

# BETWEEN THE LINES



COLORADO DEVELOPMENTAL DISABILITIES COUNCIL

Spring 2012

## Class Action Lawsuit Seeks an End to Segregated Sheltered Workshops

**PORTLAND, ORE.** (Jan. 25, 2012)—Advocates for individuals with intellectual and developmental disabilities today filed a class action lawsuit challenging Oregon's failure to provide supported employment services to more than 2,300 state residents who are segregated in sheltered workshops where they perform mundane tasks, such as folding UPS bags.

The lawsuit, filed in U.S. District Court, charges state officials with violating the Americans with Disabilities Act and the Rehabilitation Act by confining individuals with disabilities to segregated settings where they have little—if any—interaction with non-disabled peers. Moreover, they are paid far below the state's minimum wage of \$8.80 for doing rote tasks that offer no training, no skills, and no advancement.

For more than a decade, lead plaintiff Paula Lane, 48, has had the same request: "Find me an outside job." Instead, she and 137 other people with disabilities package gloves or put parts into boxes on assembly lines in a noisy and crowded sheltered workshop in Beaverton. Despite her request for competitive employment and her high performance scores, her individualized service plan has no goals related to employment. She lives in an apartment with staff support, and would like to go to a country music concert or attend an Upward Bound camp, but her resources are limited. Over a 12-month period in 2010-11, she made a high of 66 cents an hour.

Another plaintiff, Lori Robertson, 51, performs mundane tasks at a sheltered workshop in Gresham. She has been assigned to these segregated settings since 1981. Robertson earned \$126.15 for 53.9 hours of work in December



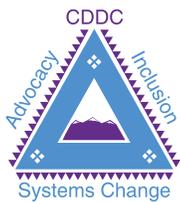
2011—which works out to \$2.34 an hour. She lives in a group home and would like to earn at least minimum wage in an integrated job in the community. She also would like to go bowling or horseback riding, but has little money left after paying her bills.

According to the lawsuit, Oregon currently spends \$30 million a year confining individuals with disabilities to sheltered workshops. The plaintiffs contend it would be much cheaper to fund programs that promote integrated, supported employment. They cite a 2010 Call for Action Report issued by the state's Office of Developmental Disability Services that recognized "cumulative costs generated by sheltered employees may be as much as three times higher than the cumulative costs generated by supported employees—\$19,388 versus \$6,618."

The plaintiffs are represented by Disability Rights Oregon, Miller Nash, Perkins Coie, and the Center for Public Representation.

"The Americans with Disabilities Act recognizes that discrimination against individuals with disabilities includes intentional segregation and relegation to lesser service jobs," said Bruce Rubin, partner at Miller Nash. "This law protects individuals with developmental disabilities, like the named plaintiffs in this lawsuit."





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Ironically, throughout the 1980s, Oregon was at the forefront of a national movement to reduce the number of sheltered workshops and increase opportunities for integrated and supported employment. However, beginning in the mid-1990s, the state changed course and the raw number and percentage of people served in sheltered workshops more than doubled, while the number and percentage served in supported employment has almost halved. This reversal, ascribed to a lack of commitment to expanded supported employment programs and to a drop-off in federal monies for such programs, coincided with the 1999 U.S. Supreme Court ruling in *Olmstead v. L.C.* that ordered states to develop concrete, measurable plans to integrate disabled persons into the general population.

“Requiring integration in employment is the next natural step for obeying the integration mandate required by the U.S. Supreme Court and the U.S. Department of Justice,” said Steven Schwartz, litigation director at the Center for Public Representation.

“It is time to require that the State of Oregon follow the law,” said Bob Joondeph, executive director of Disability Rights Oregon.

“We want the state to provide supported employment programs in integrated employment settings and to develop measurable plans that describe modifications to the state’s employment service system,” said Lawrence Reichman, partner at Perkins Coie.

Joondeph cited the plaintiffs’ segregation and inequitable wages, and added, “They deserve better.” For example, 28-year-old Sparkle Green wants “a community job,” but no one has discussed integrated employment options with her or offered her supported employment services. She has almost perfect performance scores at the Beaverton sheltered workshop, but earned less than 46 cents an hour in August, 39 cents an hour in September, and 29 cents an hour in October.

Gretchen Cason, 27, was referred to a sheltered workshop that purported to provide employment services, but instead offered only crafts projects, and she spent three years watching television or coloring. If she ever has the chance, she would work in a music store or an ice cream parlor. As she explains, what she wants is “a job that’s not boring.”

Andres Paniagua, 32, works with 66 other individuals with disabilities in a sheltered workshop that cuts steel. Mr. Paniagua has worked in every department from the machine shop to the front office. Despite his demonstrated ability, interest, and repeated requests for outside integrated employment, he has not been afforded any community-based options. Rather, the goal outlined in his “individualized” service plan calls for more segregation: “opportunities in employment in a workshop setting and for activities and socialization with other people with disabilities.”

The other named plaintiffs are Angela Kehler, 48, who has been forced to remain in sheltered workshops since she was laid off from a successful job placement at a drugstore; Elizabeth Harrah, 32, who previously worked at McDonald’s and Safeway, and now is at a sheltered workshop while waiting for assistance to return to competitive employment; and Zavier Kinville, 27, who is stuck at a sheltered workshop, awaiting an opportunity for integrated community employment. Kinville has volunteered in the community, where his favorite job was reading to children.

United Cerebral Palsy of Oregon and Southwest Washington (UCP), which serves adults, children, and families experiencing cerebral palsy and intellectual and developmental disabilities, is an organizational plaintiff in the lawsuit. UCP executive director Ann Coffey said its efforts to increase supported employment programs have been frustrated by the state’s diversion of resources into sheltered workshops. As alleged in the lawsuit, thousands of individuals with disabilities are unable

(Disclaimer)

The views expressed by authors in *Between the Lines*, the quarterly newsletter of the Colorado Developmental Disabilities Council, are not necessarily those of the Council, its individual members or the staff. Letters to the Editor are encouraged, as are requests for correction of factual information. Please direct such to the newsletter editor at [marna.ares@state.co.us](mailto:marna.ares@state.co.us).

to get supported employment services because the Department of Human Services (DHS) administers and funds an employment system that relies primarily on sheltered workshops.

The plaintiffs are asking the federal court to direct the state to end their needless segregation in sheltered workshops and to provide supported employment services to enable them to participate in competitive employment in integrated settings as mandated by federal law.

The lawsuit, *Lane v. Kitzhaber*, names as defendants Governor John Kitzhaber; Erinn Kelley-Siel, DHS director; Mary Lee Fay, administrator of the Office of Developmental Disability Services; and Stephanie Parrish Taylor, administrator of the DHS Office of Vocational Rehabilitation Services.

<http://tinyurl.com/6rpk2vt> (pdf of complaint)

<http://tinyurl.com/6um2zhd> (fact sheet on sheltered workshops)

<http://www.disabilityrightsoregon.org/news/class-action-lawsuit-seeks-an-end-to-segregated-sheltered-workshops>

**The Colorado Developmental Disabilities Council** reports annually on its progress in implementing its Five-Year Plan. The Program Performance Report for the last year of the Five-Year Plan for 2007–2011 can be found on the Council's website (<http://www.coddc.org/PDFs/PPR2011.pdf>), and will be provided in print form or alternative formats by request.



The Transportation Security Administration has launched TSA Cares, a new helpline number designed to assist travelers with disabilities and medical conditions.

Travelers may call TSA Cares toll free at **1-855-787-2227** prior to traveling with questions about screening policies, procedures and what to expect at the security checkpoint. **TSA Cares will serve as an additional, dedicated resource specifically for passengers with disabilities, medical conditions or other circumstances or their loved ones who want to prepare for the screening process prior to flying.**

The hours of operation for the TSA Cares helpline are Monday through Friday 9 a.m.–9 p.m. EST, excluding federal holidays. Travelers who are deaf or hard of hearing can use a relay service to contact TSA Cares or can e-mail [TSA-ContactCenter@dhs.gov](mailto:TSA-ContactCenter@dhs.gov).

If you would like to make advance arrangements for screenings at airports, travelers can contact TSA using Talk To TSA, a web-based tool that allows passengers to

reach out to an airport Customer Service Manager directly, and the TSA Contact Center, 1-866-289-9673 and [TSA-ContactCenter@dhs.gov](mailto:TSA-ContactCenter@dhs.gov), where travelers can ask questions, provide suggestions and file complaints

In this busy travel season, you are invited to please share this widely.



# One Baby Boomer's Story: *This can't be happening to me...*

February 10, 2012

After retiring from a small division of an automotive company in the Midwest and moving to Colorado, I was faced with the inability to secure insurance because of a pre-existing condition. First, a little background about myself. To be honest, growing up (and growing old) I never gave health insurance much thought. It was something that I took for granted because it was always there. Sure, once a year my wife and I would noodle on the company provided choices, weigh the pros and cons of each, and maybe grumble a bit about the rising cost of "our share" of the burden. However, in the end we usually just said "we'll buy the most expensive policy because surely it must be the best."

After retiring and as my COBRA started to run out, I began the search for health insurance for myself (my wife is on Medicare). Since I was clueless on the subject (lulled into complacency by my years in "Corporate America") I engaged the services of a local insurance broker to guide me through the process. Like most folks today, I was shocked at the cost of even the most basic coverage; after all, I considered myself reasonably healthy and at 62, still young enough to enjoy life. After settling on the least onerous option, we started working through the ponderous paperwork of enrollment.

Several days after submitting the forms, I received a call that shook me to the core. "Sorry, you have a pre-existing condition and we **WILL NOT INSURE YOU**. I can honestly say I was stunned. Never would I have thought that I would be rejected because of a few notations buried in my health record. I assumed that this must be an aberration, some strange unique response from the one insurance carrier that I contacted, however my broker gave me the bad news. "It is going to be the same with any company that you talk to." I thought, "This can't be right, I'm an upstanding citizen, seemingly healthy, always insured" and yet I found myself cast aside.

What came next was a humbling journey into a world of foreign terms and acronyms. My business and engineering background did little to prepare me for the staggering confusion of the health insurance world. Fortunately for me the insurance broker I was working with pointed me in the direction of Cover Colorado, the state High Risk insurance carrier, so at least I knew where to start the process. With the help of the internet (and driven by the cold fear of being uninsured) I dug in and soon understood that Cover Colorado was my only option. I scrambled to fill out the appropriate enrollment forms and provide proof of past insurance. I remember how happy I was when I finally got the written confirmation that I was enrolled in Cover Colorado (a little less happy when I saw the cost, but that's another story).



After the completing the painful path to becoming insured again, it dawned on me that there must be a significant number of folks in the same boat, clueless and ill equipped to deal with the transition from the coddled world of corporate group health insurance to the real world of finding affordable individual health insurance. At that point, I realized that I needed to find some way to get involved and began the process by finding and then joining two organizations, Boomers Leading Change in Health and the Colorado Consumer Health Initiative.

While I never considered myself a student of state or federal politics, it became clear that the pathway to better understanding of healthcare issues leads straight into the political world. For folks like me the 2010 Patient Protec-



tion and Affordable Care Act (sometimes called ObamaCare) is the light at the end of the tunnel. This sweeping piece of legislation created by President Obama's administration has already addressed several serious flaws in the current healthcare system and will address many more when fully implemented in 2014. Among the many facets of this piece of legislation are restrictions that would prevent insurance companies from denying insurance to folks with pre-existing conditions, as well as a challenge to states to offer Health Care Benefit Exchanges (a task that Colorado has embraced as can be seen at Colorado Health Benefit Exchange). These exchanges will become a centralized source for the review and purchase of a wide variety of regulated health insurance plans from many of the country's leading health insurance providers.

The bad news in all this is that the 2010 Patient Protection and Affordable Care Act is not a "done deal" and is under attack on several fronts. My personal experience with the health care system has taught me that everyone has a stake in this fight. When it comes to healthcare we all need to get smart and get involved!



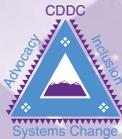
**Useful websites for additional reading:**

- <http://www.healthcare.gov/law/timeline/index.html>
- <http://www.getcoveredco.org/Index>
- <http://cohealthinitiative.org/>
- <http://blcih.org/>

**Keith**

<http://cohealthinitiative.org/blog/2012-02-10/one-baby-boomers-story-cant-be-happening-me>

# Sister Act Section



## Defending the Right to Emotional Support Animals in Your Home

*by Alison B. Daniels, Esq.*  
Senior Attorney and Coordinator of Protection & Advocacy for Individual Rights Program

Recently, Congress amended the Americans with Disabilities Act (ADA). Most disability advocates welcomed the

new amendments as they expanded the previous definition of disability, but for some the amendments have caused confusion. One issue that The Legal Center has seen frequently in the last year is confusion regarding emotional support animals in housing. For those with any questions on the subject, here is a breakdown of the current state of the law regarding your right to an emotional support (often referred to as "companion") animal in your home.

First, although the ADA and the Department of Justice's (DOJ) implementing regulations have limited a "service animal" to a specially trained dog (or in some instances a miniature horse), those limitations do not apply to the Fair Housing Act (FHA) or Section 504 of the Rehabilitation Act



# Sister Act Section

continued .....

of 1973—the federal laws that apply to housing. While the DOJ’s rules expressly preclude emotional support animals from qualifying as service animals, the FHA and Section 504 do not exclude emotional support animals from their protections.

What does this mean? It means that people with disabilities may request a reasonable accommodation to allow an emotional support animal to live with them even if their housing has restrictions or prohibitions on pets. The issue then becomes whether the person with a disability needs the animal in order to have an equal opportunity to use and enjoy the housing or housing program. To make this argument, the person with a disability must make a request for a reasonable accommodation to the landlord, property manager or homeowners association (HOA) and provide the following information:

1. **Indicate that you have a disability**
2. **Request that, as a reasonable accommodation of your disability, you are seeking to have an emotional support animal live with you**
3. **Describe the relationship between your disability and the assistance the animal provides**

If you can show each of these three things, a housing provider or program must permit the animal to live with you unless it can demonstrate that allowing the animal would pose an undue financial or administrative burden, or would fundamentally alter the nature of the housing or program.

**A few additional notes:** First, although the request for accommodation does not need to be in writing, it is always a good idea. Second, you are not required to provide any particular proof of disability. However, you may consider sending supporting documentation from a medical provider, counselor, or case manager to help expedite your request. You should not send or agree to provide access to all of your medical records. Third, there is no spe-

cific restriction on the type or number of animals that can provide emotional support, but it’s best to be reasonable. Two cats will likely be fine, whereas two dogs, three cats, a parakeet and a salamander together may not qualify as a “reasonable” accommodation. Finally, your request can be denied if the animal poses a direct threat to the health and safety of others that cannot be reduced or eliminated by a reasonable accommodation, or if the animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation.

The Fair Housing Act is intended to be broad in scope. Therefore, generally speaking, a person with a disability who needs an emotional support animal should be able to have one. Please contact us if you find that your landlord, property manager or HOA is refusing to grant you this accommodation. We can try to help you and your animal stay together in your home—just like we did for Steve Thomas and his dog Henry. We were able to convince Mr. Thomas’ HOA that his dog was a reasonable accommodation—despite their strict “no pets” stance—and we are pleased to report that Mr. Thomas and his dog are now happy and healthy and living together in Durango.



# Planet of the Blind

By Stephen Kuusisto

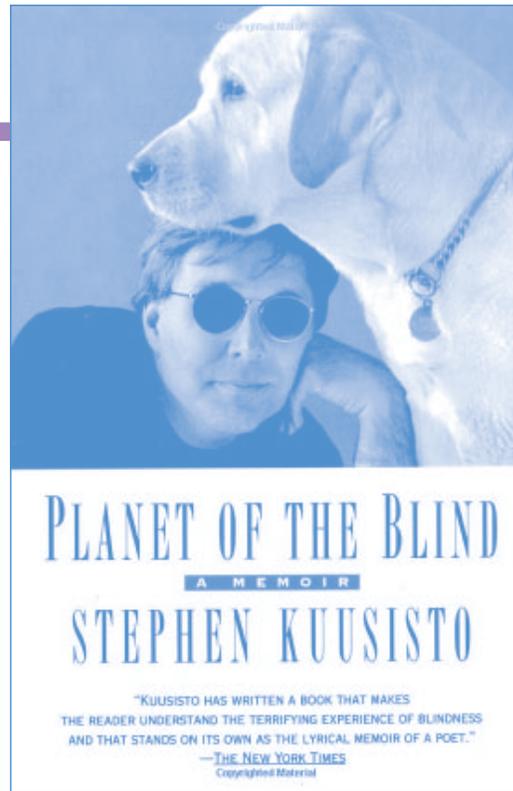
Review by Marcia Tewell

*Planet of the Blind* by Stephen Kuusisto is the most recent book added to the Council library. Stephen is currently a professor in the Creative Writing Department of Syracuse University, thus this memoir is creatively written well beyond the traditional memoir.

The *Planet of the Blind* is written as a biography starting with Stephen's life from early years into his 40s, when he meets Corker, his seeing-eye dog. Stephen was born prematurely in the mid-1950s, and was placed in an overly oxygenated incubator, that scarring of his retinas. He can see light and outlines of shapes, but he has been legally blind from birth. He attempts to live a full life with no accommodations until he is forty years old.

Stephen grew up in what we would now call an unsupported inclusive educational setting, with one teacher finally being in the 'angel' category. This teacher read to him after school since he was unable to read any text easily or without eyestrain. The book continues through his childhood and teen years, on to college, sex, drugs, and rock and roll. All this may seem rather routine, were it not for Stephen's doing this with no accommodations, no consistent readers, no technology, no white cane, or seeing-eye dog. He did use a magnifying glass intermittently. Amazingly enough there were a number of angels in Stephen's life, including people who pulled him out of the way of oncoming cars or back on to a subway platform.

The book not only illuminates 40 years in the life of someone who has yet to accept and accommodate his disability, it provides a number of jewels in terms of words, phrases, and interesting written expression. Here is an excerpt from the book with Stephen describing how he tried to create his cloak of competence in the classroom:



"In the classroom the criticism is heated, and since I can't read the worksheets, I sit in the fog. Sometimes I raise my hand and say things like, 'Paul Klee made dolls for children, primitives, hand-painted. This poem has that quality of the reliquary, the universal unconscious.' What else can I do? I listen with care, but the fluorescent lights produce a vitreous squinting, and through each wordy argument, I'm again the boy in the first grade listening hard to make sense of something on the blackboard. When it comes time for me to read my own poem, I recite it from memory, holding the worksheet as though I might be reading aloud. In retrospect it's so foolish masquerading as a seeing man. It takes so much energy. In that modern building alongside the Iowa River, I was sitting in the cozy seminars with hopeless spectacles on my nose, and fake music in front of me. I was in my self-constructed village of St. Ovide, a blind man in a charade."

The experience of Stephen Kuusisto is very different from individuals we may know who were relegated to the Colorado School for the Deaf and Blind or other institutional alternatives of the 1950s, however, it is interesting to read what a life with no supports was like as well as know what the guide dog provided as an accommodation and partner.

# We and They

Adapted from Meyer Shevin

*We like things.*

*They fixate on objects.*

*We try to develop relationships and friends.*

*They display attention-seeking behaviors.*

*We take a break.*

*They display off-task behaviors.*

*We stand up for ourselves and friends.*

*They are non-compliant.*

*We chose when to leave our family home.*

*They wait until they are told they are off a waiting list.*

*We shop at our favorite grocery store,*

*They are fed from the Rocky Mountain Food Bank.*

*We chose whom we will live with.*

*They are placed to live with strangers.*

*We change our minds.*

*They are disoriented or have a short attention span.*

*We go for a long walk.*

*They exhibit elopement issues.*

*We love people.*

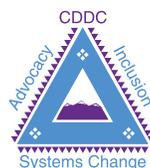
*They have dependencies.*

*We chose where we live, and in which neighborhood.*

*They live where there is an opening.*

*We are human.*

*They are ????????*



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