

**The Work Option for Individuals with Intellectual Disabilities:
The Obstacles and the Possibilities**

November 2012
University Legal Services
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University Legal Services

Since 1996, University Legal Services, Inc. (ULS), a private, non-profit legal service agency, has been the federally mandated protection and advocacy (P&A) program for individuals with disabilities in the District of Columbia (D.C.). Congress vested the P&As with the authority and responsibility to investigate allegations of abuse and neglect of individuals with disabilities. In addition, ULS provides legal advocacy to protect the civil rights of D.C. residents with disabilities.

ULS staff directly serves hundreds of individuals with disabilities annually, with thousands more benefiting from the results of investigations, institutional reform litigation, outreach, education and group advocacy efforts. ULS staff addresses client issues relating to, among other things, abuse and neglect, community integration, accessible housing, financial exploitation, access to health care services, discharge planning, special education, and the improper use of seclusion, restraint, and medication.

Methodology

In writing this report, ULS researched the laws, regulations, and policies relating to the employment, independence, and community integration of individuals with intellectual disabilities. ULS read numerous reports on the subject (see Appendix A).

ULS also met with the following providers: The Arc (April 4, 2012), Capitol Hill Supported Services Program (June 13, 2012), Goodwill of Greater Washington (September 7, 2012), Kennedy Institute (March 23, 2012), Metro Day (March 7, 2012), New Visions (February 24, 2012), Project Redirect (February 3, 2012), PSI Inc. (June 18, 2012), St. Coletta of Greater Washington – Adult Day Program in Virginia (October 12, 2012), and St. John’s Community Services (July 20, 2012). At each program, we spoke with the program directors and program managers to learn more about their programs. We also presented to the individuals participating in the programs to provide information about employment and their rights. Only one provider – Capitol Hill Supportive Services, Inc. – did not permit us to present to the individuals there. ULS also contacted Choices Unlimited, Creative Options and Employment, and National Children’s Center, but we were not invited to present.

Finally, ULS met with Laura Nuss, Director of Department on Disability Services, Cathy Anderson, Deputy Director of Department on Disability Services-Developmental Disabilities Administration, and Rebecca Salon, Manager of State Office on Disability Administration. Matthew Bachand, Deputy Director of Department on Disability Services-Rehabilitation Services Administration did not attend. We discussed our findings and asked them about their efforts to pursue employment opportunities and initiatives for individuals with intellectual disabilities.

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Executive Summary

For many people, a job is something that defines who we are. It gives us a meaningful place to go every day, a way to explore our interests, a means of earning money, and a way to be a part of our community. Yet too often, people with intellectual disabilities are not given this opportunity.

In response to this problem, ULS researched the laws and policies relating to employment opportunities for individuals with intellectual disabilities, requested records and information via a Freedom of Information Act (FOIA) request to the Department on Disability Services (DDS), visited day, prevocational, and supported employment programs for individuals with disabilities, and met with the leaders of DDS. In the course of this project, ULS met with many people and heard many stories about what was and was not working in D.C. Sally G., a fictional person, illustrates the complex myriad of barriers that can make it difficult for individuals in her position to find employment. The following is her story.

Sally G. has an intellectual disability that was diagnosed at an early age. As a child, she attended Mamie D. Lee where she had an Individual Education Plan (IEP). Yet as Sally G. grew older and her graduation date drew closer, no one helped her develop a transition plan. Sally G. recalled that while someone from Rehabilitation Services Administration (RSA) may have attended an IEP meeting, she never heard back from them. As such, Sally G. graduated, and someone directed her to the Developmental Disability Administration (DDA). Her DDA service coordinator determined that she would do best in a day program – painting pictures and doing crafts – and so she began attending.

Years later, Sally G. was still at her day program and had no work experience. She was tired of doing the same thing day after day; she wanted to make choices for herself and earn some money. Her day program was located in a big building that had few windows. She rarely left the building except for occasional outings, and she only went with people from the program. She rarely saw people without disabilities except for staff. Though most of the staff members were nice, they treated her like a child. She felt dissatisfied and frustrated. She wanted to live and be treated like an adult.

Sally G. was told by DDA that if she really wanted a job, she would need to go to RSA for assistance. With the help of her family, Sally G. contacted RSA and scheduled an intake meeting. At the intake meeting, the Vocational Rehabilitation (VR) Specialist thought that Sally G.'s disability might be so severe that she could not benefit from RSA services. Weeks went by and Sally G. never heard from anyone. She tried to call the VR specialist multiple times, but no one ever returned her call. Months went by.

Eventually, someone – a different VR specialist – contacted Sally G. and notified her that she was ineligible for RSA services. She had never had a vocational assessment or a trial work evaluation. By this time, Sally G. was discouraged and was not sure what to do next. She felt as though she were right back where she started. Her service coordinator explained, however, that she could try a prevocational program or a supported employment program through DDA. Sally G. chose a program and is currently learning job skills and looking for integrated work in the

community. Unfortunately, she is finding that it is hard to find a job and that potential employers lack incentives to hire people with disabilities.

Sally G.'s experience is similar to that of many individuals who attempt to find employment. In the fiscal year 2011, according to a recent Freedom of Information Act (FOIA) request, only **ten** individuals receiving DDA services were found eligible for RSA services.¹ In contrast, 102 individuals already receiving DDA services were found not eligible for RSA services.² Only **five** individuals received a vocational assessment³ and only **ten** individuals were given a trial work experience.⁴ Meanwhile, DDA served 567 individuals through day habilitation services,⁵ 406 individuals through prevocational services,⁶ but only 265 individuals through supported employment services from DDA providers.⁷ Of these 265 individuals, many do not have jobs in the community. Rather, they spend their day at a segregated facility working on "job development" and "training."

In examining the DDS system as it currently exists and speaking with individuals like Sally G., ULS identified the following of problems:

- (1) Too many individuals who receive services from DDA are served in a segregated environment and are never provided with the opportunity to work or learn about work in a natural environment.
- (2) RSA is difficult for individuals to navigate due to its lack of a formal application and long wait times for eligibility determinations, vocational assessments, and other services.
- (3) RSA and DDA do not communicate or collaborate effectively.
- (4) RSA does not provide adequate services to individuals with intellectual disabilities.
- (5) There is limited use of assistive technology by individuals with intellectual disabilities.
- (6) There are few incentives or supports to encourage employers to hire individuals with intellectual disabilities.

ULS would like to draw attention to these issues and see them addressed at the policy-level. Specifically, ULS would recommend the following:

- (1) Develop policies that promote "Employment First" and require day programs, prevocational programs, and supported employment programs to take an individualized, job-oriented approach to providing these services in an integrated setting.

¹ FOIA Officer, Department on Disability Services, Response to ULS FOIA Request July 18, 2012, Question 20 (August 24, 2012) [hereinafter FOIA Request].

² *Id.* at Question 19.

³ *Id.* at Question 23. *See also* 34 C.F.R. § 361.48(b) for definition of "vocational assessments."

⁴ *Id.* at Question 24. *See also* 34 C.F.R. § 361.42(e) for definition of "trial work experience."

⁵ *Id.* at Question 4.

⁶ *Id.* at Question 7.

⁷ *Id.* at Question 11.

- (2) Develop and publish an application for RSA services that gives notice to the individual of the 60-day period and reduce wait times at RSA for eligibility determinations, vocational assessments, and other services.
- (3) Improve communication and teamwork between RSA and DDA, so that individuals are better served according to their individual needs.
- (4) Improve employment outcomes for individuals receiving services from RSA by increasing the use of customized employment and developing close ties to the business community.
- (5) Encourage and fund the use of assistive technology that is available for individuals with intellectual disabilities.
- (6) Provide businesses with tax incentives, grants, training, and opportunities for collaboration with providers and state agencies to encourage them to hire individuals with disabilities.

ULS has created this report for advocacy groups, government agencies, service providers, family members, and individuals with disabilities alike. It is meant to serve as a resource for future advocacy work and to spur change. D.C. must improve employment opportunities and outcomes for individuals with intellectual disabilities. To do that, it must change.

Part I: Introduction

“We want to work!”

This is what we heard over and over again when ULS presented to individuals in day programs, prevocational programs, and supported employment programs in the District of Columbia. Some individuals we spoke with already had jobs, and they proudly told us what they did and where they worked.

“I work at Safeway!”

“I work at the cinema!”

“I work at a school!”

Wherever ULS went, it was clear that those individuals who had jobs were proud of them. Jobs provide a sense of purpose, an identity, an income, and a sense of community. The individuals who had them were eager to tell ULS where they worked and what they did.

Unfortunately, ULS found that such stories were not common, but rather exceptions to an otherwise bleak employment scene. ULS met many individuals who had never worked and were not on track to get a job. ULS met individuals who had worked before, but were now jobless and had to return to day programs, prevocational programs, and supported employment programs. ULS met with individuals who were trying to figure out how to navigate RSA, as well as individuals in day programs who had never been introduced to the RSA system.

Part II: The Process

(A) The Department on Disability Services

In the District of Columbia, individuals with intellectual or developmental disabilities may receive services from the Department on Disability Services (DDS). Established in 2007, DDS is a Cabinet-level agency within the executive branch of D.C. By law, it is tasked with following responsibilities:

- (1) Leading the reform of the District’s intellectual and developmental disability system[.]
- (2) Ensuring that District laws, regulations, programs, policies, and budgets are developed and implemented to promote inclusion and integration, independence, self-determination, choice, and participation in all aspects of community life[.]
- (3) Promoting the well-being of individuals with developmental disabilities throughout their life spans[.]⁸

Prior to 2007, individuals with intellectual disabilities received services from the Mental Retardation and Developmental Disabilities Administration (MRDDA)⁹ or the Rehabilitation

⁸ D.C. ST § 7-761.03(1-3).

Services Administration (RSA), two separate and distinct agencies in D.C. With the establishment of the new agency, DDS became responsible for overseeing and providing MRDDA and RSA services.¹⁰ The idea was that it would be easier to coordinate the two agencies and to provide individuals with disabilities more effective services if the two agencies were located in one department.

In 2012, five years after the creation of DDS, DDS requested funding for a new sub-agency, the State Office of Disability Administration (SODA). The stated purpose of SODA is to address reporting requirements, planning, research, program development, policy analysis and the preparation of reports and recommendations.¹¹ It is not intended to be involved in direct services delivery or operations of the services delivery.¹² Specifically, it is responsible for the following functions: (1) community and stakeholder relations, and customer services; (2) strategic planning, program development, and research, (3) legislation and policy analysis, and (4) grants and partnerships.¹³ SODA is now in its first year of existence.

(B) The Rehabilitation Services Administration

(1) Procedures and Determinations

The establishment of a federal Rehabilitation Services Administration is mandated by federal law.¹⁴ Its purpose is many-fold and includes empowering individuals with disabilities to “maximize employment, economic self-sufficiency, independence, and inclusion and integration into society[.]”¹⁵ In D.C., the local RSA regulations closely parallel the federal mandate.¹⁶

By law, the local RSA must conduct a review and assessment to determine eligibility and priority for services.¹⁷ Eligibility determinations are to be made within sixty days of the application date, unless there are exceptional and unforeseen circumstances.¹⁸ When a Vocational Rehabilitation (VR) specialist believes that, because of the severity of the individual’s disability, the individual cannot benefit from RSA services and would therefore be ineligible for them, the VR specialist must, even then, provide an opportunity for a trial work experience.¹⁹ The local RSA cannot deny an individual services based on the severity of the

⁹ MRDDA was later renamed and the subsequent statutes amended to read DDS or DDA.

¹⁰ D.C. ST § 7-761.08(a-b).

¹¹ Council of the District of Columbia, Committee on Human Services – Chairman Jim Graham, Department on Disability Services, Responses to FY 2013 Budget Hearing Questions, 8 (April 12, 2012).

¹² *Id.* at 9.

¹³ *Id.* at 10-11.

¹⁴ 29 U.S.C.A. § 702 (mandating that a federal Rehabilitation Services Administration be created with a Commissioner who has substantial experience in rehabilitation and rehabilitation program management).

¹⁵ 29 U.S.C.A. § 701(b)(1).

¹⁶ D.C. Code § 32-331.

¹⁷ 34 C.F.R. § 361.42 (d).

¹⁸ 34 C.F.R. § 361.41(b)(1)(i). Because there is no formal application process at D.C. RSA, there is no standard for when the clock starts to run. This can create delays that are not necessarily reflected in the data.

¹⁹ 34 C.F.R. § 361.42(e). *See also* 29 D.C.M.R. § 103.13.

disability without providing the opportunity for supported employment, on-the-job training, and other experiences using realistic work settings *with supports* (emphasis added).²⁰

In order to deny services to an individual, the local RSA must produce “clear and convincing evidence” that the disability is too severe for him or her to benefit from VR services.²¹ As such, the trial work experiences “must be of sufficient variety” and “over a sufficient period of time” for the local RSA to make the appropriate determination.²²

Once the local RSA determines that an individual is eligible for VR services, the VR specialist must develop an Individual Plan for Employment (IPE). The IPE must include, among other things, the individual’s employment goals and means to achieve them.²³

The local RSA may close a client’s case for numerous reasons.²⁴ If an individual maintains a successful employment outcome for ninety days or more, for example, the case is closed as rehabilitated.²⁵ If the individual is determined to be incapable of achieving an employment outcome because of the severity of the individual’s disability, then the local RSA may close the case based on the individual’s ineligibility.²⁶ If the local RSA closes a case based on ineligibility, the local RSA must “refer the individual to other agencies and programs, including, when appropriate, its independent living services program.”²⁷

In addition, the local RSA must inform the individual of his or her right to due process.²⁸ Not only may an individual appeal a denial of services, an individual may appeal “any determination concerning the furnishing [...] of vocational rehabilitation services” with which an individual is dissatisfied.²⁹ The individual has a right to “any or all” of the following options:

Individualized Employment Plan (IPE) Components

- Employment outcome, including the employment setting
- Specific vocational rehabilitation services needed to achieve the employment outcome
- Entities that will provide the vocational rehabilitation services
- Methods available for procuring those services

34 C.F.R. § 361.45(d)(2)(i-iii)

²⁰ 34 C.F.R. § 361.42(e)(2)(iv). *See also* 29 D.C.M.R. § 103.13(b)(4).

²¹ 34 C.F.R. § 361.42(e)(2)(iii)(B). *See also* 29 D.C.M.R. § 103.13(a).

²² 34 C.F.R. § 361.42(e)(2)(iii). *See also* 29 D.C.M.R. § 103.13(b)(3).

²³ 34 C.F.R. § 361.45(d)(2).

²⁴ 29 D.C.M.R. § 117.1 (listing the circumstances under which a client’s case may be closed).

²⁵ 29 D.C.M.R. § 117.1(a).

²⁶ 29 D.C.M.R. § 117.1(f).

²⁷ 29 D.C.M.R. § 117.5.

²⁸ 29 D.C.M.R. § 136.

²⁹ 29 D.C.M.R. § 135.2.

- Informal administrative review meeting with the division chief of Vocational Rehabilitation Services or Services for the Blind;
- Mediation, and;
- Impartial due process hearing before the D.C. Office of Administrative Hearings.³⁰

(2) RSA Services Available

The local RSA’s website lists four major programs:

- (1) *Independent Living Program*: assists eligible individuals with disabilities to live as independently as possible by coordinating a variety of services necessary to perform all activities of daily living;
- (2) *Randolph Sheppard Vending Facility Program*: provides entrepreneurial opportunities to individuals with visual impairments;
- (3) *Supported Employment (SE) Program*: assists clients who require on-going supports to maintain competitive employment and access the necessary services and support; and
- (4) *Vocational Rehabilitation Program*: provides individually tailored service and job training to people with disabilities who want to work.³¹

The local RSA “supported employment program” consists of three primary components:

- (1) *Job Development*: matching the individual to the job, communicating with family and employers where needed on behalf of the individual, and assisting in the arrangement of transportation;
- (2) *Job Placement, Training, and Support*: assisting the individual in both acquiring the production skills and general worker traits needed by the employer and in developing positive work relationships with the employer and co-workers;

³⁰ *Id.*

³¹ Department on Disability Services, Rehabilitation Services, Programs Offered, *available at* <http://dc.gov/DC/DDS/Rehabilitation+Services+Administration/About+RSA/Programs+Offered?nav=2&vgnextrefresh=1> (last accessed October 24, 2012). *See also* 29 D.C.M.R. § 100.2.

Vocational Rehabilitation Services Include the Following:

- Physical and mental restoration services
 - Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials
 - Vocational rehabilitation services to family members
 - Interpreter and reader services
 - Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services
 - Supported employment services
 - Maintenance
 - Personal assistance services
 - Post-employment services
 - Occupational licenses, tools, equipment, and supplies
 - Transitional services
 - Transportation related to VR services
 - Technical assistance for self-employment
 - Other goods and services determined necessary for the individual with a disability
-

29 U.S.C.A § 723; 29 D.C.M.R. § 113.2

(3) *Job Retention*: building employer and co-worker supports for the client, maintaining a job site presence consistent with the individual's needs, and assuring support is accessible to the employer, family or individual where needed.³²

An individual with a “most significant disability” may receive supported employment for 18 months, and then other agencies should provide long-term support.³³

“Vocational rehabilitation services” are much broader and include “any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.”³⁴ The federal law holds RSA to a high standard in its delivery of services and indicates that services should be based on the needs and wants of the individual – not on what is available or “this is how we usually do it.” The law includes an extensive list of services that should be made available.³⁵

³² Department on Disability Services, Rehabilitation Services Administration, Policies, VI. Services, Supported Employment, 36, *available at* <http://dc.gov/DC/DDS/Rehabilitation+Services+Administration/About+RSA/Policies/Section+VI+Services> (last accessed October 24, 2012).

³³ *Id.* Extensions are allowed on a case-by-case basis.

³⁴ 29 U.S.C.A. § 723(a); 29 D.C.M.R. § 113.1.

³⁵ 29 U.S.C.A. § 723(1-18); 29 D.C.M.R. § 113.2.

(C) The Developmental Disabilities Administration

The Developmental Disabilities Administration (DDA) is another agency within DDS. It oversees and coordinates services for individuals with intellectual disabilities. Most services are provided through the use of the Home and Community-Based Services (HCBS) Waiver, which is a Medicaid program that pays for community-based services for eligible individuals with intellectual or developmental disabilities. The HCBS Waiver allows individuals to live in the community rather than in an Intermediate Care Facility for individuals with intellectual disabilities (ICF-ID) or an institution.³⁶ Generally, individuals who live in ICF-IDs cannot attend prevocational or supported employment programs; they can only attend day treatment programs.³⁷ According to the director of DDS, however, “this is about to change.”

Individuals who receive DDA services through the HCBS Waiver can choose day habilitation, prevocational, or supported employment services. Day habilitation services or day programs are meant to “provide opportunities for socialization and leisure activities in the community.”³⁸ They are to include “activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences.”³⁹ The reimbursement rate for day habilitation services is currently \$15.80 per hour under the HCBS Waiver.⁴⁰

Prevocational services are “designed to prepare a person for paid or unpaid employment, but not to develop a specific job skill.”⁴¹ The reimbursement rate for prevocational services is currently \$15.60 per hour under the HCBS Waiver.⁴² According to the regulations, “[t]o be eligible for prevocational services, DDA must submit a vocational assessment within the first

*Day Habilitation Services
Include the Following:*

- Training and skills development that increases participation in community activities and fosters independence
- Training in the safe and effective use of one or more modes of accessible public transportation
- Coordination of transportation to participate in community activities necessary to carry out this service

29 D.C.M.R. § 945.5 (a, d, e)

³⁶ Department on Disability Services, HCBS Waiver, available at <http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/About+Our+Services/Home+and+Community+Based+Services+Waiver+Program/Waiver+Service+Descriptions+and+Rules/A.+HCBS+waiver+29+DCMR+Ch+19+from+2008> (last accessed July 2, 2012).

³⁷ FOIA Request, *supra* note 1, at Question 12. There are 3 individuals who live in an ICF-ID and receive supported employment services.

³⁸ 29 D.C.M.R. § 945.5(c).

³⁹ 29 D.C.M.R. § 945.5(b).

⁴⁰ 29 D.C.M.R. § 945.16.

⁴¹ 29 D.C.M.R. § 920.3.

⁴² 29 D.C.M.R. § 920.18.

ninety days of participation.”⁴³ Thus it appears that this assessment should take place quickly upon entry to the system. Moreover, DDA does not limit the time an individual may receive prevocational services.

Similar to supported employment through RSA, the HCBS Waiver funds supported employment services.⁴⁴ Supported employment services under the HCBS Waiver consist of the following:

- (1) Intake and assessment;
- (2) Job placement;
- (3) Job training and support; and
- (4) Follow-along services.⁴⁵

The jobs must pay at least minimum wage consistent with the Fair Labor Standards Act and be in an integrated work setting.⁴⁶ It may be full-time or part-time employment.⁴⁷ Under the HCBS Waiver, the reimbursement rate for intake and assessment, job placement, and job training and support activities is \$43.00 per hour when performed by a professional and \$25.30 when performed by a paraprofessional. Group supported employment is reimbursed at \$16.40 per hour.⁴⁸ However, an individual can only receive supported employment services under the HCBS Waiver if he or she has gone through the hoop of applying for RSA services, and RSA has found the individual to be ineligible.⁴⁹

It is important to note, however, that on November 19, 2012, the current HCBS Waiver will expire, and a new HCBS Waiver will begin the next day. While similar to the current waiver, it will contain noticeable differences. Instead of offering prevocational services, the new waiver will provide “employment readiness” services. At this time, it is not clear how these services will be different from prevocational services. However, it is meant to further advance vocational skills. In addition, there will be a new type of day support, called “individualized day supports.” Individualized day supports are supposed to provide individuals with low staffing ratios in a non-facility based program that emphasizes community integration.

This report is based on the HCBS Waiver as it currently exists. ULS acknowledges that while aspects of the DDA day support services will change under the new waiver, RSA services

⁴³ 29 D.C.M.R. § 920.2. However, it is not clear from the regulations who must submit the assessment or to whom the assessment must be submitted.

⁴⁴ 29 D.C.M.R. § 929.1.

⁴⁵ 29 D.C.M.R. § 929.4.

⁴⁶ 29 D.C.M.R. § 929.3.

⁴⁷ *Id.*

⁴⁸ 29 D.C.M.R. § 929.10 (intake and assessment); 29 D.C.M.R. § 929.12 (job placement); 29 D.C.M.R. § 929.14 (job training and support); and 29 D.C.M.R. § 929.18 (group supported employment).

⁴⁹ 29 D.C.M.R. § 929.5. (“Each person receiving supported employment services shall submit documentation that demonstrates services are not otherwise available pursuant to the Acts referenced above [Rehabilitation Act of 1973], for inclusion in his or her record and individual habilitation plan (IHP) and individual support plan (ISP) and Plan of Care.”)

will not. In addition, it will take time to realize the full effects of the new waiver on DDA day support services.

Part III: The Services

In order to gain more insight into RSA's supported employment programs and DDA's supported employment, prevocational, and day habilitation programs, ULS visited ten programs.⁵⁰ Some of those we visited provided both RSA and DDA services, while some provided only one or the other.⁵¹ ULS developed a monitoring tool to elicit the following information from the providers we met. At each program, we sat down with the program director or manager and discussed the programs. The providers that we met gave generously of their time and tried to answer our many questions. We thank them for their cooperation.

(A) Supported Employment

(1) Where do people work?

According to the providers and individuals with whom ULS spoke, individuals in supported employment programs work at a number of different businesses. These businesses include: CVS, Safeway, Forman Mills, Shoppers Food Warehouse, Wal-Mart, IHOP, Regal Theater, George Washington University, hardware stores, food warehouses, clothing stores, office buildings, hospitals, schools, and the federal government.

(2) What do people do?

Although individuals work at a number of different places, the types of jobs they find are more limited. Some individuals have jobs as elevator operators, dressing room attendants, and greeters. Many of the jobs tend to be janitorial in nature or involve stocking shelves or shredding paper.

More creative providers have developed artistic options. For example, New Vision has given individuals the opportunity to produce films. Although we did not visit the program, ULS is aware of the fact that Art Enables provides artists with income for producing art work, including an annual calendar.

⁵⁰ The Arc of Washington, DC, Capitol Hill Supportive Services, Goodwill of Greater Washington, Kennedy Institute, Metro Day, New Visions, Project Redirect, PSI Inc., St. Coletta of Greater Washington, and St. John's Community Services provide supported employment services.

⁵¹ Individuals also find jobs through other contractors such as AbilityOne and its subsidiary organizations, NISH, Melwood, and Chimes. AbilityOne is a federal initiative that awards government contracts to community-based, non-profit agencies that train and employ people with disabilities. NISH is one of two non-profits that the AbilityOne Commission has designated to provide assistance to non-profit agencies with AbilityOne Contracts. Melwood, a second non-profit agency in Upper Marlboro, Maryland, also serves some DC clients. See AbilityOne, FAQs, available at http://www.abilityone.org/about_us/faqs.html#2 (last accessed July 31, 2012). Note: ULS did not visit any of these programs.

*Day Programs,
Prevocational Programs,
Supported Employment
Programs ULS Visited*

- The Arc (April 4, 2012)
- Capitol Hill Supported Services Program (June 13, 2012)
- Goodwill of Greater Washington (September 7, 2012)
- Kennedy Institute (March 23, 2012)
- Metro Day (March 7, 2012)
- New Visions (February 24, 2012)
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- St. Coletta of Greater Washington – Adult Day Program in Virginia (October 12, 2012)
- St. John’s Community Services (July 20, 2012)
- ULS also contacted Choices Unlimited, Creative Options and Employment, and NCC, but was unable to elicit a specific time to meet.

Until individuals find jobs, however, individuals in supported employment programs focus on job development and general vocational skills. While the jobs themselves are in the community, the job development and skill-building portion of the supported employment program are often in a segregated environment.

(3) How do people find work?

Providers have different ways of developing ties with the business community, which helps them to find jobs for individuals. Sometimes it is the program manager who looks for jobs and reaches out to the business community; sometimes a specific staff member is tasked with developing job opportunities; and sometimes job coaches themselves must search for job opportunities. These people work with employers directly to assist and encourage them to hire individuals with disabilities. Program directors almost unanimously stated that they have to rely on personal relationships with employers, as opposed to tax breaks or other financial incentives, to help individuals find work.

In addition, providers reported that some jobs are created by volunteering or unpaid internships. Nearly all of the providers that we visited had some sort of volunteer program in which individuals volunteered at places such as nursing homes, soup kitchens, homeless shelters, churches, the Soldiers Home, the Mission of Love, and So Others Might Eat (SOME). Some have internships within the federal government. The volunteer programs are structured differently. At least one of the providers sets a limit on the duration of an internship, while other providers leave it up to the individual.

At least one provider explained that sometimes the businesses or organizations want an individual to volunteer for a while, but then do not hire him or her. Other providers expressed frustration that employers simply do not understand the value of hiring a person with a disability and need to be convinced or incentivized.

(4) How many hours do people work?

According to the providers, almost all individuals work part-time. Some individuals work several hours each day. Other individuals work two to three days a week for a full day. There are several reasons for the lack of full time work. First, providers and DDA staff stated that it is much harder to find an individual a full time job. They stated that in the current economy, full time jobs are both scarce and highly competitive.

Second, many people would lose their SSI or Medicaid benefits if they were employed full time. One provider stated that in some cases, family members will urge an individual to cut back on his or her hours because they do not want the individual to lose his or her benefits – even if the individual would prefer to work more hours.

Third, some individuals do not want to work full time. For these individuals, they are working the amount of time they are comfortable or capable of working. Others need part-time employment because of health reasons.

(5) How much are people paid?

According to the providers, individuals with disabilities typically earn minimum wage, although at least one person is earning up to \$20 per hour. According to DDS, no one who receives services from RSA and DDA is paid less than minimum wage.⁵² However, there are two providers in the District of Columbia who are on the U.S. Department of Labor list of 14(c) special subminimum wage certificate holders.⁵³ It is also possible that D.C. residents could work at a sheltered workshop if they have been placed out of state and receive less than minimum wage there.⁵⁴ There are D.C. residents who have been placed in facilities outside of D.C., segregated from family and community.

(6) How are job coaches utilized?

Supported employment programs provide job coaches to work with the individuals and support them as they learn how to do a job. The cost of job coaches is built into the rate that providers bill for supported employment services. According to the draft RSA 2013 State Plan on DDS's website, "Employment Specialists/Job Coaches spend valuable time with consumers

⁵² FOIA Response, *supra* note 1, at Question 36.

⁵³ U.S. Department of Labor, Wage and Hour Division, Community Rehabilitation Programs (CRPs) and Patient Worker Certificate Holders, *available at* <http://www.dol.gov/whd/specialemloyment/CRPlist.htm> (current as of September 7, 2011). The two employers holding certificates issued under 14(c) of the Fair Labor Standards Act are St. Coletta of Greater Washington and Anchor Mental Health Association, Inc. ULS met with St. Coletta, and they reported that they are not currently making use of their 14(c) certificate. ULS did not visit Anchor Mental Health Association, Inc. because it is our understanding that they do not serve individuals who receive DDA services.

⁵⁴ In some cases, families prefer these out-of-state residential programs, believing that they are better for their family member with a disability.

teaching them about the workplace's expectations and the required tasks."⁵⁵ However, ULS has had clients who have struggled or failed in the past because the job coaches were overworked or unqualified.

In addition, a consistent complaint that ULS heard from providers is that it can be difficult for job coaches to provide clients with the assistance that they need while maintaining the staffing ratios necessary to keep the supported employment program financially feasible. One program we visited had a supported employment program, but, because of financial difficulties, switched to providing day habilitation and prevocational services only. Most places reported that is impossible to go below a one-to-four ratio, even though many individuals need greater support, especially in the beginning of the work experience.

Finally, some providers claimed that RSA can only provide supported employment for 90 days. In reality, RSA can provide up to 18 months of supported employment. DDA can provide supported employment for an unlimited amount of time once an individual has been found ineligible for RSA services.

(7) How is assistive technology used?

ULS asked providers about the type of assistive technology that is used to support individuals. While some providers stated that they used computers and other forms of technology, many were not aware of how assistive technology could be used for an individual with an intellectual disability, even though assistive technology can be of tremendous benefit. For example, the iPad/tablets can be used to teach individuals how to complete their job tasks independently through video modeling and other techniques. Either providers were unaware of these tools or did not believe that they could access funding to pay for them.

(B) Prevocational Programs

In general, the prevocational programs ULS observed had three components: (1) instruction, (2) volunteer activities, and (3) community outings. Not all prevocational programs, however, consist of all three components. ULS visited five prevocational programs.⁵⁶

At Kennedy Institute, the prevocational program is broken down into three levels with one instructor for each level. The staff assured us that necessary accommodations are provided at each level, including computers, microboards, and simplified curriculums. They explained that all three levels teach job skills. Individuals at New Visions said they work on mock interviews, writing their names, life skills and resumes (print and video). Project Redirect described similar services.

⁵⁵ Department on Disability Services, Rehabilitation Services Administration, DRAFT RSA 2013 State Plan, Attachment 6.3 Quality, Scope and Extent of Supported Employment Services, 1, *available at* http://dds.dc.gov/DC/DDS/DDS%20Publication%20Files/DDS_files/Press%20Release/DRAFT%20RSA%202013%20State%20Plan%20Attachment%206_3.pdf (May 28, 2012).

⁵⁶ Kennedy Institute, Capitol Hill Supportive Services, New Visions, Project Redirect, St. Coletta of Greater Washington – Adult Day Program in Virginia, and St. John's Community Services provide prevocational services.

St. Coletta of Greater Washington explained that individuals enrolled in their prevocational program learn job skills like stocking shelves and stapling papers onsite at St. Coletta. They also learn interview skills and how to write resumes. About fifty-percent of individuals' time is spent on prevocational activities, while the other fifty-percent is spent on day program activities, such as arts and crafts, leisure activities, and activities of daily living.

At both New Visions and Capitol Hill Supportive Services, individuals volunteer in the community as part of the prevocational program. They volunteer at churches, charter schools, homeless shelters, nursing homes, Mission of Love, and So Others Might Eat. They switch sites every 90 days unless the individuals want to remain at the same site.

All of the prevocational providers we met indicated that the individuals go on job-oriented outings in the community. Individuals participate in community events, as well as go to malls, museums, stores, libraries, and recreation centers. Even though these activities take place in the community, individuals in these programs nevertheless can be segregated from their non-disabled peers because the individuals in these programs go out as a group without the opportunity to have meaningful interactions with their non-disabled peers.

Of the programs ULS visited, St. John's was unique in that it met only occasionally as a large group. Instead of being located at a facility, it gathered at a community center. Staff had portable computers for completing paperwork. Although many of the individuals had significant disabilities, the staff fully believed that the individuals are capable of working and were aggressively seeking creative options for employment.

(C) Day Habilitation and Day Treatment Programs

There is significant variation among day program providers in D.C. Most day habilitation or day treatment programs function as a way to provide individuals with "activities of daily living" ("ADLs") – or a means of "staying busy" during the day. ULS found that this is often limited to arts, crafts, and music. Day programs are less individualized and more segregated. ULS visited five day habilitation programs.⁵⁷

Metro Day provides day habilitation for individuals on the HCBS Waiver, as well as day treatment for individuals in ICF-IDs. They do not provide prevocational or supported employment services. Individuals who attend may engage in the following activities: (1) activities of daily living, (2) drawing, (3) painting, (4) textiles, (5) jewelry, (6) music, (7) dance, and (8) exercise. Metro Day acknowledged that these programs were not intended to lead to jobs in the community. Metro Day stated that if someone wanted a job, they would be referred to a different program. However, ULS spoke with several individuals who wanted jobs. Metro Day stated that the individuals go on community outings every day to museums, the mall, and other places. When ULS visited, however, we observed many individuals sitting in small rooms doing little.

⁵⁷ St. Coletta of Greater Washington – Adult Day Program in Virginia, Metro Day, Capitol Hill Supportive Services Program, Project Redirect, and PSI Inc. provide day habilitation services.

Capitol Hill Supportive Services Program provides day habilitation. They explained that at their day habilitation program, individuals participate in arts and crafts, gardening, self-advocacy, travel, and community recreation. However, they did not permit us to visit with the individuals there or see the specific programs. At St. Coletta, individuals also engage in functional living skills (folding clothes, cooking), leisure activities (arts and crafts, blown glass), visits to community sites, and social skills training.

Project Redirect explained that their individuals participate in different community outings, visiting libraries, bowling alleys, and going to meet-and-greets. They use public transportation, such as metro, buses, and walking to get to activities. There were also classrooms with sports, music, and computer classes at Project Redirect.

PSI provides a very different type of day program. PSI stated that their day program has a “work hardening” component in which they provide (1) clerical training, (2) building and grounds maintenance, (3) home health, (4) visual arts, (5) creative writing, (6) culinary school, (7) paper recycling, and (8) product making. Also unlike other programs, PSI provides individuals with a stipend for the work done. PSI said that, although they do not have a supported employment or prevocational program, they have placed people in internships in the community and placed several people in jobs in the community. Although PSI is funded as a day program, it has a job developer to help individuals find jobs in the community.

What is notable is that these programs are facility-based, separated from the general public in a segregated environment. The individuals in these programs have limited opportunities to interact with their non-disabled peers in the community. In addition, they have limited opportunities to develop vocational goals, get jobs, and earn money outside of the programs.

Part IV: The Problems

Regardless of where ULS presented, whether it was a day program, prevocational program, or supported employment program, ULS heard repeatedly from individuals that they wanted to work. Nevertheless, these individuals encounter a myriad of obstacles to employment. ULS identified the following problems.

- (A) Too many individuals who receive services from DDA are served in a segregated environment and are never provided the opportunity to work or learn about work in a natural environment.*

Some individuals are told over and over again that they are not ready for work. They are told this by providers and representatives of DDS. They are told that once they develop necessary skills in a day program, they can move onto prevocational and supported employment services. However, many day programs fail to do even this because employment is not emphasized.

This seems to be true nationwide. One study found that “state and federal policy do not consistently prioritize employment.”⁵⁸ It also found that “[Community rehabilitation providers] have not reallocated resources to community employment.”⁵⁹ This is consistent with what ULS found in D.C.

In D.C. in the 2011 fiscal year, DDA served 2,190 individuals:⁶⁰ 567 of those individuals received day habilitation services;⁶¹ 406 individuals received prevocational services;⁶² and only 265 individuals received supported employment services.⁶³ The day program and prevocational services are almost universally provided in a segregated setting and rarely lead to employment, as this is not their main focus.

Some individuals sit around an arts and crafts table doing little to promote independence or vocational skills. As the system is currently set up, these individuals will never be ready to work. These stories and statistics clearly demonstrate that there is a problem with the system and a tremendous need to improve employment opportunities and initiatives for individuals with intellectual disabilities. Individuals with intellectual disabilities in D.C. simply do not have the same employment opportunities as others.

Case Scenario 1: A Lack of Choices

ULS met with individuals who were never given a chance to work at all. After graduating from school, these individuals go straight to a day program. They do not get services from RSA and they do not get prevocational or supported employment services from DDA. They never have the opportunity to try work as an option.

⁵⁸ Institute for Community Inclusion (UCEDD) University of Massachusetts Boston, StateData: The National Report on Employment Services and Outcomes, 10 (2011) [hereinafter Institute for Community Inclusion].

⁵⁹ *Id.* at 10-11.

⁶⁰ FOIA Response, *supra* note 1, at Question 1.

⁶¹ *Id.* at Question 4.

⁶² *Id.* at Question 7.

⁶³ *Id.* at Question 11.

For those who want to work, it is imperative that individuals are given the opportunity to develop their skills and talents with encouragement and support. This opportunity needs to be provided early on as part of the transition from school and continued at all RSA and DDA programs. The opportunities must be individual-driven, designed to meet the needs and interests of the individuals. Without this match, efforts are unlikely to be successful.

Case Scenario 2: A Lack of Choices

ULS spoke to individuals who were not connected to RSA through a school transition plan. For example, M.T. is a young woman with cerebral palsy. When she was in school, she had an Individual Education Plan (IEP) and engaged in several summer internships working with children. However, as graduation crept closer, no one ever developed a transition plan. So when M.T. graduated, she found herself at home. M.T. tried to follow up with RSA where she had a VR Specialist, but she did not get anywhere. No one returned her phone calls, and she didn't know what she was supposed to be doing.

(B) RSA is difficult for individuals to navigate due to its lack of a formal application and long wait times for eligibility determinations, vocational assessments, and other services.

The process for accessing services from RSA is both daunting and lengthy. Federal law requires RSA to make application forms widely available⁶⁴ and to make an eligibility determination within 60 days.⁶⁵ However, there is no formal application in D.C. for individuals applying for RSA services. Rather, there is a “referral form” that is neither an application, nor a request for vocational rehabilitation services.⁶⁶ Consequently, individuals face serious delay and confusion when trying to apply for RSA services. How does one apply for services when there is no application form? How does one enforce the 60-day time limit when the start date is unclear?

In cases where it is not clear that an individual will benefit from RSA services, the eligibility determination can take much longer than 60 days. In just the last few months, ULS worked with two individuals who, even with assistance, had to wait months for vocational and trial work evaluations. As the response to our FOIA request demonstrates, almost no one receives vocational assessments, even though assessments can be critical to understanding the individual's strengths and weaknesses.

Among the individuals who RSA did find eligible for services, ULS spoke with some who reported calling their VR specialists and never receiving a call back. ULS also spoke with individuals who reported VR specialists leaving the agency, but never notifying them

⁶⁴ 34 C.F.R. § 361.41(b)(3).

⁶⁵ 34 C.F.R. § 361.41(b)(1).

⁶⁶ Department on Disability Services, Rehabilitation Services Administration, Referral Form. *See* Appendix B.

of the change in VR specialists. ULS has had at least three clients who were assigned up to four different VR specialists in less than one year, creating delays, confusion, and frustration.

In addition, ULS has found that IPEs often include limited detail. Required information – specific employment goals, services needed to achieve the goals, assistive technology that is necessary to obtain employment, the name of the organization or company that will provide individuals with those services, how progress will be measured, a timeline⁶⁷ – is often lacking. Because of limited planning and little contact with the VR specialists, individuals report not knowing where they are in the process or what is being done. If supports are not working, the individual is left to flounder.

Admittedly, VR specialists have a very high caseload. According to the draft RSA 2013 State Plan, attachment 4.10(1)(A), the average VR Specialist ratio is 175:1.⁶⁸ The stated goal is to bring the ratio to below 150:1.⁶⁹ According to a recent email from the director of DDS, the average caseload is now 98:1, and there are 36 counselors (or VR specialists) on staff, plus three supervisors.

Nevertheless, this ratio is still too high. Such high ratios cannot result in a functioning system given the lofty goals of the program and the significant services that should be provided. Not only is this unfortunate for the VR specialists, but it is unfortunate for the clients who need significant help and who are almost doomed to fail without it. Although this ratio may be lower than it was, individuals and providers still report having trouble reaching their VR specialists.

(C) RSA and DDA do not communicate or collaborate effectively.

RSA and DDA do not work together systematically to serve dually-enrolled individuals. In order to better serve individuals with intellectual disabilities, RSA and DDA need to improve communication and teamwork. Although both administrations fall under DDS and are located in the same building, they still struggle to coordinate services.

Both DDA and RSA must do a better job of using the information that already exists to better serve the client. If the individual has a Behavior Support Plan developed through DDA, RSA needs to take it into consideration and use it during job training and job placement. If RSA funds a vocational assessment for an individual, then DDA should incorporate that information into its supported employment program later. In ULS's experience, the DDA service coordinators and providers abdicate their responsibility to coordinate with RSA VR specialists during the time the individual is applying for or receiving the RSA services, and the RSA VR Specialist similarly fails to communicate with the DDA service coordinators.

⁶⁷ This is required pursuant to 29 D.C.M.R. §111.2.

⁶⁸ Department on Disability Services, Rehabilitation Services Administration, DRAFT RSA 2013 State Plan, Attachment 4.10 Comprehensive system of personnel development, 1, *available at* <http://dds.dc.gov/DC/DDS/About+DDS/News+Room/Press+Releases/DRAFT+RSA+2013+State+Plan> (May 28, 2012).

⁶⁹ *Id.*

Yet coordination is critical to determining and developing a plan that describes where the individual excels, what supports the individual needs to be successful, what sort of jobs the individual likes, what skills the individual needs to develop to obtain those jobs, and what transportation is needed. In one case, RSA claimed that it did not need to provide transportation to a vocational assessment, saying that DDA was responsible since they could provide it as a comparable benefit. However, neither RSA nor DDA followed up with each other or the individual.

RSA and DDA need to coordinate the development of an individual's goals and how they will be achieved. Moreover, they need to coordinate services and results. It should never be the individual's responsibility to coordinate between the two agencies, yet this happens regularly. If an individual needs travel assistance or other resources, it should not matter whether RSA or DDA will be providing or paying for that support. The agencies need to resolve the responsibility and coordinate in an efficient and effective manner.⁷⁰

(D) RSA does not provide adequate services to individuals with intellectual disabilities.

By law, supported employment is intended as “ongoing support for individuals with the most significant disabilities” and “for whom competitive employment has not traditionally occurred[.]”⁷¹ The draft RSA 2013 State Plan has specifically identified persons with intellectual disabilities and other developmental disabilities as a population that requires the use of supported employment.⁷² Supported employment is individualized, and employment specialists/job coaches spend time with the individuals working on workplace expectations, required tasks, assistance, travel training, as well as other necessary skills.⁷³

Disturbingly, in the 2011 fiscal year, of those individuals who received services from both RSA and DDA, only **one** individual received supported employment services from RSA and that was for only 17 days.⁷⁴ Only five individuals received job-related services and only two received post-employment services from RSA. Only 56 individuals received funding for higher education through RSA, which includes vocational and other training services.⁷⁵

⁷⁰ This problem is not unique to D.C. A national study about employment for individuals with intellectual disabilities found that disability and employment data systems are fragmented. The study also noted that “[f]unding mechanisms vary across states and do not always reflect policy priorities.” Institute for Community Inclusion, *supra* note 58, at 12.

⁷¹ 34 C.F.R. § 361.5(b)(53).

⁷² Department on Disability Services, Rehabilitation Services Administration, DRAFT RSA 2013 State Plan Attachment 6.3, Quality, Scope and Extent of Supported Employment Services, 1, *available at* http://dds.dc.gov/DC/DDS/DDS%20Publication%20Files/DDS_files/Press%20Release/DRAFT%20RSA%202013%20State%20Plan%20Attachment%206_3.pdf (May 28, 2012).

⁷³ *Id.*

⁷⁴ FOIA Request, *supra* note 1, at Question 27 and 28.

⁷⁵ *Id.* at Question 26.

In D.C. in the 2011 fiscal year, the vast majority of individuals receiving both RSA and DDA services (332 of 355) did not achieve an “employment outcome” through RSA.⁷⁶ Only 23 individuals entered or retained any type of employment.⁷⁷

According to the data collected by the Institute for Community Inclusion, of the 79 per 100,000 individuals who were successfully employed in D.C. in 2010, only seven were individuals with intellectual disabilities.⁷⁸ Meanwhile, individuals with intellectual disabilities who did manage to find jobs earned less money.⁷⁹ The overall mean weekly wage in D.C. after placement in a job for an individual without a disability was \$438.⁸⁰ Those with intellectual disabilities earned only \$282.⁸¹ Individuals with intellectual disabilities also worked fewer hours.⁸²

Based on the state and federal data, the Institute for Community Inclusion drew the following conclusions about the national state of employment for individuals with disabilities:

- State and federal policy do not consistently prioritize employment.
- Best practices in job support and job development are not consistently implemented.
- Individual employment outcomes have not progressed.⁸³

In D.C., RSA cannot continue to operate as it currently does. Simply put, there are insufficient employment outcomes for individuals with intellectual disabilities. RSA needs

Customized Employment

• **Task reassignment:** Some of the job tasks of incumbent workers are reassigned to a new employee. This reassignment allows the incumbent worker to focus on the critical functions of his/her job (i.e., primary job responsibilities) and complete more of the central work of the job. Task reassignment typically takes the form of job creation, whereby a new job description is negotiated based on current, unmet workplace needs.

• **Job carving:** An existing job description is modified – containing one or more, but not all, of the tasks from the original job description.

• **Job sharing:** Two or more people share the tasks and responsibilities of a job based on each other's strengths.

“Customized Employment,” Office of Employment Disability Policy, Department of Labor, last accessed at on August 23, 2012, at <http://www.dol.gov/odep/categories/workforce/CustomizedEmployment/what/index.htm>.

⁷⁶ *Id.* at Question 16 and 34. See also 34 C.F.R. § 361.5(b)(16) for definition of “employment outcome.”

⁷⁷ *Id.* at Question 33. See also 34 C.F.R. § 361.5(b)(16) for definition of “employment outcome.”

⁷⁸ *Id.*

⁷⁹ Institute for Community Inclusion, *supra* note 58, at 119.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 10.

to be much more zealous in their attempt to find jobs for individuals, educate employers about the benefits of hiring individuals with disabilities, and provide adequate supports to the employer and the individuals so that both will be successful. The government should provide funding and incentives to support this work. The alternative is paying to have people spend days doing little in segregated settings.

(E) There is limited use of assistive technology by individuals with intellectual disabilities.

ULS observed very little use of assistive technology. Assistive technology can and should be an integral part of job skill development and independence. Assistive technology can be as simple as a magnifier, and such simple adaptations can make a significant difference. Easily accessible technology, such as iPads/tablets and smart phones, includes apps which are opening up a world of possibilities. Nevertheless, ULS did not see or hear of these devices being used to assist individuals with intellectual disabilities. Similarly, at the national level, studies have shown that best practices in job support and job development are not consistently being implemented.⁸⁴

Of course, the use of these devices and selection of appropriate and useful technology requires training and valuable assessments. DDS must fund best practices and training for both providers and individuals. A one-time training may not be enough; training must be on-going and continuous for providers and individuals.

(F) There are few incentives or supports to encourage employers to hire individuals with intellectual disabilities.

D.C. does not offer employers incentives to hire individuals with disabilities. Although many states offer state-specific tax incentives for employers to hire individuals with disabilities, D.C. does not.

The federal government, however, offers several relevant tax incentives that businesses could take advantage of. The Internal Revenue Code includes three major federal provisions aimed at making businesses more accessible to people with disabilities. The first is the Work Opportunity Tax Credit (Internal Revenue Code Section 51) in which employers who hire certain targeted low-income groups, including individuals referred from vocational rehabilitation agencies and individuals receiving Supplemental Security Income (SSI), may be eligible for an annual tax credit of up to \$2,400 for each qualifying employee.⁸⁵ Two other tax credits promote accessibility and are aimed at incentivizing employers to hire people with physical disabilities.⁸⁶

⁸⁴ *Id.*

⁸⁵ United States Department of Labor, Office of Disability Employment Policy, Work Opportunity Tax Credit, 1 (March 2010), available at <http://www.dol.gov/odep/documents/WOTC-incentive.pdf> (last accessed November 1, 2012).

⁸⁶ The Small Business Tax Credit (IRS Code Section 44, Disabled Access) allows businesses that earned \$1 million or less in the past year or had 30 or fewer full-time employees to take an annual tax credit of up to \$5,000 for a variety of accessibility expenditures. The Architectural/Transportation Tax Deduction (IRS Code Section 190, Barrier Removal) allows business of all sizes to take an annual deduction of up to

In Maryland, the Maryland Disability Employment Tax Credit gives businesses a tax credit for wages paid to employees with disabilities, as well as for child care or transportation expenses paid on behalf of the employees.⁸⁷

Of course, tax incentives alone will not convince employers to hire individuals with intellectual disabilities. There also must be collaboration and support. In determining what leads to the successful employment of individuals with disabilities, the National Technical Assistance and Research (NTAR) Center identified the following themes:

- Employers respond to a business case for employing people with disabilities (i.e., value added to the company and improved bottom-line);
- Innovative collaborations with and between workforce-supplying organizations enable employer efforts to recruit, hire, train, and support employees with disabilities;
- Collaborations ensure that workers are qualified and productive; and
- Successful collaborations nurture and reward continuous leadership.⁸⁸

Employers not only need tax incentives to encourage them to hire individuals with disabilities, but they also need ongoing training, support, and collaboration. While some employers may have the time and energy to provide this level of support, most do not. Similarly, providers also need the time and skill to be able to work with employers to provide assistance, especially in the early stages of employment. As such, DDS needs to develop strategies to support employers and providers, so that they can collaborate and develop employment opportunities for individuals with disabilities.

Part V: Government Response

(A) Employment First Initiative

In an attempt to improve employment opportunities for individuals with disabilities, at the federal level, the U.S. Office of Disability Employment Policy (ODEP) has adopted an Employment First policy. ODEP describes its Employment First policy as follows:

\$15,000 for expenses such as creating accessible parking; installing ramps and curb cuts; making telephones, water fountains and restrooms accessible; and widening walkways, and adapting vehicles. United States Department of Labor, Office of Disability Employment Policy, Tax Incentives for Employers, available at http://www.dol.gov/odep/topics/TaxIncentivesForEmployers.htm#UJKMS2_R6E4 (last accessed November 1, 2012).

⁸⁷ Comptroller of Maryland, Maryland Disability Tax Credit, *available at* <http://business.marylandtaxes.com/taxinfo/taxcredit/disability/default.asp> (last accessed October 11, 2012).

⁸⁸ National Technical Assistance and Research Center to Promote Leadership for Increasing and Economic Independence of Adults with Disabilities, Ready and Able: Addressing Labor Market Needs and Building Productive Careers for People with Disabilities through Collaborative Approaches, 1-2 (April 2011), *available at* <http://www.dol.gov/odep/categories/workforce/readyable/readyable.pdf> [hereinafter NTAR].

“Employment First is a concept to facilitate the full inclusion of people with the most significant disabilities in the workplace and community. Under the Employment First approach, community-based, integrated employment is the first option for employment services for youth and adults with significant disabilities.”⁸⁹

ODEP has also promoted customized employment for individuals with disabilities. Customized employment is a process designed to match an individual’s strengths with an employer’s needs.⁹⁰ Research shows that individuals with disabilities are able to work just as well as people without disabilities given the right supports and environment and that employing people with disabilities benefits everyone – not just the individual with the disability.⁹¹

In developing jobs based on an individual’s skills and interests, it is important to educate both employers and providers by explaining the special abilities of individuals with intellectual disabilities as well as benefits to the other employees – both tangible and intangible. It also allows individuals to do jobs that they enjoy, maximizes their potential, and go beyond the conventional tasks of paper shredding and cleaning.

On October 18, 2012, Mayor Gray proclaimed D.C. to be an “Employment First State.”⁹² According to the Department on Disability Services’s FY 2012 Performance Plan, the State Office of Disability Administration (SODA) will develop a strategic plan “to promote the least restrictive, most integrated day, vocational and employment services.”⁹³ This plan is to be developed during the second quarter of the fiscal year. Plans and proclamations present lofty ideals. Nevertheless, the true measure of success will only be proven by actual services resulting in employment.

(B) Interview with DDS, DDA, and SODA

ULS met with Laura Nuss, Director for DDS; Cathy Anderson, Deputy Director for DDS-DDA; Dr. Rebecca Salon, Manager of SODA; and Mark Back, Assistant Attorney General (OAG). Matthew Bachand, Deputy Director of DDS-RSA did not attend.

ULS identified the problems described in this report. Responding to the high number of individuals in day programs and prevocational programs, Ms. Nuss, Ms. Anderson, and Dr. Salon explained that they recognize the problem and have been taking a systemic approach to

⁸⁹ United States Department of Labor, Office of Disability Employment Program, Employment First, available at <http://www.dol.gov/odep/topics/EmploymentFirst.htm> (last accessed July 6, 2012).

⁹⁰ United States Department of Labor, Office of Employment Disability Policy, Customized Employment, available at <http://www.dol.gov/odep/categories/workforce/CustomizedEmployment/what/index.htm> (last accessed August 23, 2012).

⁹¹ NTAR, *supra* note 88, at 1-2.

⁹² See Appendix C: Proclamation – District of Columbia an Employment First State.

⁹³ Department on Disability Services, FY12 Performance Plan, Initiative 2.3, 3, available at <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DDS12.pdf> (last accessed August 23, 2012).

remedying it. DDS has provided trainings to the providers to enable them to train their own staff to develop an “Employment First” approach. At the same time, DDS explained that it will be incentivizing a more individualized approach by implementing “individualized day programs” in November under the new Medicaid HCBS Waiver. The purpose of this change is to provide financial incentives to providers for serving individuals in more individualized, integrated settings. DDS stated that it would like all programs to become vehicles for career exploration, volunteerism, and employment.

Responding to the claim that RSA is difficult for individuals to navigate, Ms. Nuss maintained that there are enough VR specialists to adequately service people. In fact, she explained that there were open positions she did not believe needed to be filled. Ms. Anderson stated that they are working to streamline the application process and maximize services for individuals already receiving services from DDA. They did acknowledge the fact that there was no formal application for RSA services and stated that they were working to remedy the situation.

Ms. Nuss, Ms. Anderson, and Ms. Salon all mentioned a number of initiatives to encourage future collaboration between RSA and DDA. These initiatives include: encouraging DDA providers to become RSA providers; providing enhanced benefits counseling to DDA and RSA clients; working with the D.C. chapter of the Association of People Supporting Employment (APSE); and having DDS become an employment network for Ticket-to-Work. They also mentioned the existence of a centralized complaint system for people to call if they have trouble reaching their VR specialists or are unhappy with their services.⁹⁴

In recognition of the low employment rate among individuals with intellectual disabilities, the directors said that they are working to provide individuals with flexible supports, so individuals can look for work and receive day habilitation, prevocational, or supported employment services concurrently. They also said that they working with business organizations and employment agencies to develop more employment opportunities. They noted that they have provided training to providers so that they are better equipped to find jobs for individuals based on the concept of customized employment. They said that they were working on a better set of metrics to measure success.

Finally, ULS raised the suggestion of a tax credit or a grant to employers to provide an additional financial incentive for hiring individuals with intellectual disabilities. The directors stated that they did not believe such measures were necessary or helpful because such incentives demean individuals with intellectual disabilities. However, they did say that they were collaborating with the business community to encourage employers to hire people with disabilities.

⁹⁴ The complaint form is available at https://docs.google.com/spreadsheets/viewform?hl=en_US&pli=1&formkey=dHAXRHhmbzZIN1ZDN05hRmlDUDh0eVE6MQ#gid=1.

Part VI: Recommendations

- (A) Develop policies that promote “Employment First” and require day programs, prevocational programs, and supported employment programs to take an individualized, job-oriented approach to providing these services in an integrated setting.*
- (B) Develop and publish an application for RSA services that gives notice to the individual of the 60-day period and reduce wait times at RSA for eligibility determinations, vocational assessments, and other services.*
- (C) Improve communication and teamwork between RSA and DDA so that individuals are better served according to their individual needs.*
- (D) Improve employment outcomes for individuals receiving services from RSA by increasing the use of customized employment and developing close ties to the business community.*
- (E) Encourage and fund the use of assistive technology that is available for individuals with intellectual disabilities.*
- (F) Provide businesses with tax incentives, grants, training, and opportunities for collaboration with providers and state agencies to encourage them to hire individuals with disabilities.*

Part VII: Conclusions

Individuals with disabilities want to work!

As illustrated by the Sally G. scenario, and the issues described throughout this report, there are numerous barriers to securing employment. These barriers include a failure to focus on employment from the beginning, difficulty accessing and navigating RSA services, and limited employer incentives. Significant changes in policy, procedure, and attitude must occur to make employment a reality for most individuals with intellectual disabilities. Leaders at the top seem to agree on the goal. It is time to change the policies, procedures, and practices that prevent change.

We met with individuals with intellectual disabilities whose dedication and perseverance was truly inspiring, and we met with amazing providers who believe strongly in the abilities of individuals with intellectual disabilities. These people should be supported in their efforts and held up as examples to those providers whose practices must change. Job preparation and search must be individual-driven and very customized to fit the needs of the specific person involved. Though the steps may be challenging, the results are worth the effort.

Appendix A: Reports and Resources

Beyond Segregated and Exploited: Update on the Employment of People with Disabilities, National Disability Rights Network, April 2012. Available at http://www.napas.org/images/Documents/Resources/Publications/Reports/Beyond_Segregated_and_Exploited.pdf.

Business Strategies that Work: A Framework for Disability Inclusion, Department of Labor, Office of Disability Employment Policy. Available at <http://www.dol.gov/odep/pdf/BusinessStrategiesThatWork.pdf>.

Knowledge Development and Translation Initiative for Expanding Availability and Use of Customized Employment, Department of Labor, Office of Disability Employment Policy, September 2009. Available at <http://www.dol.gov/odep/research/KnowledgeDevelopmentTranslationInitiativeExpandingAvailabilityUseCustomizedEmployment.pdf>

The Post-High School Outcomes of Young Adults with Disabilities up to 8 Years After High School: A Report From the National Longitudinal Transition Study-2, National Center for Special Education Research, Department of Education, September 2011. Available at <http://ies.ed.gov/ncser/pubs/20113005/pdf/20113005.pdf>.

Ready and Able: Addressing Labor Market Needs and Building Productive Careers for People with Disabilities through Collaborative Approaches, National Technical Assistance and Research Center to Promote Leadership for Increasing and Economic Independence of Adults with Disabilities, April 2011. Available at <http://www.dol.gov/odep/categories/workforce/readyable/readyable.pdf>.

Segregated and Exploited: The Failure of the Disability Service System to Provide Quality Work, National Disability Rights Network, January 2011. Available at <http://www.napas.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf>.

StateData: The National Report on Employment Services and Outcomes Institute for Community Inclusion (UCEDD), University of Massachusetts Boston, 2010. Available at http://statedata.info/statedatabook/img/statedata2011_Fweb.pdf.

Unfinished Business: Making Employment of People with Disabilities a National Priority, United States Senate, Committee on Health, Education, Labor & Pensions, Tom Harkin, Chairman, July 2012. Available at <http://www.harkin.senate.gov/documents/pdf/500469b49b364.pdf>.

Appendix B: RSA Referral Form and Explanation of Intake Process



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department on Disability Services
Rehabilitation Services Administration

REFERRAL FORM**
Please Print

Date: _____

Last Name: _____ First Name: _____ MI: _____

Street Address: _____

City: _____ Zip Code: _____

Telephone Number: (____) _____ Email Address: _____@_____

Social Security Number: _____ - _____ - _____ Gender: Male Female

Date of Birth: Month _____ Day _____ Year _____

Are you currently working? Yes No

What is your disability? _____

Do you require special accommodations? Yes No If yes, what? _____

Are you currently receiving **any** of the following benefits?

Please check all that apply

- SSI/SSDI Unemployment Interim Disability Assistance (IDA)
 Food stamps Survivor benefits Child support Other: _____

Referral Source: _____

Referral Address: _____

Referral Telephone Number: (____) _____

If English is not your language of preference, is it: Spanish ASL Other _____

DDS/RSA: Independent Living Deaf/HH Blind/Visually Impaired Spanish Speaking Caseload

** This form is for referral purposes only. No additional information is required, or will be accepted at the time of referral. This is neither an application, nor a request for vocational rehabilitation services.

1125 15th Street N.W. Washington, D.C. 20005
(202) 730-1700 www.dds.dc.gov

Created June 7, 2011



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department on Disability Services
Rehabilitation Services Administration**

HOW TO BEGIN THE PROCESS?

- ✓ Inform advocate (If applicable)
- ✓ Contact RSA to schedule orientation date & time
- ✓ Attend and complete orientation
- ✓ Meet with Vocational Rehabilitation Counselor to proceed with intake interview and submission of required documentation (ID, Social Security card, proof of address, proof of income & Medical Documentation regarding diagnosis).

RSA has a two-part mission:

➤ **Competitive Employment**

- Job counseling to support the attainment of an employment goal
- Job development to insure appropriate supports
- Job placement services to provide access to opportunities
- Job retention assistance to insure continued success

➤ **Independence and community integration**

- Helping people develop independent living skills
 - ❖ Core IL Services: Independent Living Skills Training, Information & Referral services, Individual/Systems Advocacy & Peer Support.
- Helping the blind population maintain independence
- Explicit skill development to promote community integration

All RSA VR Activities are focused on obtaining and maintaining competitive employment



1125 15th Street N.W. Washington, D.C. 20005
202.730-1700 www.dds.dc.gov

Appendix C: Proclamation – District of Columbia an Employment First State

THE DISTRICT OF COLUMBIA
VINCENT C. GRAY, MAYOR

Proclamation



DISTRICT OF COLUMBIA AN EMPLOYMENT FIRST STATE

OCTOBER 18, 2012

WHEREAS, the District of Columbia believes that all people of working age, including people with disabilities, shall have the opportunity to work and earn the prevailing wage, in the career path they choose; and

WHEREAS, people with disabilities, including people with intellectual and developmental disabilities, and veterans with service-connected disabilities have the ability to work, as well as the desire to work, earn competitive wages, and contribute to their workplaces, their families, the economy and their communities; and

WHEREAS, the District of Columbia and the Department on Disability Services affirms that employment is an important part of the lives of all working age adults and people with disabilities are a largely untapped resource with skills and talents who can meet the needs of area business and employers; and

WHEREAS, when people with disabilities are employed, they benefit directly and have a positive impact on the economy by earning wages, paying taxes, purchasing goods and services, and having the opportunity to become economically self-sufficient; and

WHEREAS, aligning with the 19 Employment First states in the U.S.A. and our "One City Action Plan," the District of Columbia and the Department on Disability Services believe that integrated employment in the community should be the first and primary option for working age adults with disabilities and youth transitioning from school services:

NOW THEREFORE, I, THE MAYOR OF THE DISTRICT OF COLUMBIA, do hereby proclaim October 18, 2012, as "DISTRICT OF COLUMBIA AN EMPLOYMENT FIRST STATE" which will benefit people with disabilities, their families, employers and this community.

