

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

November 21, 2019

Dannette R. Smith, MSW  
Chief Executive Officer  
NE Dept. of Health and Human Services  
301 Centennial Mall South  
P.O. Box 95026  
Lincoln, NE 68509

Re: Nebraska's Draft Olmstead Plan Public Comment

Dear CEO Smith:

Nebraska's *Olmstead* plan, as written, fails to realize the objectives of the Nebraska legislature, or the vision of the Olmstead stakeholder advisory group, and will not meaningfully increase opportunities for community integration or remedy ongoing disability discrimination. Despite the involvement of a diverse group of stakeholders, including Disability Rights Nebraska, and the information, resources and consultation provided by the Technical Assistance Collaborative, the document the State has produced is an *Olmstead* plan in name only. It does not advance the goals of integration and meaningful community participation for Nebraskans with disabilities, and it is unlikely to protect the State from future litigation to secure its citizens' rights under the Americans with Disabilities Act.

Nebraska's Plan, as written, is not even close to meeting the basic elements that the U.S. Department of Justice (DOJ) and federal courts have said are required for *Olmstead* plans.<sup>1</sup> The plan's most egregious failings are the following:

- Absence of data to inform the development of measurable goals and benchmarks;

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<sup>1</sup> Civil Rights Division, U.S. Dep't of Justice, Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* 6-7 ¶¶ 12 ("What is an Olmstead Plan"), (June 22, 2011), available at [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm) (last visited November 18, 2019); *Frederick L. v. Dep't of Pub. Welfare (Frederick L. III)*, 422 F.3d 151 (3d Cir. 2005); *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 269-77 (E.D.N.Y. 2009) (DAI II); *Lane v. Brown*, 841 F. Supp. 2d 1199 (D. Or. 2012).

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- Failure to identify priority populations currently facing or at risk of unnecessary segregation;
- Failure to quantify the level of unmet need, so that meaningful targets for improvement can be established;
- Lack of focus on key substantive areas including competitive, integrated employment and supportive housing, and;
- Failure to draw from expert reports and technical assistance intended to guide the plan's development and implementation, most notably the absence of concrete short and long-term recommendations for remedying ADA violations.

We recommend the State work with its contractor to create a true comprehensive, effective, working *Olmstead* plan that increases opportunities for community integration and addresses ongoing discrimination of Nebraskans with disabilities.

Sincerely,



Eric A. Evans, Ph.D.  
Chief Executive Officer  
Disability Rights Nebraska

EAE/

cc: Nebraska Legislature Health and Human Services Committee  
nebraskaolmstead@tacinc.org