

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

**UNITED STATES OF AMERICA,**

Case No. CA13-442L

Plaintiff,

**JOINT MOTION TO DISMISS  
WITHOUT PREJUDICE AND  
RETAIN JURISDICTION**

v.

**STATE OF RHODE ISLAND and  
CITY OF PROVIDENCE,**

Defendants.

Plaintiff United States of America and Defendants State of Rhode Island and City of Providence (collectively, "Parties"), having entered into an Interim Settlement Agreement, jointly move this Court to: (1) enter an Order conditionally dismissing this action, without prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and (2) expressly retain jurisdiction to enforce the Interim Settlement Agreement in accordance with its terms and for its duration.

In support of this Joint Motion, the Parties rely on the accompanying Memorandum. The Interim Settlement Agreement is attached as Exhibit A to the Memorandum.

Dated: June 13, 2013

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

**UNITED STATES OF AMERICA,**

Case No. CA13-442L

Plaintiff,

**[PROPOSED] ORDER**

v.

**STATE OF RHODE ISLAND and  
CITY OF PROVIDENCE,**

Defendants.

AND NOW, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, for good cause shown, it is hereby ORDERED that the Parties' Joint Motion to Dismiss Without Prejudice and Retain Jurisdiction is GRANTED. It is further ORDERED that:

(1) The above-titled action is conditionally dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2).

(2) The Court specifically retains jurisdiction to enforce the Parties' Interim Settlement Agreement (filed as Exhibit A to the Parties' Memorandum in Support of the Joint Motion to Dismiss Without Prejudice and Retain Jurisdiction), in accordance with its terms, which are incorporated herein by reference, and for its duration. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (recognizing that under Rule 41(a), a district court may, in its order of dismissal, retain jurisdiction to enforce a "dismissal-producing settlement agreement"); *F.A.C., Inc. v. Cooperativa de Seguros de Vida de P.R.*, 449 F.3d 185, 190 (1st Cir. 2006) (finding the *Kokkonen* standard to be satisfied when a district court's order "incorporates the terms of the settlement, and even more plainly, expresses . . . an intention to retain jurisdiction to resolve disputes about the settlement.").

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Lagueux, S.J.

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Lagueux, S.J.

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

**UNITED STATES OF AMERICA,**

Case No. CA13-442L

Plaintiff,

**MEMORANDUM IN SUPPORT  
OF THE JOINT MOTION TO DISMISS  
WITHOUT PREJUDICE AND RETAIN  
JURISDICTION**

v.

**STATE OF RHODE ISLAND and  
CITY OF PROVIDENCE,**

Defendants.

Plaintiff United States of America and Defendants State of Rhode Island (“State”) and City of Providence (“City”) (collectively, “Parties”), have entered into the attached “Interim Settlement Agreement” to ensure the State and City’s compliance with Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-34, and its implementing regulations, 28 C.F.R. pt. 35, with respect to individuals who are currently in, have recently left, or will enter Training Thru Placement, Inc. (“TTP”) and the Harold A. Birch Vocational Program (“Birch”) at Mount Pleasant High School in Providence, Rhode Island. Title II prohibits public entities, including states and municipalities, from discriminating against individuals with disabilities. *See* 42 U.S.C. § 12132 (“[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”). The United States Department of Justice (“Department”) has authority to enforce Title II of the ADA and to issue regulations implementing the statute. 42 U.S.C. §§ 12133-34. Title II’s integration mandate requires public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The Supreme Court has held that unnecessary segregation and isolation of

individuals with disabilities is discrimination under Title II and its integration mandate.

*Olmstead v. L.C.*, 527 U.S. 581, 597 (1999). Under *Olmstead*, public entities are required to provide community-based services when (a) such services are appropriate, (b) the affected persons do not oppose community-based treatment, and (c) community-based services can be reasonably accommodated, taking into account the resources available to the state and the needs of other persons with disabilities. *Id.* at 607. The *Olmstead* principles apply to segregated day activity programs such as sheltered workshops. *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205-06 (D. Or. 2012) (noting that there exists “no statutory or regulatory basis for concluding that the integration mandate to provide services in the most integrated setting appropriate applies only where the plaintiff faces a risk of institutionalization in a residential setting.”); *see also* 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.*, at 3 (June 22, 2011), *available at* [http://www.ada.gov/olmstead/q&a\\_olmstead.htm](http://www.ada.gov/olmstead/q&a_olmstead.htm).

Individuals with disabilities do not have to be in an institution in order to assert their rights not to be unnecessarily segregated. Rather, as numerous courts have concluded, individuals may assert the ADA integration mandate if a public entity places them at serious risk of unnecessary segregation. *See Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013) (“In sum, individuals who must enter institutions to obtain Medicaid services for which they qualify may be able to raise successful Title II . . . claims *because they face a risk of institutionalization.*”) (emphasis added); *M.R. v. Dreyfus*, 663 F.3d 1100, 1117 (9th Cir. 2011) (“An ADA plaintiff need not show that institutionalization is ‘inevitable’ or that she has ‘no choice’ but to submit to institutional care in order to state a violation of the integration mandate[; r]ather, a plaintiff need only show that the challenged state action creates a serious risk of institutionalization.”); *Fisher*

*v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003) (“[P]rotections [of the ADA’s integration mandate] would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation. . . . [N]othing in the *Olmstead* decision supports a conclusion that institutionalization is a prerequisite to enforcement of the ADA’s integration requirements.”); *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205 (D. Or. 2012) (“the risk of institutionalization addressed in both *Olmstead* and *Dreyfus* includes segregation in the employment setting.”).

In January 2013, the Department notified the State that it had opened an investigation of the State’s day activity service system. 46-1-14 R.I. Code R. § 43.0. This investigation was prompted by information demonstrating that, in administering and funding its day activity service system for people with intellectual and developmental disabilities (“I/DD”), the State over-relied on the segregated sheltered workshop and facility-based day activity program, TTP, which provides segregated services to approximately 90 individuals with I/DD.

In the course of the Department’s investigation of TTP, the Department determined that a disproportionate number of TTP’s clients had come to TTP directly from Birch. Birch is a self-contained special education program located inside of a wing of Mount Pleasant High School in Providence, Rhode Island, for students with I/DD between the ages of 14 and 21. Birch operates a school-based sheltered workshop within the Providence Public School District, and is under the direct control of the City.

Although the Department’s investigation into the State’s day activity service system is ongoing, in March 2013 the Department completed the portion of its investigation involving TTP and Birch. As a result of that investigation, the Department concluded that service recipients at

TTP were not receiving services in the most integrated setting appropriate to their needs and that students at Birch were being placed at serious risk of unnecessary segregation, in violation of Title II of the ADA. The State and the City cooperated fully with the Department's investigation. In response to the Department's findings, the State and the City responded that they would be willing to enter into an interim settlement agreement to remedy the violations that the Department had found at those facilities.

The Parties have engaged in extensive, arms-length negotiations to resolve the alleged violations, which are identified in the Department's Complaint (ECF #1). The attached Interim Settlement Agreement is the product of these negotiations and is intended to ensure that the State and the City comply with Title II of the ADA and the integration mandate with respect to individuals who are currently in, have recently left, or will enter TTP and Birch. Under the Interim Settlement Agreement, the State and the City will significantly expand their capacity to provide integrated transition-related educational, vocational rehabilitation, and day activity services, including integrated supported employment and integrated day services, to individuals with I/DD. The Interim Settlement Agreement will enable approximately 200 individuals with I/DD to receive employment services and supports in integrated, community-based settings instead of in segregated sheltered workshops and facility-based settings.

Accordingly, the Parties jointly move this Court to (1) enter an Order conditionally dismissing this action, without prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and (2) expressly retain jurisdiction to enforce the Interim Settlement Agreement in accordance with its terms and for its duration. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (recognizing that under Rule 41(a), a district court may, in its order of dismissal, retain jurisdiction to enforce a "dismissal-producing settlement agreement"); *F.A.C.*,



*Inc. v. Cooperativa de Seguros de Vida de P.R.*, 449 F.3d 185, 190 (1st Cir. 2006) (finding the *Kokkonen* standard to be satisfied when a district court's order "incorporates the terms of the settlement, and even more plainly, expresses . . . an intention to retain jurisdiction to resolve disputes about the settlement."). The Interim Settlement Agreement is attached hereto as Exhibit A.

A proposed Order is attached.

Dated: June 13, 2013

Respectfully submitted,

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# Exhibit A

INTERIM SETTLEMENT AGREEMENT

I. INTRODUCTION

- A. This Interim Agreement (“Interim Agreement”) is entered into between the United States of America (“United States”), the State of Rhode Island (“State”), and the City of Providence, Defendants (hereinafter collectively “Parties”).
- B. On January 14, 2013, the United States Department of Justice (“United States”) notified the State that it had initiated an investigation into whether the State has violated Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12131, et seq., as interpreted by the United States Supreme Court in Olmstead v. L.C., 527 U.S. 581 (1999), through its administration and operation of its day activity services system, including employment, vocational, and day services, 46-1-14 R.I. Code R. § 43.0, for individuals with intellectual and developmental disabilities (“I/DD”).
- C. On January 14, 2013 and March 4, 2013, the United States requested documents from the State as part of its investigation into Rhode Island’s day activity service system, including employment, vocational, and day services, 46-1-14 R.I. Code R. § 43.0, for individuals with I/DD. Also, as part of this investigation, the United States participated in two in-person meetings with the State in February and March 2013, conducted on-site interviews with providers, including sheltered workshop, supported employment and integrated day providers, as well as individuals with I/DD participating in employment programs, and met with numerous stakeholders and advocacy organizations. On March 20, 2013, the United States communicated its findings, in person, to the State pertaining to the services provided at the sheltered workshop provider Training Thru Placement (“TTP”) and the Harold A. Birch Vocational Program at Mount Pleasant High School (“Birch”) of the Providence Public School Department (“PPSD”), as part of the State and PPCSD’s day activity services system, concluding that the State fails to administer programs and services to individuals with I/DD at TTP in the most integrated setting appropriate to their needs, and PPCSD places Birch students at risk of unnecessary segregation in sheltered workshop and day program settings, including TTP, in violation of the ADA and Olmstead. On April 9, 2013 and April 29, 2013, the United States communicated its findings to the City of Providence, including PPCSD, concluding that the school district places Birch students at risk of unnecessary segregation in sheltered workshop and day program settings, including TTP, in violation of the ADA and Olmstead. The United States and the State and City continued to meet a number of times in May 2013 to resolve these findings. On June 7, 2013, the United States sent its findings to the State and also to the City, memorializing its specific oral findings.
- D. This Interim Agreement resolves the United States’ findings of violations by the State and the City of Providence of Title II of the ADA with respect solely to individuals served by TTP and Birch and any successor programs to TTP and Birch. The Parties expressly acknowledge and agree that the United States will continue its investigation of the remainder of the State’s day activity service system and will seek to remedy any and all violations of Title II of the ADA and Olmstead identified at the conclusion of the United States’ continuing investigation.

- E. This Interim Agreement is intended to ensure that the State and the City of Providence/PPSD will timely meet the requirements of the ADA and the Olmstead decision as it pertains to TTP and Birch, which require that the State's and the City's day activity services for individuals with I/DD be provided in the most integrated setting appropriate to meet their needs. Through this Interim Agreement, the Parties intend that the goal of community integration will be achieved for individuals with I/DD being served, identified for referral, or at risk of entering TTP and Birch.
- F. The State and the City of Providence have cooperated with the United States in reviewing and responding to the findings. The Parties agree that it is in their mutual interest to avoid litigation.

## II. DEFINITIONS

- A. For the purposes of this Interim Agreement only, the following terms have the following meanings:
  - 1. A "career development plan" is a plan that identifies the individual's employment goals and objectives, the services and supports needed to achieve those goals, the persons, agencies, and providers assigned to assist the person attain those goals, and the obstacles to the individual working in an individualized job in an integrated employment setting at competitive wages, and seeks to identify the appropriate services and supports necessary to overcome those obstacles.
  - 2. "Discovery" is the process by which an employment planning team assists an individual to identify his/her interests, strengths, and abilities relating to employment, with the goal of attaining and maintaining employment in an integrated employment setting, including self-employment.
  - 3. "Evidence-based" means well-defined practices, such as Individual Placement and Support ("IPS"), which have been demonstrated to be effective through multiple research studies.
  - 4. "Individuals with intellectual or developmental disabilities" (I/DD) are defined, for the purposes of this Interim Agreement, as persons who are eligible or likely to be found eligible, for publicly-funded developmental disability services through the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals ("BHDDH") as defined in Rhode Island General Laws § 40.1-21-4.3(5) or students who are eligible or likely to be eligible for transition services and supports under the Individuals with Disabilities Education Act, and who meet the definition found at 34 CFR § 300.8(c)(6).
  - 5. "Individual Learning Plan" is: a document consisting of 1) post-secondary plans aligned to career goals, and 2) documentation of the range of college and career readiness skills a student has developed; and 3) a process that enhances the relevance of school and out-of-school learning opportunities, and provides the student access to career development opportunities that incorporate self-exploration, career exploration, and career planning and management skill building activities.

6. “Integrated Day Services” are services and supports provided in the amount, duration, and intensity to allow persons with I/DD to engage in self-directed activities in the community at times, frequencies, and with persons of their choosing during hours when they are not receiving employment or residential services.
7. “Person-centered planning” is the formal process that organizes services and supports around a self-directed, self-determined and goal-directed future, and includes the process by which an individual, with the assistance of an employment planning team, identifies the direction of his/her future vocational, employment related, and day activities based on his/her skills, interests, strengths, and abilities, regardless of whether the individual has the verbal ability to express such information.
8. “Rhode Island” or “the State” means the State of Rhode Island, including BHDDH and the Office of Rehabilitation Services (“ORS”), as administered through the Department of Human Services, the Rhode Island Department of Education (“RIDE”), and the Executive Office of Health and Human Services (“EOHHS”).
9. A “sheltered workshop” is a facility-based service that congregates a large number of adults with I/DD. Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with I/DD or other disabilities except for service support staff. Individuals with I/DD are frequently paid less than minimum wage for work performed. In sheltered workshops, individuals with I/DD have limited or no engagement with nondisabled peers, coworkers, and customers, except for provider agency support staff.
10. A “situational assessment” is a vocational assessment that is administered on-site in integrated employment settings, where individuals are evaluated in the performance of work activities that are typical to the setting where the assessment is administered.
11. “Summary of Performance” is a plan developed for a student with a disability at the secondary level whose eligibility for special education services terminates because of graduation with a regular diploma or reaching the maximum age of eligibility for special education services. The Plan must provide the student with a summary of the student’s academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his or her postsecondary goals.
12. “Supported Employment Services” are employment services provided in the amount, duration, and intensity that allow persons with I/DD to work the maximum number of hours consistent with their abilities in an integrated employment setting. Supported Employment Services include services necessary to place, maintain, and provide ongoing support to an individual with I/DD in an integrated employment setting.
13. “Transition-age youth” or “eligible youth” are youth who, now or in the future, will attend the Harold A. Birch Vocational Program at Mount Pleasant High School and are between the ages of fourteen years old and twenty-one years old (14-21 years old).
14. “Trial work experience” is the opportunity to work in a real job in an integrated employment setting alongside non-disabled coworkers, customers, and peers, with the appropriate services and supports for a sufficient period of time to establish whether an

individual's interests, skills, and abilities are well-suited for the particular job, but for no shorter than 60 days. The trial work experience shall be selected through a person-centered planning process and shall be individually tailored to each person.

15. A "vocational assessment" is an assessment administered to provide employment-related information essential to the development of, or revision of, an individual's employment-related planning documents, including the Individual Plan for Employment ("IPE"), Individual Support Plan ("ISP"), Individual Education Plan ("IEP") and/or Individual Learning Plan ("ILP"), where applicable. The primary purpose of all vocational assessments shall be to determine an individual's interests, strengths, and abilities, in order to identify a suitable match between the person and an integrated employment setting.

### III. SCOPE OF THE AGREEMENT AND TARGET POPULATIONS

- A. Supported Employment Services, Integrated Day Services, and/or Transition Services under the Interim Agreement will be given to the following individuals:
  1. Individuals with I/DD that receive day activity or sheltered workshop services at Training Thru Placement or have received services at Training Thru Placement or any successor organization in the previous year ("TTP Target Population");
  2. Individuals with I/DD who are transition-age youth currently attending the Harold A. Birch Vocational Training Program, or any successor program, at Mount Pleasant High School ("Birch Transition Target Population"); and
  3. Individuals with I/DD who are transition age youth attending the Harold A. Birch Vocational Training Program, or any successor program, at Mount Pleasant High School who have exited Birch within the previous two years, or who will exit Birch within one year ("Birch Exit Target Population").

### IV. OUTCOMES

1. By September 1, 2013, all individuals in the Birch Exit Target Population will be provided the services and supports described in Section V(A)(1)-(2) necessary to introduce them to work in integrated settings, according to the youth transition process and milestones set forth in Section VIII, and they will become eligible for a Supported Employment Placement, as provided in Section V(D), upon their exit from Birch.
2. By September 1, 2014, all individuals in the Birch Transition Target Population will be provided the services and supports described in Section V(A)(1)-(2) necessary to introduce them to work in integrated settings, according to the youth transition process and milestones set forth in Section VIII.
3. A person-centered planning process will be engaged in every year that a student attends Birch, starting at age 14. The person-centered planning process will minimally include the standards and milestones set forth in Section VIII, including the opportunity to access integrated transition work placements and information about post-secondary work in integrated settings. In addition, individuals with I/DD at Birch will be offered meaningful

options for post-secondary Supported Employment and Integrated Day Services beginning no later than the start of the school year in which they will turn 18. Such individuals and their families must be provided information through the person-centered planning process sufficient to make a meaningful informed choice between such services and remaining in school.

4. Effective April 12, 2013, by Order of the PPSD Superintendent, PPSD ceased providing sheltered work at the Birch sheltered workshop. As of the date of this Interim Agreement and going forward, PPSD will continue not to provide services to individuals with I/DD at Birch in a sheltered workshop setting.
5. Effective upon the date of this Interim Agreement, the State will no longer provide placement or funding for new entrants to sheltered workshop or segregated day activity services at TTP, including:
  - a. Transition-age youth with I/DD;
  - b. Any working age adult who is newly eligible for I/DD services; and
  - c. Any working age adult who is already utilizing I/DD services who is not already receiving services at TTP.
6. Effective March 31, 2014, the State will no longer provide placement or funding for sheltered workshop or segregated day activity services at TTP.
7. By September 1, 2013, the State will provide career development plans, as described in Section VII, for each individual in the TTP Target Population. The State and the PPSD will provide career development plans, as described in Section VII to each individual in the Birch Exit Target Population. However, the provision of Supported Employment Services will not be delayed or denied due to the lack of a career development plan.
8. By September 30, 2013, for all individuals in the Birch Exit Target Population, and all individuals in the TTP Target Population, such persons shall receive benefits planning information and counseling from a qualified professional who is experienced and certified in Social Security and SSI regulations and who will review an individual's personal benefit levels and produce a written analysis, providing information to the individual and their family or guardian about the impact of earned income on the individual's public benefits. Benefits counseling will be rolled out consistent with when each individual in the Target Populations is scheduled to enter supported employment. Each person's benefits plan may be adjusted thereafter, subject to review by the Monitor, for six months following its completion.
9. It is the position of PPSD that supported employment placements are not typically a requirement for school districts under IDEA. However, the State and PPSD acknowledge that they will work together for the Birch Exit Target Populations to provide supported employment services and placements. The State will provide Supported Employment Placements and Integrated Day Services, as described in Sections V and VI, for all individuals in the TTP Target Population. The State and PPSD will provide Supported Employment Placements and Integrated Day Services, as described in Sections V and VI,



for all individuals in the Birch Exit Target Populations. The State and PPSD will do so by providing Supported Employment Placements to each individual:

- a. By July 1, 2013, the State jointly with the PPSD will provide Supported Employment Placements to all individuals in the Birch Exit Target Population who left, or will leave, school during the 2012-2013 school year.
- b. By August 1, 2013, the State will provide Supported Employment Placements to an additional 15 individuals.
- c. By November 1, 2013, the State will provide Supported Employment Placements to an additional 25 individuals.
- d. By February 1, 2014, the State will provide Supported Employment Placements to an additional 30 individuals.
- e. By March 31, 2014, the State jointly with PPSD will provide Supported Employment Placements to any additional individuals in the TTP and Birch Exit Target Populations.

V. SUPPORTED EMPLOYMENT SERVICES AND PLACEMENTS

- A. "Supported Employment Services" include the following community services and supports that the State shall make available to satisfy the requirements of this Interim Agreement:
  1. Vocational and related services, such as job discovery and development, job-finding, job carving, job coaching, job training, job shadowing, co-worker and peer supports, re-employment support, benefits counseling and transportation services, as well as those environmental modification and environmental accessibility adaptations, behavioral supports; personal care services; case management services; assistive technology; social skills training; self exploration; career exploration; career planning and management; job customization; soft skill development; time management training; self-employment opportunities and supports; adaptive behavior and daily living skills training directly related to job placement and support necessary to allow individuals with I/DD to participate in an integrated employment setting; and
  2. In addition, for transition-age youth with I/DD, transitional services and supports, including: instruction, community experiences, the development of employment and other post school adult living objectives; school-based preparatory experiences; career preparation, and integrated work-based learning experiences such as site visits, job shadowing, soft skill and job skill development, internships, part-time employment, summer employment; youth development and leadership, including training in self-advocacy, self-determination and conflict resolution skills, peer and adult mentoring, and, where appropriate, daily living skills; connecting activities, including exposure to post-school educational and community services, transportation, benefits planning, and assistive technology.

- B. Supported Employment Services shall be individualized and flexible, and shall be available as needed and desired, but shall not be mandated as a condition of working or receiving services in an integrated employment setting.
- C. Supported Employment Services shall be provided in the amount, intensity, and duration necessary to place, maintain, and provide ongoing support, including ongoing professional development, to an individual in a Supported Employment Placement, as set forth below in Section V(D)-(E).
- D. "Supported Employment Placement," for the purposes of this Interim Agreement, is defined as the provision of Supported Employment Services in an integrated employment setting:
  - 1. Where the individual is compensated at or above Rhode Island's minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities;
  - 2. Where the individual works the maximum number of hours consistent with his/her abilities;
  - 3. That allows individuals with disabilities to interact with individuals without disabilities in an employment setting to the fullest extent possible for the individual; and
  - 4. That offers individuals with disabilities the same opportunity as non-disabled individuals:
    - a. To access community opportunities at times, frequencies, and with persons of their choosing during appropriate times when the individual is not working, such as on breaks, during lunch, and before and after the work day;
    - b. For promotion and/or advancement opportunities; and
    - c. To perform tasks or work activities that match the interests, preferences, and skills of the worker.
- E. All Supported Employment Placements shall be based on an individual's capabilities, strengths, and preferences, and shall be individually tailored to each person and may include self-employment. Working from an individual's home as part of self-employment may be a Supported Employment Placement if made as an informed choice by the individual, and is subject to review by the Monitor.
- F. The State and PPSD will establish and implement a policy that includes the presumption that all individuals covered by this Interim Agreement are capable of working in integrated employment settings.
- G. Supported Employment Placements made available under this Interim Agreement cannot be in facility-based work/sheltered workshops, group enclaves, mobile work crews, time-limited work experiences (internships), or facility-based day programs.
- H. All individuals who receive a Supported Employment Placement under this Interim Agreement shall work the maximum number of hours consistent with their abilities and have access to integrated day services in sufficient amount, duration, and intensity to complement

their employment and to provide them with an ISP that affords them the opportunity to participate in integrated settings at times when they are not working during a normative 40 hour work week.

- I. By May 1, 2014, all individuals in the TTP and Birch Exit Target Populations that receive a Supported Employment Placement(s) shall average, as determined by a point in time survey, work in an integrated employment setting for at least 20 hours per week.
- J. Any individual eligible for a Supported Employment Placement, but who makes an informed choice for placement in a sheltered workshop, group enclave, mobile work crew, time-limited work experience (internships), or facility-based day program, or other segregated setting may seek a variance allowing such placement. Variances may only be granted after an individual has:
  - 1. Participated in at least one vocational or situational assessment, as defined in Section II;
  - 2. Completed one trial work experience, as defined in Section II;
  - 3. Received the outreach, education, and support services described in Section X; and
  - 4. Received a benefits counseling consultation, as described in Sections IV(8).
- K. If a variance is granted, the individual must be reassessed by a qualified professional, and the revised employment goal reevaluated, within 180 days, and annually thereafter, for the individual to have the meaningful opportunity to choose to receive Supported Employment Services in an integrated work setting. The Parties and the Monitor shall create a process that governs the variance process within 30 days of entering this Interim Agreement.

#### VI. INTEGRATED DAY SERVICES

- A. "Integrated Day Services" include the following community services and supports that the State shall make available to satisfy the requirements of this Interim Agreement: community-based recreational, social, educational, cultural, and athletic activities, including community volunteer activities and training activities, as well as other non-facility based activities of a person's choosing that are provided in integrated settings during the day with the appropriate services and supports.
- B. Integrated Day Services will be provided to all individuals in the TTP and Birch Exit Target Populations for the remainder of all time set forth in an individual's ISP in a 40 hour work week in which such individuals are not in school or supported employment. Integrated day settings must:
  - 1. Allow individuals with disabilities the opportunity to interact with individuals without disabilities in a community setting to the fullest extent possible for the individual; and
  - 2. Offer individuals with disabilities the same opportunity as do non-disabled individuals:
    - a. To engage in non-work activities that match the interests, preferences, and goals of the participant; and

- b. To do so at times, frequencies, and with persons of their choosing during the day, when an individual is not working or receiving residential care or educational services.
  - i. Integrated Day Services shall be individualized, flexible, purposeful, and productive daytime activities; shall be individually tailored to a person's interests, abilities, and goals; and shall afford individuals the services and supports necessary to interact with non-disabled individuals to the fullest extent possible during the day.
  - ii. Integrated Day Services must include an array of group and non-group activities and facilitate meaningful choice by individuals with I/DD between group and non-group activities.
  - iii. Integrated Day Services shall not be services provided as part of a sheltered workshop, day services, group home, or residential service provider's on-site program.

## VII. CAREER DEVELOPMENT PLANNING

1. By September 1, 2013, the State shall adopt and implement policies and procedures for developing career development plans for each individual in the TTP Target Population. By September 1, 2013, the State and PPSD shall adopt and implement policies and procedures for developing career development plans for each individual in the Birch Exit Target Population. The policies will include a presumption that all individuals covered by this Interim Agreement are capable of working in an integrated employment setting and that a rapid search process for employment should be implemented for individuals eligible for Supported Employment Services under this Interim Agreement. The policies will also include the presumption that all individuals covered by this Interim Agreement will be ensured an active and leading role in the career development planning process. The policies also will include a provision that no readiness criteria shall be used in pre-eligibility determinations to assess an individual's ability to work in an integrated setting. All individuals covered by this Interim Agreement will be presumed ready for employment.
2. The State shall adopt evidence-based vocational assessments and vocational eligibility criteria that are person-centered and appropriate for individuals with I/DD; based on the presumption that with the appropriate services and supports individuals with I/DD can work; and designed to reveal information about an individual's skills, interests, strengths and abilities, regardless of whether the individual has the verbal ability to express such information.
3. For the purposes of this Interim Agreement, no vocational or situational assessments, including those conducted by the State, or any vendors or contractors of the State, shall be conducted in segregated work settings, including in sheltered workshops or in any setting that does not meet the definitions and standards set forth in Sections V(D)-(E).
4. The State shall ensure that all assessments:

- a. Are conducted by appropriate and trained staff;
  - b. Maintain fidelity to an asset-based assessment model (like MAPS, PATHS, or VAPS);
  - c. Are available for all individuals eligible for relief under this Interim Agreement to be assessed in several different integrated employment settings, should they desire to be assessed in more than one community employment setting; and
  - d. Are conducted with the appropriate accommodations, services and supports necessary for individuals eligible for relief under this Interim Agreement to be assessed performing work activities in integrated employment settings.
5. A career development plan shall be formulated and/or revised at least annually in conjunction with the ISP or IEP process through an asset-based, person-centered planning process including discovery, vocational assessment, and situational assessment conducted with the goal of maximizing the number of hours spent working, consistent with an individual's abilities, in settings that meet the definitions and standards set forth in Sections V and VI. The career development plan shall:
- a. Set forth the individual's skills, interests, strengths, and abilities;
  - b. Be integrated into the individual's IPE, ISP, IEP, and ILP and Summary of Performance ("SOP"), where applicable; and
  - c. Identify the nature and scope of services needed by the individual to remove obstacles to obtaining and keeping an individualized job in an integrated employment setting and participating in Integrated Day Services meeting the definitions and standards set forth in Sections V and VI.
6. Translation and interpretation services, including sign language interpretation, shall be accessible and available to all individuals in the Target Population and their families who require such services during all employment planning meetings and during the entire career planning process. Further, all individuals covered by this Interim Agreement will have access to the services and supports necessary to make informed decisions pertaining to this Interim Agreement.
7. If, after discovery, and a vocational or situational assessment, an individual expresses that a particular work setting does not match his/her interests, strengths, or abilities, the person-centered planning process shall resume, the reasons that the individual did not prefer the work placement shall be documented, and all planning shall proceed with goals that have been adjusted based on the information revealed through the discovery and assessment process.
8. The State shall implement a rapid job search process for competitive employment for each individual eligible for a Supported Employment Placement under this Interim Agreement.

9. At minimum, the State shall ensure that the rapid job search process:
  - a. Begins within 10 days of the completion of an individual's vocational assessment;
  - b. Includes an individualized job search; and
  - c. Includes job development and job carving.

VIII. TRANSITION PLANNING FOR YOUTH

1. The State and PPSD shall adopt an Employment First Policy, making work in integrated employment settings the first and priority service option for youth seeking transition work placements and for transition-age youth's postsecondary vocational planning objectives. The PPSD's Employment First Policy will set forth values for the school district's transition planning process that reflect PPSD and the State's expectations for supporting youth in transition in integrated employment settings through a systemic and collaborative framework.
2. The State and PPSD shall enter into an interagency agreement that includes timelines and specific benchmarks setting forth a school-to-work transition process for transition-age youth (14-21 years of age) with I/DD in Providence Public School District, including Birch students, and providing for students' access to the services and supports set forth in Sections V(A)(1)-(2).
3. The State and PPSD shall promote the involvement and availability, and use of employment planning teams at Birch. Employment planning teams shall at a minimum include a qualified vocational rehabilitation counselor, qualified school transition specialist, qualified State representative, where applicable, and the eligible youth with I/DD. Family and/or guardian participation in all planning meetings should be required. The eligible youth shall be ensured an active and leading role in all of his/her planning meetings.
4. The transition planning process for students enrolled in Birch shall continue to begin by age 14, shall include an employment planning team, and shall include access to ORS and Medicaid Waiver services, if the individual is eligible for such services. The transition planning process shall be designed to ensure that each youth and his/her family has been informed about, and been given opportunities to experience, Supported Employment Services and Placements. The transition planning process, as set forth by interagency agreement in Section XIII, shall be inclusive of specific and relevant planning milestones for all eligible Birch youth in transition. At minimum, these milestones shall include:
  - a. Assignment, by age 14, to an employment planning team, as defined in this Section;
  - b. No later than during the first year of entry to Birch, and with the assistance of the employment planning team, the formulation of the employment-related recommendations of the IEP to discover and record students' personal interests and goals for postsecondary employment and/or postsecondary education;

- c. No later than the year in which a student turns 16 years of age and with the assistance of the employment planning team, a comprehensive introduction to or enrollment in State services, if an individual is eligible or will be eligible, and also with the assistance of the employment planning team, the formulation of the employment-related recommendations of the IPE and ISP, where applicable;
  - d. No later than the year in which a student turns 18 years of age meeting with the employment planning team to facilitate possible post-secondary employment placements, and to ensure that an eligible youth has been introduced to numerous and specific options to receive Supported Employment Services in a community based long-term placement in an integrated employment setting meeting the definitions and standards set forth in Section V(D)-(E), and that the eligible youth has (or will have) experienced the opportunity to be placed in such a setting, and to begin working there, prior to the end of his or her participation at Birch; and
  - e. No later than during the year prior to exit from secondary school, all Birch youth in transition shall receive benefits planning information, according to the standards set forth in Section IV(8).
5. All youth in transition shall have a meaningful opportunity to experience one or more vocational and/or situational assessments in an integrated employment setting prior to exit from Birch, pursuant to the standards set forth in Section II.
  6. All youth in transition shall have a meaningful opportunity to experience at least two trial work experiences, where each trial work experience is approximately 60 days duration, prior to exit from Birch in an individualized, integrated employment setting meeting the definitions and standards set forth in Sections V(D)-(E) with supervision and appropriate services and supports. Such trial work experiences may be exempt from the requirement of Section V(D)(1), and may include full-time, part-time, or seasonal work on a paid or unpaid basis, including internships, summer work experiences, or volunteer/ community service experiences. Such trial work experiences cannot be positions of employment that are controlled by an employer that is a provider, school, or school district for the purpose of employing individuals with disabilities; instead, they must be provided in typical work settings meeting the definitions and standards set forth in Sections V(D)(2)-(4) and V(E).
  7. A person-centered career development plan shall be developed by the employment planning team for each youth in transition, to inform the employment-related goals and recommendations of the youth's ISP, IEP, IPE, ILP, and SOP, where applicable, and to provide ongoing coordination of the employment-related recommendations of those plans.
  8. The State and PPSD shall prohibit vocational assessments of transition age youth in segregated work settings, and shall issue a directive that no Birch youth in transition will be assessed in segregated settings or in settings that do not meet the definitions and standards set forth in Section V(D)-(E).
  9. The State and PPSD shall ensure that the appropriate services and supports are available to Birch transition-age youth who choose to work in the community before their 21st

birthday rather than remaining in school. To this end, the State and PPSD will update their policies and administrative rules to facilitate individuals who are eligible to access State services, including Supported Employment Services, beginning at age 18.

10. The State and PPSD shall take affirmative steps to ensure that Birch youth, following their exit from school, are not excluded from the benefits and opportunities of the school district's "transition academy" at Johnson & Wales University.
11. The State and PPSD shall issue a directive that Birch youth in transition shall be provided all opportunities to earn credentials based on the RI Secondary Education Regulations 2011 and not be unnecessarily or unjustifiably excluded from the opportunity to receive a high school diploma as a result of their participation in the Birch program.

IX. TRAINING

1. By October 1, 2013, the State and PPSD will establish competencies, and will develop and implement a competency-based and value-based training program for TTP and Birch staff respectively, and all members of employment planning teams as defined under Section VIII, and for youth service professionals, for the development of vocational assessment/profiles, career development plans, and transition plans; job development, job coaching, employment support, benefits counseling, and Supported Employment and Integrated Day Services; intake and vocational rehabilitation services; and service coordination.
2. The State and PPSD will ensure that all persons involved in the discovery and assessment process, the preparation and implementation of career development plans, and the provision of Supported Employment and Integrated Day Services for members of the Target Populations have completed the necessary training, have attained and retain the required competencies, and are otherwise qualified (as specified in Section X) to perform their respective responsibilities with respect to employment services.

X. OUTREACH, EDUCATION, AND SUPPORT

1. By September 1, 2013, the State and PPSD will develop an outreach, in-reach, and education program that explains the benefits of supported employment, that addresses concerns of families and perceived obstacles to participating in supported employment programs, and that is designed to encourage individuals with I/DD at TTP and Birch and their families to seek Supported Employment Services and to understand the objectives of the State and PPSD's Employment First Policy, receive benefits planning consultation, and participate in other related initiatives. As part of its outreach, in-reach, and education program, the State will educate individuals about the ways in which Integrated Day Services can complement employment in integrated settings, and will develop opportunities for individuals and families to learn about the benefits of Integrated Day Services. Furthermore, the program will provide the opportunity for individuals in the Target Populations to visit and observe integrated employment and day settings where individuals with I/DD receive Supported Employment and Integrated Day Services.



2. The State will support personal networks and use family to family and peer to peer programs to link families and individuals with I/DD who obtain competitive employment with families and individuals with I/DD at TTP and Birch, in order to explain the benefits and opportunities of supported employment.

XI. PROVIDER CAPACITY

1. The State and PPSD will ensure that it supports and maintains a sufficient capacity to deliver Supported Employment and Integrated Day Services to individuals at TTP and Birch, including qualified supported employment providers and integrated day providers, consistent with the terms of this Interim Agreement.
2. The State will ensure that the supported employment providers and/or integrated day providers and transition service providers have a sufficient array of trained staff, adequate staff supervision, appropriate policies and procedures, a quality improvement program, and the capacity to deliver Supported Employment and Integrated Day Services consistent with the terms of this Interim Agreement.
3. The State will establish, implement and enforce pre-qualification requirements for all Supported Employment and Integrated Day Services providers that supply services to individuals at TTP, consistent with the terms of this interim agreement. The State will establish, implement and enforce pre-qualification requirements for all Supported Employment and Integrated Day Services providers that supply services to individuals at and Birch, consistent with the terms of this Interim Agreement.
4. The State will create incentives to encourage the transition of individuals from TTP to integrated employment settings that meet the definitions and standards of Section V(D)-(E). The State will implement these incentives through public-private partnerships with persons with I/DD, family members, employers, and employment providers, and community organizations. The State and PPSD will create incentives to encourage the transition of individuals from Birch to integrated employment settings that meet the definitions and standards of Section V(D)-(E). The State and PPSD will implement these incentives through public-private partnerships with persons with I/DD, family members, employers, and employment providers, and community organizations.
5. Supported employment providers shall use evidence-based employment practices and the State will provide monitoring, oversight, and technical assistance to ensure supported employment providers have adequate staffing, organizational support and supervision, and use of effective business models to meet the goals and outcomes of this Interim Agreement.
6. The supported employment provider(s) used to transition individuals with I/DD from TTP and Birch into Supported Employment Placements will:
  - a. Identify and promote Supported Employment Placements in state and federal agencies and in private industry on a statewide basis; and
  - b. Develop relationships with public and private employers based on the benefits to businesses of hiring people with disabilities.

7. The State will establish public and private sector initiatives to support the employment of individuals in the Target Populations.
8. The State will develop procedures to require provider staff to assist in the transition of individuals from TTP to Supported Employment Services and Placements. The procedures will provide incentives and support to qualified providers of sheltered workshop services at TTP to convert their employment programs to support employment services once the terms and conditions of this Interim Agreement are met, at the expiration of this Interim Agreement. The State and PPSD will develop procedures to require provider staff to assist in the transition of individuals from Birch to Supported Employment Services and Placements.
9. If any service gaps or obstacles are identified through the process in Section XV, the Monitor may recommend the necessary actions to remedy these gaps and address these obstacles, including increasing the number of trained and qualified vocational rehabilitation counselors, transition specialists, job developers, job coaches, benefits counselors, job placement specialists, case managers, youth service professionals and other community employment professionals, in order to allow for successful transition of individuals with I/DD at TTP and Birch to integrated employment settings and to ensure the full implementation of the goals and outcomes of this Interim Agreement.

## XII. STATE AGENCY ACTIONS

1. By September 1, 2013, the State and PPSD will identify and pursue a contract with a technical assistance provider or, access the services of an existing technical assistance provider to provide leadership, training, and technical assistance to employment providers and to the State, PPSD, TTP, and Birch staff involved in assessing, planning, and providing Supported Employment and Integrated Day Services, in order to support the goals and outcomes of this Interim Agreement.
2. The technical assistance provider will assist and support employment providers to transition individuals, programs, staff, and resources from the sheltered workshops at TTP and Birch to Supported Employment and Integrated Day Services meeting the definition and standards set forth in Sections II(11), V, and VI of this Interim Agreement.

## XIII. INTERAGENCY COLLABORATION

1. By September 1, 2013, the State will develop and implement one or more interagency agreements or memoranda of understanding between BHDDH, ORS, and RIDE designed to ensure the full implementation of this Interim Agreement that addresses:
  - a. Allocation of responsibility, funding commitments, and authority for conducting and ensuring the quality of all requirements of this Interim Agreement, including career planning, transition planning, outreach, in-reach, and education, training and professional development, Supported Employment and Integrated Day Services, and data collection, sharing, and reporting;
  - b. Supported employment outcomes through coordination and collaboration between BHDDH, ORS, and RIDE;

- c. The compatibility of ORS and RIDE services with services funded through BHDDH by clarifying and streamlining interagency procedures and allowing for the blending and braiding of funding; and service gaps resulting from the transition from one funding stream to another funding stream, e.g. ORS funding to BHDDH funding, or special education funding to ORS funding, enabling individuals with I/DD to maintain uninterrupted integrated employment without unnecessary delays in services;
  - d. Individual tailoring of the vocational rehabilitation assessment and job placement activities to serve people with the most significant disabilities, including individuals at TTP and Birch, who are eligible for ORS funding; and
  - e. Coordinated outreach and in-reach efforts to individuals in the Target Populations conducted by vocational rehabilitation counselors and BHDDH representatives.
2. The State will develop and implement a memorandum of understanding with PPSD regarding any and all applicable funding issues, including but not limited to the costs of the Monitor, as well as the transition planning process set forth in Section VIII designed to ensure the full implementation of this Interim Agreement that will:
- a. Require ORS presence at Birch in order to collaboratively implement the Employment First Policy and related initiatives, and promote the presence and active engagement of vocational rehabilitation counselors on Birch employment planning teams and in planning meetings (including IEP meetings);
  - b. Ensure the engagement of trained school transition specialists to assess and support students in transition to integrated supported employment;
  - c. Require Birch special education staff and transition specialists to be trained to refocus transition services on supported employment instead of sheltered workshops, and to train special education directors and transition specialists on the requirements of the integration mandate of Title II of the ADA and Olmstead as applied to the youth transition planning process;
  - d. Establish referral relationships with integrated, supported employment providers in Birch's immediate service area; and
  - e. Adopt mutual agency policies and procedures to ensure that the requirements of the integration mandate of Title II of the ADA and Olmstead are applied to the youth transition planning process including to situational work assessments, trial work experiences, post-secondary employment goals and outcomes, and ongoing professional development.

#### XIV. FUNDING

1. The State and the PPSD shall ensure that all individuals in their Target Populations with a career development plan have an ongoing allocation from available funding/budgets that is dedicated to supports for gaining, maintaining, or improving employment outcomes and for integrated day services.

2. The State and PPSD shall timely fund the services and supports necessary to comply with this Interim Agreement for the eligible members of their Target Populations according to the standards and timelines set forth in this Interim Agreement.
3. The State shall develop and implement performance-based contracts for Supported Employment Services to individuals in the Target Populations, linking funding to the provider's achievement of numerical targets and implementation timelines.
4. The State will reallocate resources expended on TTP to fund supported employment as individuals in the Target Populations transition from TTP to supported employment, in order to have funding "follow the person."

XV. QUALITY IMPROVEMENT

1. TTP Target Population Quality Improvement Program
  - a. The State will develop and implement a quality improvement initiative to ensure that individual, integrated Supported Employment Placements and Supported Employment and Integrated Day Services, as defined and described in Section V, are developed in accordance with this Interim Agreement; to evaluate the quality and quantity of Supported Employment and Integrated Day Services provided to persons with I/DD under this Interim Agreement; and to ensure that individuals who receive Supported Employment Placements and Integrated Day Services under this Interim Agreement receive services and supports that are adequate and sufficient to achieve integration, increased independence, and increased economic self-sufficiency.
  - b. The State will establish detailed program standards for Supported Employment and Integrated Day Services that at least incorporate the definitions and standards set forth in Sections V-VI.
  - c. Through its quality improvement initiative, the State will conduct on-site reviews of TTP at least monthly for the first year of this Interim Agreement and quarterly thereafter to evaluate the services provided to individuals with I/DD against the program standards described above. The need for continued quarterly review will be reevaluated after year 3 (three).
  - d. The State will issue reports from each review describing its findings and recommendations, identifying any program deficiencies, and requiring a plan of correction, where appropriate. If a plan of correction is required, details of the plan's requirements will be included in the report.
  - e. The State will conduct appropriate follow-up reviews to determine if plans of correction have been implemented and to ensure that any identified deficiencies have been corrected in a timely manner. The State will issue reports pertaining to any follow-up reviews.
2. Birch Transition and Exit Target Populations Quality Improvement Program

- a. The State, and PPSD will develop and implement a quality improvement initiative to ensure that individual, integrated Supported Employment Services and Supported Employment Placements, and Integrated Day Services as defined and described in Sections V-VI, are developed in accordance with this Interim Agreement for students at Birch; to evaluate the quality and quantity of Supported Employment and Integrated Day Services provided to persons with I/DD at Birch under this Interim Agreement; and to ensure that individuals from Birch who receive Supported Employment Placements and Integrated Day Services under this Interim Agreement receive services and supports that are adequate and sufficient to achieve integration, increased independence, and increased economic self-sufficiency.
- b. The State and PPSD will establish detailed program standards for transition planning and services, career development planning, benefits planning, Supported Employment Services, and Supported Employment Placements, that at least incorporate the definitions, standards, and processes set forth in Sections V and VII-VIII.
- c. Through its quality improvement initiative, the State and PPSD will conduct on-site reviews of Birch at least monthly for the first year of this Interim Agreement and quarterly for two additional years, to evaluate the services provided to individuals with I/DD against the program standards described above. The need for continued quarterly review will be reevaluated after year 3 (three).
- d. The State and PPSD will issue joint reports from each review describing its findings and recommendations, identifying any program deficiencies, and requiring a plan of correction, where appropriate. If a plan of correction is required, details of the plan's requirements will be included in the report.
- e. The State and PPSD will conduct appropriate follow-up reviews to determine if plans of correction have been implemented and to ensure that any identified deficiencies have been corrected in a timely manner. The State and PPSD will issue reports pertaining to any follow-up reviews.

XVI. DATA COLLECTION & REPORTING

1. The State and PPSD shall collect data where applicable. The State and PPSD shall respectively monitor the monthly progress of implementation of this Interim Agreement through data collection, data analysis, and quality improvement activities.
2. The State and PPSD shall collect data and report on a monthly basis for the first year of this Interim Agreement and quarterly thereafter the following unduplicated data for individuals with I/DD in the Target Populations:
  - a. The number of career development plans in place for members of the Target Populations;
  - b. The number and reason for any readmissions to the TTP and Birch sheltered workshops;

- c. The number of individuals moving from TTP or Birch to another sheltered workshop setting, center-based day services setting, group enclave, mobile work crew, time-limited work experience (internship), or facility-based day program, or other segregated setting, the reasons for such moves, and the number of variances granted;
- d. The number, hours worked, wages earned, age, and tenure of all individuals at TTP and Birch;
- e. The number of individuals referred to and receiving Supported Employment Services as defined in Sections V(A)-(C), and from which setting, TTP or Birch, they have been referred;
- f. The number of individuals working in Supported Employment Placements as defined in Section V(D)-(E);
- g. The number of hours worked per week, hourly wages paid, and tenure of all members of the Target Populations in an integrated employment setting, excluding any of the service settings set forth in Section V(K);
- h. The number of hours spent per week, and tenure of all individuals in the Target Populations receiving integrated day services, including the name of that service setting, the provider of Integrated Day Services, and the specific activity(ies) that the individual is engaged in (i.e., art classes, health club, etc.);
- i. The number and reason(s) for lost jobs and/or terminations from employment along with plans for re-employment;
- j. The number of youth in transition at Birch who have vocational objectives;
- k. The number of youth in transition at Birch exiting or graduating, or otherwise expected to exit or graduate this year, their career planning goals, and where they transition to following their exit;
- l. The number and client capacity of supported employment providers providing services to the Target Population;
- m. The number and client capacity of integrated day providers providing services to the Target Population;
- n. The number of qualified and trained individuals for each category of supported employment professionals, including job coaches, job developers, employment specialists, and benefits counselors providing services to the Target Population;
- o. The number of qualified and trained individuals who develop assessments and transition plans for youth with I/DD at Birch and who participate on employment teams; and
- p. The number of qualified and trained vocational counselors who assess and assist persons with I/DD for Supported Employment Services at TTP and at Birch; and

- q. The number of in-reach, out-reach, and education programs and efforts offered to the Target Population(s).
3. The State shall take the following steps related to Data Collection and Monitoring:
    - a. The State will regularly collect, aggregate, and analyze data described above, will identify problems or barriers to placement in or retaining jobs in individual, integrated employment settings, and will recommend to the Directors of BHDDH, RIDE, and ORS remedial actions to resolve the problems or barriers. The State will review this information on a monthly basis for the first year of this Interim Agreement and quarterly thereafter and develop and implement effective measures to overcome the problems and barriers identified; and
    - b. The State will analyze service data, monitor services and service gaps, report on any service gaps, and identify and address any obstacles to the implementation of the goals and outcomes of this Interim Agreement.

#### XVII. MONITORING AND ENFORCEMENT

1. The Parties have jointly selected Nancy Gurney as the Monitor for this Interim Agreement. The State and PPSD will contract with the Monitor to provide monitoring services pursuant to this Interim Agreement, subject to applicable purchasing laws. In the event that the Monitor resigns or the Parties agree to replace the Monitor, the Parties will select a replacement. If the Parties are unable to agree on a replacement within 30 days from the date the Parties receive a notice of resignation from the Monitor, or from the date the Parties agree to replace the Monitor, they shall each submit the names of up to three candidates and shall select the replacement from the names submitted.
2. The Monitor shall conduct the factual investigation and verification of data and documentation necessary to determine whether the Parties are in compliance with this Interim Agreement, on a monthly cycle continuing during the pendency of the Interim Agreement. The Monitor may hire staff and consultants, in consultation with and subject to reasonable objections by the Parties, including but not limited to the economic efficiency of the Monitor or other budgetary requirements, to assist in his/ her compliance investigations. The Monitor and any hired staff or consultants are neither agents nor business associates of the State, the City of Providence/PPSD, or the United States Department of Justice.
3. The Monitor shall provide a written report to the Parties regarding the State and PPSD's compliance with the terms of this Interim Agreement every 90 days for the first year of this Interim Agreement and every 180 days thereafter. The first report shall be issued two months from the effective date of this Interim Agreement. At the request and with the consent of the Parties, the Monitor may hold an informational and review meeting after the filing of each written report. The Monitor shall provide the Parties a draft of his/her report at least 7 days before issuing the report. The Parties shall have the opportunity to review and comment on the proposed report. The Parties may agree to allow the Monitor an additional 5 days to finalize a report after he/she receives comments from the Parties.

4. In order to determine compliance with this Interim Agreement, the Monitor and any hired staff or consultants shall have full access to the people, places, documents and materials that are necessary to assess the State and City of Providence/PPSD's compliance with this Interim Agreement, to the extent they are within the State or PPSD's custody or control. This shall include, but not be limited to, access to the data and records maintained by the State and PPSD pursuant to Section XIV above. The Monitor and any hired staff or consultants may also interview individuals receiving services under this Interim Agreement with the consent of the individual or his/her authorized representative. The Monitor's access to people, places, documents and materials shall continue until the Interim Agreement is terminated. Any individually identifying health or education information that the Monitor and any hired staff or consultants receive or maintain shall be kept strictly confidential.
5. The Monitor shall also have access to any and all:
  - a. Data collected by the State or PPSD;
  - b. Information necessary to determine that placements, pursuant to the terms of this Interim Agreement, meet the definition and standards set forth in Section V;
  - c. Information necessary to ensure that the Interim Agreement outcomes set forth in Section IV are met; and
  - d. Information necessary to evaluate the quality and quantity of Supported Employment Services provided to persons with I/DD under this Interim Agreement.
6. The Monitor and any hired staff or consultants shall not be liable for any claim, lawsuit, or demand arising out of their duties under this Interim Agreement. This paragraph does not apply to any proceeding before this Court for enforcement of payment of contracts or subcontracts for reviewing compliance with this Interim Agreement.
7. The Monitor and any hired staff or consultants shall not be subject to formal discovery, including, but not limited to, deposition(s), request(s) for documents, request(s) for admissions, interrogatories, or other disclosures. The Parties are not entitled to access the Monitor's records or communications, or those of his/her staff and consultants, although the Monitor may provide copies of records or communications at the Monitor's discretion.
8. Reimbursement and Payment Provisions
  - a. The allocation of the cost of the Monitor between the State and PPSD, including the cost of any consultants and staff to the Monitor, shall be determined by the State and PPSD, based upon utilization of the Monitor's services. All reasonable expenses incurred by the Monitor in the course of the performance of his/her duties as set forth in this Interim Agreement shall be reimbursed by the State and PPSD. The United States shall bear its own expenses in this matter. If a dispute arises regarding reasonableness of fees or costs, the Monitor shall provide an accounting justifying the fees or costs.



- b. Within 10 business days of his/her appointment, the Monitor shall submit to the Parties for approval a proposed budget for the first six months of operations. Then, annually thereafter.
  - c. The Parties shall raise with the Monitor any objections they may have to the draft of the proposed budget within ten days of its receipt. The Parties and the Monitor shall work to resolve any objections within ten days of an objection being raised. If the objection cannot be resolved, a Party may thereafter file the objection with the Court.
  - d. At any time, the Monitor may submit to the Parties for approval a proposed revision to the approved budget, along with any explanation of the reason for the proposed revision. Budget revisions will be effective upon approval by the Parties.
9. The Monitor, including any hired staff or consultants, shall not enter into any contract with the State or the City of Providence/PPSD while serving as the Monitor. If the Monitor resigns from his/her position as Monitor, he/she may not enter into any contract with the State or the City of Providence/PPSD on a matter related to this Interim Agreement during the pendency of this Interim Agreement without the written consent of the United States.
  10. The Monitor, and any hired staff or consultants, shall refrain from any public oral or written statements to the media, including statements "on background," regarding this Interim Agreement, its implementation, or the State or the City of Providence/PPSD's compliance.

#### XVIII. GENERAL PROVISIONS

1. This Interim Agreement does not resolve any claims other than those alleged by the United States Department of Justice, Civil Rights Division, under Title II of the ADA, as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), in the State and City of Providence's administration and operation of its day activity services system for people with I/DD at TTP and Birch. No other agency of the U.S. government, group, or individual is bound by or waives or resolves any claims herein. Nor are any other claims affected by this Interim Agreement.
2. The signatures below of officials and attorneys representing the United States, the State, and the City of Providence/PPSD signify that these parties have given their final approval to this Interim Agreement. Each Party to this Interim Agreement represents and warrants that the person who has signed this Interim Agreement on behalf of his or her entity or client is duly authorized to enter into this Interim Agreement and to bind that Party to the terms and conditions of this Interim Agreement.
3. This Interim Agreement is binding upon the Parties, by and through their officials, agents, employees, and successors for the term of this Interim Agreement. If the State and/or the City of Providence/PPSD contracts with an outside provider for any of the services provided in this Interim Agreement, the Interim Agreement shall be binding on all contracted parties, including agents and assigns. The State and the City of Providence/PPSD shall ensure that all contracted parties and agents take all actions

necessary for the State and the City of Providence/PPSD to comply with the provisions of this Interim Agreement.

4. No person or entity is intended to be a third party beneficiary of the provisions of this Interim Agreement for purposes of any civil, criminal, or administrative action, and, accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Interim Agreement in any civil, criminal, or administrative action.
5. This Interim Agreement and any documents incorporated by reference constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
6. This Interim Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Interim Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart. All references to signature or execution of the Interim Agreement shall be calculated from the date on which the last Party executed the Interim Agreement.
7. The Parties represent and acknowledge that this Interim Agreement is the result of extensive, thorough and good faith negotiations. The Parties further represent and acknowledge that the terms of this Interim Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of any and all claims or allegations set forth by the United States Department of Justice as a result of its investigation and findings made about TTP and Birch.
8. The United States and the State and the City of Providence/PPSD will bear the cost of their own fees and expenses incurred in connection with this Interim Agreement.
9. This Interim Agreement shall be interpreted in accordance with federal law and the laws of the State of Rhode Island. The venue for all legal actions concerning this Interim Agreement shall be in the United States District Court for the District of Rhode Island.
10. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1345; and 42 U.S.C. §§ 12131-12132. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
11. The term of this Interim Agreement shall extend for eight years from the date upon which this Interim Agreement is executed.

#### XIX. CONSTRUCTION AND TERMINATION

1. The Parties agree to jointly file this Interim Settlement Agreement with the Court, together with a Complaint and a joint motion to conditionally dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a). The Parties further agree that this case will remain on the Court's inactive docket, with the Court retaining jurisdiction to

enforce the Interim Agreement in the event of any disputes that may arise between the Parties until the Interim Agreement terminates, subject to the limitations set forth in Sections XIX(7)-(8) of this Interim Settlement Agreement. In the event the Court declines to retain jurisdiction, this Interim Settlement Agreement shall become null and void and the United States has the right to revive any claims otherwise barred by operation of this Interim Settlement Agreement.

2. The implementation of this Interim Settlement Agreement shall begin immediately upon execution. The Parties anticipate that the State and the City will have substantially complied with all provisions of this Agreement by July 1, 2020, unless the Interim Settlement Agreement is otherwise terminated, cancelled, or extended. Substantial compliance is achieved where the State and City have implemented all of the provisions of the Interim Settlement Agreement for all individuals in the Target Populations. Any violations of the Interim Settlement Agreement that are minor and occasional and are not systemic shall not be deemed noncompliance. Any Interim Settlement Agreement deadline may be extended by mutual agreement of the United States and the State and/or the City, or pursuant to the process described in Section XIX(3) below in the event that the State has not achieved substantial compliance with the Agreement on or before July 1, 2020.
3. The Parties anticipate that the State and City will have substantially complied with all provisions of the Interim Settlement Agreement by July 1, 2020. The Court shall retain jurisdiction of this action for all purposes until both Defendants have substantially complied with all provisions of this Interim Settlement Agreement and maintained substantial compliance with all provisions for one year unless: (1) the United States together with the State and/or the City jointly ask the Court to terminate the Interim Agreement as to the requesting Defendant before July 1, 2020, pursuant to Section XIX(4); or (2) the United States disputes that the State and/or City is in substantial compliance with the Agreement as of July 1, 2020. If so, the United States shall inform the Court, and the State and/or City by January 1, 2020 that it disputes substantial compliance, and the Court may schedule further proceedings as appropriate. In any such proceedings, the burden shall be on the State and/or City to demonstrate substantial compliance. If one Defendant has independently substantially complied, the Interim Settlement Agreement can be terminated as to that Party, even if another Party has not substantially complied.
4. As set forth in Section XIX(3), the United States and the State and/or City may agree to terminate the Interim Settlement Agreement as to one or both Defendants before the end of the anticipated term, provided the State and/or City has substantially complied with all provisions of the Interim Settlement Agreement and maintained substantial compliance with all provisions for one year. If the United States agrees to release only one Defendant from its obligations under the Interim Settlement Agreement, the remaining party continues to be bound by the terms of the Interim Settlement Agreement.
5. Within 30 days after the Interim Settlement Agreement is signed, the each Defendant shall select and appoint an Interim Settlement Agreement Coordinator to oversee compliance with this Interim Settlement Agreement and to serve as a point of contact for

the Monitor, and shall provide notice to the Monitor and to the other Parties of the Interim Settlement Agreement Coordinator's name, title, address, telephone number and e-mail address.

6. Throughout the pendency of this Interim Settlement Agreement, the United States and the State and City will coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. In the event of any dispute over the language or construction of this Interim Settlement Agreement or its requirements, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution prior to terminating the Interim Settlement Agreement. Overall, it is intended that the Parties will pursue a problem-solving approach so that disagreements can be minimized and resolved amicably and the energies of the Parties can be focused on the State and City's compliance with the provisions of this Interim Settlement Agreement.
7. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of individuals receiving services under this Interim Settlement Agreement, if the United States believes the State and/or City has failed to fulfill any obligation under this Interim Settlement Agreement, the United States shall, prior to initiating any court proceeding, notify the State and/or City in writing of any alleged non-compliance with the Interim Settlement Agreement and request that the State and/or City take action to correct such alleged non-compliance. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of individuals receiving services under this Interim Settlement Agreement, the State and/or City shall have 15 days from the date of such written notice to respond to the United States in writing by denying that noncompliance has occurred, or by accepting (without necessarily admitting) the allegation of noncompliance and proposing steps that the State and/or City will take, and by when, to cure the noncompliance. If the State and/or City fails to respond within 15 days or denies that noncompliance has occurred, the United States may seek an appropriate judicial remedy.
8. If the State and/or City responds by proposing a curative action by a specified date, the United States may accept the State's and/or City's proposal or offer a counterproposal for a different curative action or deadline. If the Parties reach an agreement that varies from the provisions of this Interim Settlement Agreement, the new agreement shall be in writing, signed and filed with the Court. If the Parties fail to reach agreement on a plan for curative action, the United States may seek an appropriate judicial remedy. The Parties will not seek to have the Court enforce implementation of this Interim Settlement Agreement other than through the process set forth in Sections XIX(7)-(8).
9. Any modification of this Interim Settlement Agreement must be consented to by the Parties, shall be executed in writing by the Parties, shall be filed with the Court. The Parties shall promptly notify each other of any judicial or administrative challenge to this Interim Settlement Agreement or any portion thereof, and shall defend against any challenge to the Interim Settlement Agreement.
10. Failure by any Party to enforce this entire Interim Settlement Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed

as a waiver.

11. The State and City shall maintain sufficient records to document that the requirements of this Interim Settlement Agreement are being properly implemented and shall make such records available to the Monitor or the United States for inspection and copying upon request. The Monitor or the United States may require additional written reports from the State and/or City with regard to the State's or the City's compliance with the terms of this Interim Settlement Agreement. The State and City will cooperate and comply with those requests.
12. The State and City will work collaboratively with the United States to provide full access for the United States and the Monitor to the people, places, and documents that are necessary to assess the State's and City's compliance with and/or implementation of this Interim Settlement Agreement, subject to applicable federal and state law.
13. The Parties agree that, as of the date the court enters the order conditionally dismissing the Complaint and retaining jurisdiction, for purposes of the Parties' preservation obligations pursuant to Federal Rule of Civil Procedure 26, litigation is not "reasonably foreseeable" concerning the matters described in the Findings Letter issued to either the State or the City pertaining to either TTP and/or Birch. To the extent that either Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Findings Letter issued to either the State or the City pertaining to TTP and/or Birch, the Party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves the United States, the State, or the City of any other obligations imposed by this Interim Settlement Agreement.
14. "Notice" under this Interim Settlement Agreement shall be provided by overnight courier to the following or their successors:

Chief of the Disability Rights Section  
United States Department of Justice  
Civil Rights Division  
1425 New York Avenue NW  
Washington, DC 20005

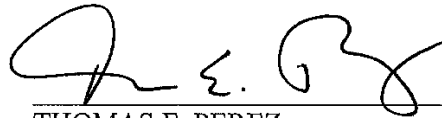
Office of the Secretary, Executive Office of Health & Human Services  
Louis Pasteur Building  
57 Howard Avenue  
Cranston, RI 02920

Office of the Commissioner, Rhode Island Department of Education  
255 Westminster Street  
Providence, RI 02903

Office of the Superintendent of the Providence Public School Department  
797 Westminister Street  
Providence, RI 02903

FOR THE UNITED STATES:

PETER F. NERONHA  
United States Attorney  
District of Rhode Island



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THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

EVE L. HILL  
Senior Counselor to the Assistant Attorney  
General  
Civil Rights Division

ALISON N. BARKOFF  
Special Counsel for *Olmstead* Enforcement  
Civil Rights Division

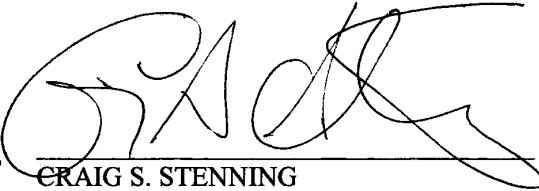
REBECCA B. BOND  
Section Chief

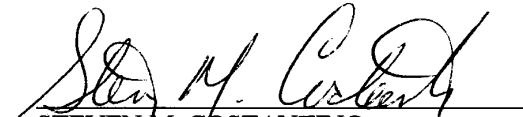
SHEILA M. FORAN  
Special Legal Counsel


ANNE S. RAISH  
Deputy Chief  
Disability Rights Section  
Civil Rights Division

REGINA KLINE  
H. JUSTIN PARK  
Trial Attorneys  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice

FOR THE STATE OF RHODE ISLAND:


6-12-13   
CRAIG S. STENNING  
Director  
Department of Behavioral Healthcare,  
Developmental Disabilities and Hospitals


6-12-13   
STEVEN M. COSTANTINO  
Secretary of Health and Human Services

6-12-13   
SANDRA M. POWELL  
Director  
Rhode Island Department of Human Services

6-12-13   
DEBORAH A. GIST  
Rhode Island Commissioner of Education

FOR THE CITY OF PROVIDENCE:

  
\_\_\_\_\_  
SUSAN F. LUSI, PhD  
Superintendent  
Providence Schools

  
\_\_\_\_\_  
JEFF M. PADWA, Esq.  
City Solicitor  
City of Providence  
*as to form and correctness*