



NYSRA New York State
Rehabilitation
Association, Inc.

Employment, Careers, Opportunities:
Navigating the Policies and Factors of Change

Presented by:

Jeff Wise, JD, CEO of NYSRA/RRTI



EMPLOYMENT, CAREERS, OPPORTUNITIES: Navigating the Policies and Factors of Change

ABSTRACT:

Social, political, policy, fiscal and philosophical realities all sit on the landscape when the field of employment of individuals with disabilities is surveyed.

This paper seeks to identify some of the major examples of these realities as our communities, systems, and governments work to tackle the challenges posed. As systems designed to meet the needs of individuals evolve, issues are resolved only to see new issues emerge.

It is not the mission of this paper to pose resolutions of issues. It is, instead, intended to collect some of the major factors that must be considered by the potential resolvers; to raise some of the questions that emerge, recognizing that it is we – the entire disabilities community – who must work to arrive at the answers.



EMPLOYMENT, CAREERS, OPPORTUNITIES: Navigating the Policies and Factors of Change

INTRODUCTION

The history of employment of people with disabilities is one that goes back to the late 1800s. Resources cite the Perkins Institution for the Blind in 1840 in Massachusetts and the Pennsylvania Home for Working Men (Philadelphia) in 1874, among others, as early workshop settings employing people with disabilities.¹

In New York, the Bronx was the site of a documented workshop for individuals with tuberculosis in an effort to “rehabilitate” these individuals in a work setting.² This enterprise took the name “sheltered workshop” in what would appear to be a connotation of protection and nurturing as it was operated by medical nurses.

In time this movement led to the initiation of what became more widely known as “community workshops” or, simply, sheltered workshops.”

As one traces the development of the workshop model through the 20th century, it would seem that the experience of Northeast Career Planning in Albany would be typical and instructive:

¹ See, e.g., *Sheltered Employment and the Second Generation Workshop*, *Journal of Rehabilitation*, (Jan-March 1993)

² B. Schwartz, I. Zelfas, *Rehabilitation Nursing in A Sheltered Workshop*, *American Journal of Nursing* (1959); retrievable at <http://www.jstor.org/pss/3418028>

In 1954, the Albany Kiwanis in conjunction with a committee of representatives from Albany Hospital, The New York State (NYS) Division of Vocational Rehabilitation, Albany County Tuberculosis Association and The Albany Council of Community Services, identified a need for a sheltered workshop to provide area residents with a new opportunity for job training and employment. Training resources included food services, clerical, janitorial and maintenance, woodworking and machine shop, as well as warehouse facilities for direct mail equipment – thus laying the groundwork for Northeast Career Planning's comprehensive vocational services and programs today.³

In its first years, the Northeast Career Planning (then known as the Menands Workshop) work center was geared toward assisting and training individuals with physical challenges. Then, in 1963, the operation began to serve individuals with mental health issues and developmental disabilities. Still later, in the 1980s, the center began its foray into the concept of “supported employment,”⁴ a service that, through supports, assisted individuals in finding and working in employment opportunities in more integrated settings.⁵

Workshops were established to train people with disabilities to work at real jobs of a wide range of difficulties. However, since individuals in these centers may not be able to reach optimum productivity levels that people without disabilities may achieve, special legislation and policies evolved. These include Section 14(c) of the federal Fair Labor Standards Act (FLSA), which in some circumstances permits people in work centers to be paid wages that may be below the federal minimum wage or, in some cases, above minimum wage but below an area’s prevailing wage.⁶

³ *Our History*, Northeast Career Planning, at <http://northeastcareer.org/History.html>
The agency continues to this day and is, in fact, one of several agencies with center-based work programs that is affiliated with NYSRA.

⁴ *Id.*

⁵ A clear definition of supported employment has been articulated by a NYS parent group as “[A]service that provides competitive work in integrated settings for individuals for whom competitive employment has been interrupted or intermittent as a result of their disabilities, and need ongoing services to continue to work.” *Guide to Understanding OMRDD Services*, Parent to Parent of NYS (2010).

⁶ The FLSA is codified at 29 USC, sec 200, *et. seq.*

Over time, “workshops” came to be known more commonly as “work centers” and, more recently, as center-based employment opportunities.

But – and this is critically important – the philosophy behind center-based work opportunities operated by not-for-profit community rehabilitation programs – such as NYSRA members – has been to recognize the inherent value of work, the tangible and intangible advantages that are imparted through work.

Too often, however, they have been misperceived: Because of occasional and isolated cases that have been exposed, center-based employment has become mischaracterized as a tool for worker exploitation and as segregated work environments that refuse to recognize the desires of individuals with disabilities.

NYSRA’s abhorrence of exploitative practices cannot be overstated. But we also lament the misperceptions of some who believe that center-based work denies people their independence and freedom of choice. The fact is that center-based work presents an option for some individuals who, without center based work, would find themselves excluded from work opportunities – and the tangible and intangible benefits associated with these opportunities -- completely.

Context: The NYSRA Perspective

NYSRA traces its roots to the early 1970s and the eventual combining of the New York State Association of Sheltered Workshops and Homebound Industries (agencies serving people with different disabilities) and the Association of Rehabilitation Centers. The newly merged organization was known as the NYS Chapter of the International Association of Rehabilitation Facilities. In time, the organization became known as the NYS Association of Rehabilitation Facilities (NYSARF) and, after the birth of the Rehabilitation Research and Training Institute (RRTI) in 1993, the trade association today known as NYSRA was incorporated in 1995.⁷

⁷ For a detailed narrative of the evolution of NYSRA and its connections to vocational rehabilitation and employment issues generally for people with disabilities, see *Journey to Independence: A Retrospective of the Rehabilitation Movement and history of the New York State Rehabilitation Association* (NYSRA 2003).

NYSRA's current Mission Statement reads:

*To advocate and support communities and systems that effectively foster opportunity, independence, inclusion, employment and life enrichment for people with disabilities.*⁸

Moreover, our formal Values Statement includes an embracing of diversity and a pro-active role in finding innovative pathways for positive change that value and benefit individuals with disabilities.⁹

Center-based work is not inconsistent with these values and mission. It is, indeed, quite compatible, as it offers an option for putting people first if the center-based work environment is what they desire, helps them thrive, and provides them with opportunities for paid work and social experiences they simply may not otherwise find available to them in a supported employment or competitive direct placement employment setting.

NYSRA agency members are not-for-profit community rehabilitation programs that provide services they tailor – within the constraints of existing systems – to the distinct needs and wishes of individuals. Individual desires, choice and independence are accommodated and encouraged. Community involvement is fostered. Rehabilitation services provide tools, support, and resources that individuals need for them to realize their individual goals and wishes, their comfort level of independence, their individuality.

It is this approach that suggests, even demands, work opportunities be offered across a full range of possible opportunities for people with disabilities. While NYSRA embraces the tenets of most-integrated-setting thinking and the meaning of the Olmstead court decision, it strongly believes that the widest range of work opportunities must be an offer if the field is truly going to be responsive to the needs of all people with disabilities. Center-based work, quite simply, can offer the best opportunity for some people with disabilities to have the tangible and intangible benefits of work. Without the center-based option, many of these individuals would undoubtedly be left unable to secure the right work environment for their skills and levels of productivity.

With these principles in mind, the NYSRA Board of Directors in 2008 adopted an important resolution that recognizes the place of center-

⁸ *NYSRA Mission, Vision, Values*, adopted December 2008 by unanimous vote of the NYSRA Board of Directors.

⁹ *Id.*

based work in the array of opportunities that must be made available to individuals with disabilities. This recognition is not at odds with the concept of most-integrated setting; it, in fact, complements and completes it.

The Board resolution adopted in 2008 is straightforward:

RESOLVED, that, as a top priority, NYSRA will advocate strongly with all stakeholders and policymakers ¹⁰for retention of work opportunities created through work centers while, at the same time, working innovatively to identify existing or new work center models that maximize opportunities for individuals while remaining true to the most-integrated setting concept.

This resolution sets NYSRA on a challenging but necessary course. It recognizes the need to modernize the work center model and effect changes that will be true to the needs of today's individuals as well as all other stakeholders. It pledges the association to strive for innovation in work opportunities for all New Yorkers with disabilities, and it commits to efforts that can preserve existing work center funding even as new models and settings are developed that remain faithful to the most-integrated setting concept.

All this must be done in today's legal, policy and philosophical environment emphasizing values such as choice, individualized support, integration, independence at the same time that it rightfully calls for accommodation, facilitation and capacity building.

Well aware of the challenges posed, both by the environment and by its own 2009 Resolution, the NYSRA Board once again re-affirmed its commitment to work and employment issues in a new Board Resolution adopted in 2010:

RESOLVED, that the Board, in keeping with the NYSRA mission, hereby adopts employment – encompassing career opportunities, work settings, and supports -- for people with disabilities as a top priority of NYSRA as it works to maintain its place as the leader on issues affecting people with disabilities. ¹¹

¹⁰ Motion of NYSRA Board, December 5, 2008. All ayes

¹¹ Motion of NYSRA Board, March 25, 2010. All ayes.

In 2009, NYSRA began its work as a partner in a project funded by the federal Medicaid Infrastructure Grant (MIG) program overseen by Cornell University and the Burton Blatt Institute of Syracuse University. The grant's overall purpose of removing obstacles to and creating new pathways for employment of people with disabilities clearly comports with NYSRA's traditional focus of vocational rehabilitation and employment options.

Among its activities as a MIG partner, NYSRA conducts research and studies in the employment arena, and has produced a plan that will look at work center transformation issues throughout 2010.¹²

Policy: Preferred Source/Set Aside

Government policy in the area of people with disabilities has taken several forms over a span of decades. Among the actions taken are the institution of preferred source and set-aside programs that, among other features, favor government purchases, where appropriate, from vendors whose workforces are composed of special populations, including individuals who are blind, have other disabilities, have veteran status, or are in the correctional services system.¹³

New York's preferred source activities are overseen by a State Procurement Council. Among the providers that are involved in the provision of commodities and services are New York State Industries for the Disabled, Inc. (NYSID); and Industries for the Blind of New York State, Inc.¹⁴

Community rehabilitation programs across the State have been active with NYSID for more than three decades. NYSID assists agencies in

¹² See P. Dowse, J. Wise, *Workcenter Transformation Plan for Action in 2010* (December 31, 2009) (NYSRA).

¹³ New York's preferred source policy is codified in Section 162 of the State Finance Law. The statute grants preferred status to, among others, not-for-profit agencies that employ people who are blind or who otherwise have "severe disabilities." Preferred status exempts these agencies from certain bidding and procurement rules that would otherwise apply to government purchases of commodities or services. See State Finance Law Section 162 (1), (2); Section 163. For a general overview of the state's purchasing rules, see generally State Finance Law Article 11.

¹⁴ Also part of the preferred source program, with oversight by the State Office of General Services as well as the State Education Department, is Corcraft, Inc., of the State Department of Correctional Services. (See Office of General Services, List of Preferred Sources, April 2010, viewable at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pplist.pdf>).

procuring contracts with state and local governments that involve the provision of services to the state its government subdivisions through the preferred source process noted above and governed by Article 11 of the State Finance Law.

The amount of this preferred source activity is not insignificant: For the year 2008, NYSID worked with community rehabilitation programs on 1,327 contracts that involved 7,385 total jobs, 3,653,406 hours worked, and wages of just less than \$41 million.¹⁵

With this volume of work being done through community rehabilitation programs, many of whom operate work centers, it is clear that transformational issues when it comes to work centers must be considered with deliberation, thought, and an eye toward preserving a system that produces commodities and services in a program that is a source of pride for workers, a social “good” in that it demonstrates productivity of individuals who may have certain disabilities, and an enterprise that does these things while also containing costs to governments and, in turn, state and local taxpayers.

On the federal level, procurement services are also overseen by an organization that has been in existence for some time. Created in 1974, NISH, along with National Industries for the Blind, is one of the two agencies recognized by the Committee for Purchase From People Who are Blind or Have Severe Disabilities – a federal government agency – in the federal level preferred source program governed by what is now known as the AbilityOne program.¹⁶

Today, by providing employment opportunities to more than 40,000 people, the AbilityOne Program is the largest single source of employment for people who are blind or have other severe disabilities in the United States. More than 600 participating nonprofit organizations employ these individuals and provide quality goods and services to the Federal Government.¹⁷

As with New York and NYSID and IFB, then, it is clear that the federal government, too, has created a substantial network of job opportunities,

¹⁵ *NYSID Annual Report* (2009) at 4, viewable at www.nysid.org

¹⁶ AbilityOne is the current name for a program that was previously known as JWOD, an acronym tracing to the program’s creation as part of what was known as Javits-Wagner-O’Day Act. This act, codified at 41 US section 46, et.seq., was enacted by Congress in 1971 through efforts of New York Senator Jacob Javits, whose work expanded a 1938 version of the law known as Wagner-O’Day. (See http://www.abilityone.gov/laws_regs/law_regs.html (Committee for Purchase, etc.) (2010))

¹⁷ See *About NISH*, viewable at www.nish.org

work product and government efficiencies through work center operations that play a significant role in the employment of people with disabilities.

Policy: Section 14c, Fair Labor Standards Act

As noted earlier, the Fair Labor Standards Act contains a provision, known as Section 14(c) of the FLSA, which applies to work center operators who have been certified under federal law to run center-based employment programs.¹⁸

Although this federal statute permits wages to be paid, in some cases, at less than the minimum wage rate, it is not the case that all center-based employment programs actually pay at that rate. Indeed, “the reality is that, consistent with the Fair Labor Standards Act, center-based programs pay their workers a range of wages commensurate with their productivity.”¹⁹

Thus, workers in center-based settings may be paid less than the federal minimum wage, above the federal minimum wage but less than the prevailing wage, at or above the prevailing wage, etc. That Section 14(c) is perceived as meaning that workers with disabilities in center-based employment are all paid less than minimum wage is, simply a “misperception” and not the “reality.”²⁰

In any case, the rationale for Section 14(c) is one that looks to encourage, rather than exploit, people with disabilities in the workplace. The statute is intended to prevent the curtailment of opportunities for employment. This is because, in the marketplace, employers would surely not provide work to those whose disabilities mean they may not be able to meet productivity standards, even with “reasonable accommodations.”²¹ The special minimum wage policy of the statute thus provides employers, including community rehabilitation programs, with the flexibility needed to employ hundreds of thousands of individuals who might otherwise not enjoy the benefits of work were that flexibility not available.²²

¹⁸ See *supra*, note 6.

¹⁹ See ACCSES Position Paper analyzing disability employment issues that include center-based employment (ACCSES) (2009).

²⁰ *Id.*

²¹ See discussion of the Americans with Disabilities Act, *infra*.

²² Approximately 425,000 workers with disabilities nationwide receive special wages because of difficulties in meeting productivity standards, according to the Government Accountability Office (GAO), as quoted in ACCSES Position Paper, *supra*, note 19.

Policy: The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was enacted in 1990 and remains perhaps the most significant legislation relating to various rights of people with disabilities to be protected from discrimination.²³ Included among the rights delineated in the act are employment accommodations for people with disabilities²⁴ as well as provisions regarding protections in “public services”²⁵ as well as “public accommodations”.²⁶

The ADA is significant in numerous ways. Notable, however, is that the ADA, though it followed other similar statutes that sought protection for certain populations, marked the first time that the Congress affirmatively described segregation as a form of discrimination, as well as making statutory reference to discrimination present in the area of institutionalization.²⁷

While extensive discussion of the ADA is not necessary for the mission of this paper, the statute, as the most extensive and expansive expression of federal policy in the areas of discrimination against people with disabilities – including employment – it is clear that the spirit of the statute and the energies expended in bringing it to fruition must be weighed when considering policy choices yet to come regarding employment models and any transformative efforts that may be undertaken by government or the private sector.

Policy: *Olmstead v. LC*

The United States Supreme Court case of *Olmstead v. LC*,²⁸ like the ADA, is instructive in the study of public policy concerning areas relating to people with disabilities in American society.

In *Olmstead*, the Georgia Commissioner of Human Resources was petitioned by two women, described as “mentally retarded” by the Court (with one of them also having a mental health diagnosis of schizophrenia) to have them removed from institutions and moved to more integrated settings. In both cases the women had been found by their clinical

²³ The ADA is codified at 42 USC section 1201, et. seq.

²⁴ 42 USC sections 12111-12117

²⁵ 42 USC sections 12131-12134

²⁶ 42 USC sections 12181-12189

²⁷ See 42 USC section 12101(a)(2), (3), (5). Earlier legislative efforts included the Rehabilitation Act of 1973, 87 Stat. 355, 29 U.S.C. § 701 et seq. (1976 ed.), and the Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486, 42 U.S.C. § 6001 et seq. (1976 ed.), enacted in 1975

²⁸ 527 US 581 (1999)

treatment professionals to be suited to community settings rather than institutionalization.²⁹ Both women had indicated an interest in being moved to more integrated settings but had been refused.³⁰

The women argued that, once their clinical professionals had declared them fit for more integrated community settings, the failure to move them to such an environment constituted a violation of the Title II of the ADA. The State argued that discrimination had not occurred on the basis of disability, but for lack of state resources to move the women. The court rejected this argument.³¹ In addition, the state's argument that the federal Medicaid statute contained a policy preference for institutionalization (presumably because of reimbursement methodologies) was also rejected.³²

The Olmstead finding that "qualified individuals" must be integrated if such a move would involve a "reasonable modification" has been a strong policy statement for deinstitutionalization and "most-integrated setting" policy across the nation. But there is another side to the Olmstead coin. The court expressly noted that the obligation toward more integrated settings is not absolute. For example, were a move toward a more integrated setting mean a fundamental change or alteration:

The State's responsibility, once it provides community based treatment to qualified persons with disabilities, is not boundless. The reasonable-modifications regulation speaks of "reasonable modifications" to avoid discrimination, and allows States to resist modifications that entail a "fundamenta[l] alter[ation]" of the States' services and programs.³³

In addition, the court in Olmstead also emphasized that "nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings."³⁴ Settings must be appropriate for the individual, the court indicated, noting that a key component of any Olmstead analysis must be whether the individual is qualified (and cleared by

²⁹ 527 US 581, 593

³⁰ The court noted that the record indicated that the regional hospital where one of the women was institutionalized had sought at one point to remove her to a homeless shelter, but this effort was opposed by her attorney and the move did not occur. *Id.*

³¹ The court found that it was likely moving the women to community setting would cost less, not more. 527 US at 595, affirming a lower court finding.

³² See 527 US at 601. The court expressly found that the existence since 1981 of the Home and Community Based Waiver feature of Medicaid was clearly a refutation of the institutional bias argument.

³³ 527 US 581, 603 (citations omitted)

³⁴ 527 US 581, 601-602.

professionals). Absent such “eligibility” or “qualification,” the court said, “it would be inappropriate to remove a patient from the more restrictive setting.”³⁵

In the wake of *Olmstead*, there has been much discussion over what it means when it comes, at the least, any legal obligations under the ADA to place individuals in the most integrated setting. There seem to be several factors that must be weighed when making this determination.

First, the person must be assessed to be “qualified” or “suitable” for such a setting. Second, the person’s desire to be in such a setting must be considered. Third, policymakers must weigh whether accomplishing the integrated setting goal will involve a “reasonable modification” to a program (in which case there is not impediment to making the change) or whether the contemplated setting would actually mean a “fundamental alteration” to the program (in which case there is no violation of the ADA or the spirit of *Olmstead* if the setting is not changed.)

This reasonable modification/fundamental alteration analysis is a key aspect of the post-*Olmstead* era when assessing existing systems, or working to design new systems.

As noted by leading legal experts in the area of health care, Medicaid and the law, there is a “tension between the goal of community integration on the one hand, and the “fundamental alteration versus reasonable modification” dichotomy on the other, that lies at the heart of much of the ADA litigation that has taken place over the years.”³⁶

State Response: Most Integrated Setting Coordinating Council

Within three years of the *Olmstead* decision, one of New York State’s responses was to create the Most Integrated Setting Coordinating Council (MISCC).³⁷

In creating the MISCC, the Legislature expressly found that “while New York provided community supports for people of all ages with disabilities, it had no centralized mechanism in place to determine whether or not

³⁵ 527 US at 581, 602. The court also noted, with some emphasis, that moving an individual to a more integrated setting was no federal requirement that community-based settings be imposed on individuals who do not desire it (see 527 US at 602).

³⁶ See S. Rosenbaum, J. Teitelbaum, *Olmstead at Five: Assessing the Impact* (Kaiser Commission on Medicaid and the Uninsured)(2004) at 4. The authors are affiliated with the Department of Health Policy in the School of Public Health and Health Services at The George Washington University Medical Center in Washington, DC.

³⁷ See Chapter 551, Laws of 2002.

people of all ages with disabilities are residing in the most integrated setting.”³⁸

The MISCC presented the Legislature and the Governor with its first formal report in late 2006. The report presented the Council’s plan to ensure that New Yorkers with disabilities receive services in the most integrated setting appropriate to their needs.³⁹

At its inception, the MISCC was chaired by Thomas Maul, then-commissioner of the State Office of Mental Retardation and Developmental Disabilities (OMRDD). Since 2007, the MISCC has been chaired by Diana Jones Ritter, successor to Maul as OMRDD Commissioner.⁴⁰

As MISCC chair, Commissioner Jones Ritter has established various committees to study and report on various aspects of disabilities policy. These committees include Transportation, Housing and Employment.

The MISCC meets quarterly in public sessions to discuss progress and studies in the various areas and to hear input from members of the public. In November 2009, the first Draft 2010-11 Draft Plan was published was published by the MISCC.⁴¹

The Draft Plan includes a section on Employment that contains goals, objectives and certain “Employment Values.” As articulated in the Draft Plan Employment section, those are:

1. All individuals with disabilities can work when the proper supports and services are available.
2. Work is a normative and expected activity for working-age individuals with disabilities and should be the first consideration

³⁸ *Id.*

³⁹ See, *MISCC 2006 Annual Report: Addressing the Service and Support Needs of New Yorkers with Disabilities: Report of the Most Integrated Setting Coordinating Council.* (November 20, 2006)

⁴⁰ State agencies on the MISCC are the Office of Mental Health, Department of Health, State Office for the Aging, Office of Mental Retardation and Developmental Disabilities, Education Department, Office of Alcoholism and Substance Abuse Services, Division of Housing and Community Renewal, Department of Transportation, Office of Children and Family Services, and the Commission on Quality of Care and Advocacy for Persons with Disabilities. Nine other public members are appointed to the Council: three individuals with disabilities, three individuals with expertise in the field of community services for people of all ages with disabilities, and three individuals with expertise in, or recipients of services available to, senior citizens with disabilities.

⁴¹ *The Draft Plan of the MISCC*, including plans from the various subject areas, can be viewed at http://www.omr.state.ny.us/MISCC/hp_miscc_DRAFT_2010-11.pdf

when providing supports and services for people with disabilities. Integrated work in the community is the preferred option over segregated day programs.

3. New York State policy needs to shift to a “make work pay” paradigm that promotes integrated employment supporting greater financial independence while at the same time creating safety nets to ensure ongoing access to essential benefits and services that make work possible and enable individuals to achieve real gains in economic self-sufficiency.⁴²

Among other things, the Draft Plan calls for OMH and OMRDD to work to increase employment opportunities for people with disabilities who fall within the ambit of those two state agencies. Specifically, the Plan mentions identifying persons who are transitioned to integrated work settings from such settings such as sheltered workshops, supported employment, day services and other venues.

In addition, the Plan calls for agencies like OMRDD to increase the number of community businesses and partners who employ people with disabilities in integrated settings.⁴³

Moreover, the MISCC Draft Plan also sets as a goal to “through the Medicaid Infrastructure Grant (MIG), develop a five year cross agency strategic employment plan and establish a disability employment platform for New York State.”

Discussion of Considerations:

The foregoing aspects of context, policy and state response are all critically important to framing the debate over employment of people with disabilities as we move further into the 21st Century.

While there may be general agreement as to the goal of giving all people the opportunity to work – and to grant them the right to choose the setting in which they may most want to work – there are clearly tensions that can emerge from various policies.

And there are clearly lines that must be drawn in areas that are far from black and white.⁴⁴

⁴² See *Draft Plan of the MISCC* at 4-5 (November 2009).

⁴³ *Id.*

For example, the spirit of Olmstead, as articulated by many, is the concept of “most integrated setting.” But this must be qualified, since the setting must also, for obvious reasons, be one that is appropriate for the particular individual. Moreover, that setting must also be one that individual chooses; Olmstead seems to be clear in its reinforcement of the notion that one does not have to choose the most integrated setting.

The ADA is quite powerful in its articulation of a legislative policy that protects people with disabilities from discrimination in many areas of today’s society. But, like Olmstead’s tension between reasonable modifications versus fundamental alterations of programs, the ADA itself speaks in terms of “reasonable” accommodations.

Section 14(c) of the Federal Labor Standards Act seems to grant certain employers the flexibility necessary to ensure that people with disabilities, even those with so-called “severe” disabilities, have employment opportunities available to them. Yet, some believe that its provisions permitting sub-minimum wage scenarios should argue for its repeal.

The State of New York has embarked, through the MISCC, on a comprehensive study of policy that may result in concrete avenues to be pursued. The Draft Plan of the MISCC calls early and often for accommodations that are contemplated to move people into more integrated settings in all sorts of environments and areas of today’s society. There can be no mistaking the strength of the momentum of such recommendations, and no real quarrel with the goal of providing people with opportunities for independence, work, inclusion and life enrichment – just as NYSRA has articulated in its Mission Statement.

But all of these considerations result in myriad questions as we work to move forward. Undoubtedly some of these questions are complex, involve trying to meld different (and equally sincere) strategies for meeting shared goals.

While one can hardly imagine all the questions that emerge from even just those topics discussed in this paper, some of those that do appear would seem to include the following.

⁴⁴ As professors Rosenbaum and Teitelbaum indicate in regard to Olmstead, the case “is both profound and ambiguous, raising many questions even as it established broad safeguards for people with disabilities.” The authors note that many questions are left to federal and state policymakers as a result. S. Rosenbaum, J. Teitelbaum, *supra*, note 36, at 1.

What is the best way to ensure that all stakeholders can participate to forge, if necessary, new employment policies that support people with disabilities?

How do we reconcile the tensions that are inherent in the entire work opportunity discussion? As we look to transform work models, how do we deal with current models that are crafted to benefit people with disabilities (e.g., FLSA issues, preferred source/set aside programs)?

What does transformation mean when it comes to center-based employment, where current practices may be perceived as against the spirit of the most-integrated-setting-that-is-appropriate goal, but whose existence may work to advance other strong goals of increased employment of individuals with disabilities?

How does the transformation of work opportunities proceed in progressive fashion while at the same time ensuring that individuals are guaranteed full panoply of work-environment choices?

How do we best transform models of work opportunities in a fashion that guards against abandonment of current, if outdated, models before new models are ready to become part of the employment infrastructure?

NYSRA is committed to working on these issues with an eye toward fulfilling its mission, set out at the beginning of this paper. Our unique position provides us with the opportunity, and perhaps the obligation, to ask and try to answer these questions.

For more information, please contact:

NYSRA/RRTI

155 Washington Avenue – Suite 410

Albany, NY 12210

Phone: 518-449-2976

Fax: 518-449-2976

