

THE NORTH DAKOTA OLMSTEAD COMMISSION
MEETING MINUTES OF
AUGUST 9, 2023
Job Service – Bismarck, ND and via Teams

MEMBERS PRESENT: Ryan Norrell, Rep. Alisa Mitskog, Veronica Zietz, Carlotta McCleary, Scott Burlingame, Julianne Horntvedt, and Senator Judy Lee

MEMBERS ABSENT: The Honorable Bruce Romanick and Wally Goulet

OTHERS PRESENT: Steven Beard, Williston; Brittany Hanson, Bismarck; Susan Dingle, Bismarck; Jennifer Henderson, ND Finance Housing Agency; Angie Bosch, Freedom Resource Center, Fargo; Jana Johnson, Olmstead Coordinator - P & A Project; Brenda Schmidt, Olmstead Advisory Council; Donene Feist, Family Voices of ND; George Zenk, Parent; Kirsten Dvorak, Arc of ND; Lauren Powell, Civil Rights Division of the U.S. Dept. of Justice; Matt Schwarz and Jessica Schwarz; Melanie Gaebe, Director of Public Policy for the Alzheimer's Association in ND; Nancy Nikolas-Maier, ND Aging Services; Nathan Leier; Trevor Vanette; Trina Gress; Nicole Maddock; and Samuel Bondy.

The meeting was called to order at 1:00 p.m.

APPROVAL OF 8/9/23 AGENDA AND 5/10/23 MINUTES:

The scheduled speakers for today's meeting are not available. Ms. Lauren Powell, from the Dept. of Justice, will be speaking instead. MOTION: A motion was made by Ms. Zietz, and seconded by Mr. Burlingame, that the agenda be approved, with the speaker update noted. The motion passed.

MOTION: A motion was made by Mr. Burlingame, and seconded by Ms. Zietz, that the 5/10/23 meeting minutes be approved as presented. The motion passed.

LAUREN POWELL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE:

- Ms. Powell presented on a recent Olmstead case, U.S. vs. Florida. This case is the Disability Rights Section's most recent case and is only the third Olmstead case to be tried in the U.S. Ms. Powell stated that by sharing this case she hopes to provide a better understanding of Olmstead itself and the law surrounding it; but also, to understand the work that the DOJ does with states, communities, and its role in enforcing the ADA.
- Senator Lee shared some history on the Life Skills and Transition Center in Grafton and Anne Carlsen Center in Jamestown, ND. She provided Ms. Powell with some of the resources available through ND's Dept of Human Services.

- Mr. George Zenk shared the challenges he and other parents are experiencing finding care for their adult children with significant disabilities. Senator Lee and Representative Mitskog shared their contact information with Mr. Zenk and encouraged him to contact them directly.
- Ms. Powell answered a question in the chat, “Can you clarify who has the responsibility to provide services, authorized or approved? Is it the provider or the state?” stating that as a legal obligation, as far as the enforcement of the ADA goes, it is the responsibility of the state or the public entity to provide appropriate services. They have an obligation to provide those services in the most integrated setting possible.
- Mr. Burlingame asked how the results of the decision in Florida impacts the rest of the states that aren’t part of that judicial region. Ms. Powell noted that this was a state-wide injunction that affects the entire state, but it is only for the state of Florida. The question was raised whether this case could be used as case law for setting a precedent for other states. Ms. Powell noted this case was tried at the District Court level and is only binding in Florida. If something was brought to a higher court, i.e., the Supreme Court, then it would be binding and apply nationwide.
- Mr. Zenk stated that in Title II of the ADA there is a comment that states “whether the provider or the state can reasonably accommodate” – is that an excuse for the state to say no, we can’t accommodate that? Ms. Powell stated that in the Florida case, once we showed that an individual could live in the community, appropriately receiving community-based services and that they want to be in the community, then the person bringing a lawsuit could say that these are plausible accommodations that the state could make that would likely make a difference. At that point the burden shifts to the state or the government entity. This could fundamentally alter our system of services in Olmstead.
- Co-chair Norrell reminded meeting participants that the Olmstead Commission does have a public comment period at the end of the meeting so would ask non-Commission members to hold their comments until that time for the Commission to get through its meeting agenda in a timely manner.

DISCUSSION/PLANNING ITEMS: OLMSTEAD PLAN REVISION UPDATE – SUBCOMMITTEE

MEMBERS:

- Ms. Julie Horntvedt, State Council on Developmental Disabilities and Ms. Jana Johnson, Olmstead Coordinator provided an update on the Olmstead Plan revision process.

INQUIRY PROCESS UPDATE – JANA JOHNSON:

- Ms. Johnson provided information on the Inquiry Process. She noted it has been defined and the form is live on the Olmstead Commission website. The fillable form was reviewed by the Commission. Ms. Johnson noted the Olmstead Commission does not

give legal advice and it is not an enforcement agency. All inquiries are reviewed upon submission and then, if needed, action is taken from there.

MOTION: A motion was made by Mr. Burlingame, and seconded by Ms. McCleary, that the inquiry process and form be accepted as presented by Ms. Johnson. The motion passed.

ADVISORY COUNCIL COMMENT:

Ms. Johnson stated that this will be a standing agenda item for each Olmstead Commission meeting.

- Ms. Brittany Hanson asked questions regarding the Inquiry Process and asked for clarification on what the Commission is doing that is not duplicative of other mandated agencies that have similar processes in place. She also noted concern with language used in the Inquiry Process, stating the term “investigation” could cause confusion in the process.
 - Ms. Zietz and Ms. Johnson explained the form asks what other resources have been exhausted and who else they have contacted regarding their concerns. Each inquiry will be reviewed on a case-by-case basis and if the Commission decides follow-up is warranted, it will be considered.
- Ms. Hanson asked if minutes are taken for sub-committee meetings and if Olmstead Commission minutes will be added to the website.
 - Ms. Johnson advised that minutes are taken at both meetings and Commission minutes will be posted to its website at a later date.

PUBLIC COMMENT:

- Mr. Trevor Vanette stated that BisMan Transit did get approved for funding, but they didn’t receive all the needed funding and there will be a temporary gap until 2025. He noted that this gap will cause another issue in the Fargo area because of the population census there.
 - Senator Lee shared there is a city ordinance in Bismarck that says every licensed taxi service has to have a certain amount of accessible transportation available, however, there is not an ordinance that requires a taxi service to be licensed, so they are not. She noted the Fargo area has several private transportation providers that do a good job and that it would be nice if similar services were available in Bismarck, as well as the rural areas in the state. Senator Lee added the Bismarck bus system has an obligation to be cognizant of their responsibilities to their respective communities.
 - Ms. McCleary stated that in the spring of 2023, Mental Health America went around to all the different regions visiting Recovery Centers, and every region talked about transportation and it being one of their most difficult issues. Ms.

McCleary added that this is an issue for both urban and rural areas of the state and noted that fixed routes don't always take folks where they need to go.

- Mr. Burlingame stated that Minot's only taxi company closed due to the high cost of insurance and fuel costs. He added that this is an issue that people don't think about, and it could be a legislative issue for the next session, as he suspects it's going to affect other North Dakota cities as well.
- Ms. Hanson noted that there have been insurance issues with providers in the Bismarck area regarding transportation provided to clients by their staff. Mr. Vanette stated that this is a very hot topic for the DD population with behaviors and the risk it poses to staff vehicles.
- Ms. Johnson noted if there are areas of interest that people want to hear about, please send her an e-mail or call and she will get those topics on the agenda.

MOTION: A motion was made by Ms. Zietz, and seconded by Mr. Burlingame that the meeting be adjourned at approximately 2:42 p.m. The motion passed.