



# DISABILITY RIGHTS NEW YORK

**New York's Protection & Advocacy System and Client Assistance Program**

**VIA Electronic Mail: [RAU.unit@opwdd.ny.gov](mailto:RAU.unit@opwdd.ny.gov)**

February 5, 2018

Office of Counsel  
Bureau of Policy and Regulatory Affairs  
44 Holland Avenue  
Albany, New York 12229

**Re: Site Based and Community Based Prevocational Services  
Proposed Emergency Amendments to 14 NYCRR 635-10.4  
& 635-10.5**

Dear Counsel:

We write to express our continued objection to the operation of sheltered workshops in New York State, and offer specific objections to the emergency/proposed amendments to 14 NYCRR 635-10.4 & 635-10.5. Disability Rights New York ("DRNY") is the designated Protection and Advocacy and Client Assistance Program System ("P&A/CAP") for New York State. Each year we provide legal assistance to hundreds of New Yorkers with intellectual and developmental disabilities. Many of these are New Yorkers who work in segregated work settings and receive subminimum wages. Some of the proposed provisions significantly diminish provider accountability and perpetuate practices that result in no meaningful skills development and employment abuses under U.S. Department of Labor's 14 (c) regulations. Consequently, nearly 9000 New Yorkers who earn

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subminimum wages in segregated work settings are left with minimal opportunity for inclusive employment and payment of at least the minimum wage.

The Americans with Disabilities Act and the U.S. Supreme Court's decision almost 20 years ago in *Olmstead v. L.C.*, 527 U.S. 589 (1999) reject the unnecessary segregation of individuals. In September 2014, the U.S. Justice Department became more assertive in its enforcement of the *Olmstead* decision. Governor Andrew Cuomo convened an Employment First Commission tasked with increasing the competitive employment outcomes for people with disabilities. OPWDD agreed to close all sheltered workshops in New York by 2019. However, that commitment has since been walked back with a target date of 2022.

In 2014, Disability Rights New York started monitoring New York's efforts to transition individuals with intellectual and developmental disabilities from segregated work settings to integrated employment in the community. Between 2014 and 2016, staff from DRNY monitored over 40 sheltered workshops across the state. These visits revealed serious systemic barriers to community integration including New York's inadequate and uncertain funding formulas, lack of transportation, lack of integrated employment opportunities and supports, lack of benefits counseling, family resistance, and limited access to quality vocational rehabilitation services. DRNY also discovered that many of the Executive Directors that operate segregated work settings were strong advocates of keeping sheltered workshops open. Some displayed a poor understanding for the U.S. Department of Labor's 14 (c) regulations. Some openly opined that New York's *Olmstead* Plan is merely "aspirational."

In 2018, DRNY will monitor 20 sheltered workshops. Our CAP program will educate workshop employees of their employment rights and opportunities to advance to employment paying at least minimum wage. In addition, DRNY will closely examine the denial of lawful wages to individuals who qualify.

We acknowledge the task that OPWDD is delegated in New York's *Olmstead* Plan is not an easy one – but neither was school desegregation, which in 1954, was ordered by the *Brown* decision (347 U.S. 483 (1954)) for the states to act with all *deliberate speed*. When the failures of states to act were evident, the U.S. Supreme Court revisited school segregation in *Brown II* (347 U.S. 483 (revisited in 1968)), stating that we need "a little less deliberating, and a bit more speed."

Finally, two of the proposed amendments specifically interfere with OPWDD's plan to eliminate sheltered workshops.

**Paragraph 635-10.4(k)(2) Allows Omission of Essential Skills and Accountability**

Paragraph 635.10-4(k)(2) is amended from: [Services **shall** include, but not limited to the following tasks and activities:] to Site based prevocational services **may** include...(emphasis added). The current regulation requires providers to provide specific listed services. By changing **shall** to **may**, providers will be able to choose to provide (or not provide) the list of required services. This allows providers to omit essential skill building in prevocational training and negates virtually all accountability. Accordingly, we oppose this regulation as it significantly undermines the development of meaningful employment skills.

**Paragraph 635-10.5(ag)(4)(iii) Unnecessarily Allows Providers to Circumvent Vocational/Work Program Time Accountability**

The proposed regulation omits language in 635-10.5(ag)(iii) which defines the “program day duration.” Currently, the program day duration is defined as the length of time that the individual is present at the provider’s ‘vocational/work program’ where prevocational services are provided. The regulation specifically states that meals and transportation time cannot be included in the program day duration. By deleting the definition of “program day duration,” providers will be able to count non-prevocational related services, or down time, as part of a program day duration. If a provider holds itself out as a vocational or work program, the individual’s time at that program should reflect only the prevocational services.

For these reasons, DRNY specifically objects to the proposed emergency amendments to 14 NYCRR Sections 635-10.4 & 635-10.5 as stated above. We further opposed the continuation of the sheltered workshop system 19 years after *Olmstead*.

Sincerely,



Julie Michaels Keegan  
Director, Program for Persons with Developmental Disabilities