Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and Olmstead Compliance
Olmstead v. L.C.

Supreme Court: Title II of the ADA prohibits the unjustified segregation of individuals with disabilities.

“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 CFR §35.130(d)
Supreme Court: Title II of the ADA prohibits the unjustified segregation of individuals with disabilities.

The Court held that public entities must provide community-based services to persons with disabilities when

(1) such services are appropriate
(2) the affected persons do not oppose community-based treatment
(3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability services from the entity.
Supreme Court: Title II of the ADA prohibits the unjustified segregation of individuals with disabilities because of the “Integration Mandate” found in Title II.

- The “most integrated setting” is defined as “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible” 28 CFR Pt.35, App. A
- “Integration Mandate” under both ADA & Section 504
- Applies to federal, state, and local governments.
“Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.”

“Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contracts, work options, economic independence, education advancement, and cultural enrichment.”
Institution (e.g., psychiatric hospital, nursing home, facility for individuals developmental disabilities) constitutes segregated living.

Beyond institutions, in the housing context, any housing that resembles or has characteristics of institution-like setting may constitute unjustified segregated living environments.
“Integrated Settings”

- Mainstream society; access to community activities and opportunities; choice of daily life activities
- Scattered-site housing with availability of supportive services
- Not located in a building that is also a publicly or privately operated facility that provides institutional treatment or custodial care; must not be located in a building on the grounds of, or immediately adjacent to, a public institution
- Not a housing complex designed expressly around an individual’s diagnosis or disability
In contrast, *Segregated Settings*:

“(1) congregate settings populated exclusively or primarily with individuals with disabilities;

(2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy; policies limiting visitors, or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or

(3) settings that provide for daytime activities primarily with other individuals with disabilities.” (DOJ Statement)
“Integrated Settings”

- **Segregated Settings:**
  - “Qualities of an institution”
    - Regimented meal and sleep times
    - Limitations on visitors
    - Lack of privacy
    - Limit individual’s ability to engage freely in community
What About HUD?

- Getting the Housing with Help From HUD
- Enforcement of anti-discrimination laws with Help from HUD aka Remedial Actions
Getting the Housing with Help from HUD
Integrative Activities under Existing Authority

- HUD encourages PHAs to ensure persons transitioning from institutions and persons at serious risk of institutionalization have access to HUD-funded programs and to direct HUD resources, where appropriate, to these populations.

- There are actions that may be taken irrespective of whether there is outstanding *Olmstead*-related litigation or a settlement that requires specific remedial activities.
Public Housing Authorities (PHA) may offer local admission preferences for persons with disabilities in general, as well as more targeted preferences for persons with disabilities ready to exit institutions or for persons at risk of institutionalization.

In a June 2009 letter, Secretary Donovan urged PHAs to adopt such a preference in housing choice voucher programs.
Getting the Housing

- PIH Notice 2012-31(A)
  - Local preference
  - NED vouchers
  - Leverage 811 funds within public housing
  - Enhance outreach
  - Develop accessible housing waiting lists
  - Provide flexible outreach and admission practices
  - Encourage PHAs to seek service-based resources

- PIH Notice 2012-34 (HA) discusses wait lists.
Getting the Housing

- **Housing Choice Voucher Program**
  - Key example of community-based residential option that may benefit persons transitioning
  - PHA may offer local preferences for admission to persons exiting institutions or at serious risk of institutionalization
  - PHA may maintain a current listing of known available accessible units, and assist in locating an accessible unit
  - PHA may encourage private landlords to make accessibility modifications to private units
  - PHA may identify or encourage private landlords with accessible units to participate in HCV programs
Other possible programs for housing:
  ◦ Housing Opportunities for Persons with HIV/AIDS (HOPWA) Program
  ◦ NED vouchers
  ◦ Shelter Plus Care Program
  ◦ Supportive Housing Program
  ◦ Section 811 Supportive Housing Program for Persons with Disabilities
  ◦ HOME rental units
  ◦ Project-based vouchers
Money Follows the Person (MFP) Program: The MFP program was authorized by the Deficit Reduction Act of 2005 (DRA) & strengthened by the Affordable Care Act of 2010. Through MFP, Congress authorized payment of $1.7 billion for state efforts to transition Medicaid-enrolled nursing home residents to the community. In practice, the Medicaid money “follows” the Medicaid beneficiary from a nursing home to a community-based setting. MFP assistance initially was available only to persons who had resided in a nursing home for at least 180 days but that has been lessened to 90 days.
Getting INTO the Housing: Overcoming Fair Housing Barriers
Recipients operating housing programs must take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals requiring the accessible features of the units.
Reasonable Accommodations & Modifications

- Section 804(f)(3)(B) of the Fair Housing Act prohibits refusing to make reasonable accommodations in rules, policies, practices, or services that may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

- Section 504 of the Rehabilitation Act of 1973 requires federally-subsidized housing providers to pay for the modification unless doing so would cause financial hardship (in non-federally funded housing, occupant pays for reasonable modifications).
Disability-Specific Housing

- Fair Housing Act does not bar development of disability-specific housing designed and operated to promote housing opportunities for disabled persons.
- But §504 may bar this; generally, it is prohibited unless there is a specific Federal statute or Executive Order authorizing housing limited to persons with specific disabilities.
- LIHTC are not considered federal financial assistance by themselves, but are often funded by federal financial assistance.
Overcoming Fair Housing Barriers

Know Your FHEO!

- HUD’s Office of Fair Housing & Equal Opportunity
- Your state office of Civil Rights
- Non-Profit Fair Housing Centers
Resources

Resources (cont.)

Resources (cont.)

- PIH Notice, 2012-31(HA)
  portal.hud.gov/huddoc/pih2012-34.pdf
- *Williams v. Quinn*, No. 05 C 4673 (2010)