiscal year 2020); *see also* DSPD 2019 Annual Report, *supra* note 36, at 26 (in 2019, the average cost of providing employment services to one individual was \$51,572 per year, compared to the average cost of providing day services to one individual which was \$65,021 per year); DSPD 2020 Annual Report, *supra* note 13, at 24 (showing that the average cost of day services exceeds the average cost of employment services across every service category); DSPD 2021 Annual Report, *supra* note 13, at 25 (same); DSPD 2022 Annual Report, *supra* note 13, at 25 (same); DSPD 2023 Annual Report, *supra* note 11, at 25 (same).

⁴² DSPD 2023 Annual Report, *supra* note 11, at 14.

settings, such as contracting more support coordinators and training them about integrated options, and incentivizing providers to offer services in integrated settings.

4. Provide Effective Transition Services So Youth with I/DD Enter Integrated Settings

Utah could take steps to ensure that youth with I/DD have the opportunity to receive services in integrated employment and day settings when they finish school. For example, the State could require early, mandatory involvement of DSPD and vocational rehabilitation in every youth's transition planning. Utah could require schools to coordinate services for students with I/DD with vocational rehabilitation and DSPD. Vocational rehabilitation counselors and DSPD could plan for and connect these students to adult services in integrated settings. Youth with I/DD should have an individualized transition plan that lists clear post-education goals, identifies services needed to achieve those goals, establishes deadlines for starting those services in integrated settings, and creates a plan to maintain integration in adulthood.

V. Conclusion

We look forward to working with you to resolve the Department's findings. We hope to collaborate with Utah and agree on changes that the State will make to remedy the violations. We must inform you, however, that, if Utah will not negotiate or if our negotiations fail, the United States may take appropriate action—including initiating a lawsuit—to remedy Utah's ADA violations.

This letter is a public document and will be posted on the Civil Rights Division's website. Please contact Margaret Girard, Trial Attorney in the Disability Rights Section of the Civil Rights Division (Margaret.Girard@usdoj.gov, (202) 598-5668), within two weeks of receiving this letter if Utah is interested in working with the Department to reach a solution along the lines described above.

Sincerely,

s/Kristen Clarke
Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

cc: Kyle Kaiser, Senior Trial Counsel, Litigation Division, Utah Attorney General's Office
Tracy S. Gruber, Executive Director, Utah Department of Health & Human Services
Angella Pinna, Director, Division of Services for People with Disabilities, Utah Department of Health & Human Services
Casey Cameron, Executive Director, Utah Department of Workforce Services
Sarah Brenna, Director, Utah State Office of Rehabilitation, Utah Department of Workforce Services
Sydney Dickson, State Superintendent of Public Instruction, Utah State Board of Education