



STATE OF MINNESOTA

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August 15, 2019

VIA CM/ECF PURSUANT TO DOC. 737

The Honorable Donovan W. Frank
Senior U.S. District Judge, District of Minnesota
United States District Court
724 Warren E. Burger Federal Building
and U.S. Courthouse
316 North Robert Street, Suite 724
St. Paul, MN 55101

**Re: *James and Lori Jensen, et al. v. Minnesota Department of Human Services, et al.*
U.S. District Court File No. 09-CV-01775-DWF-BRT**

Dear Judge Frank:

The State Defendants ("Defendants") write in response to the Court's June 17, 2019 Order ([Doc. 737](#)), and in partial response to the argumentative brief filed this afternoon by Plaintiffs ([Doc. 753](#)).

As the Court knows, it ordered the parties to meet and confer by August 1, 2019 regarding the scope of the Settlement Agreement and CPA relating to prohibited restraints and compliance with ECs regarding the Positive Supports Rule, and regarding whether there are "issues related to the Positive Support Rule that must be resolved before the Court considers the Olmstead Plan March 2019 Revision." [Doc. 737](#). The parties did so on July 23, and determined they were unable to agree about these issues.¹ In that instance, the Court had directed the parties to "file a Joint Statement no later than August 15, 2019 to inform the Court of their separate views and propose a briefing schedule." [Doc. 737, p. 36](#) (regarding the Positive Supports Rule); *see also id.* at 39, regarding the scope of the Settlement Agreement and CPA relating to prohibited restraints ("If the parties are unable to enter into a Stipulation, they must file a Joint Statement to inform the Court of their respective positions no later than August 15, 2019 and propose a process for the Court to resolve the dispute The Court will set a hearing and issue a briefing schedule.").

¹ With respect to the briefing schedule, Plaintiffs proposed a joint deadline of September 25 with no response allowed, and Defendants proposed opening briefs no later than August 22, with response briefs due 14 days later.

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Accordingly, the parties discussed submitting a joint letter. In an email on July 24, 2019, Plaintiffs asked Defendants to send their section of the draft joint letter. In response the next day, Defendants agreed to do so, but asked to also see Plaintiffs' section of the joint letter before filing. Plaintiffs never responded, instead submitting an opening brief this afternoon without waiting for the Court to issue a briefing schedule.

Consistent with the Court's Order, Defendants' positions on the subject matter at issue, and proposed process for resolving those issues, are set forth below.

I. DEFENDANT'S POSITION ON THE SCOPE OF THE SETTLEMENT AGREEMENT AND CPA REGARDING PROHIBITED RESTRAINTS.

Defendants' position is that the plain language of the Settlement Agreement and CPA prohibit certain restraints at the "Facility," which is clearly defined by both documents. *See* [Doc. 136-1, p. 5](#) (Settlement Agreement defining "Facility" as METO, its successor in Cambridge, "and the two new adult foster care transitional homes to which residents of METO have been or may be transferred"); [Doc. 283, p. 2](#) (CPA defining Facility" and "Facilities" as "MSHS-Cambridge, the MSOCS East Central home established under the Settlement Agreement, and the treatment homes established (or to be established) under this Comprehensive Plan of Action"); *see generally* Docs. 136-1, 283. Defendant has otherwise complied with the provisions of the and CPA regarding the Positive Supports Rule.

II. DEFENDANTS' POSITION ON WHETHER THERE ARE ISSUES RELATED TO THE POSITIVE SUPPORTS RULE THAT MUST BE RESOLVED BEFORE THE COURT CONSIDERS THE OLMSTEAD PLAN MARCH 2019 REVISION.

Defendants' position is that there are no issues related to the Positive Supports Rule that must be resolved before the Court considers the Olmstead Plan March 2019 Revision. The evidence shows that Defendants complied with the plain language of EC 103.

III. DEFENDANTS' PROPOSED PROCESS TO RESOLVE THE PARTIES' DISPUTE, AND PROPOSED BRIEFING SCHEDULE.

Consistent with the plain language of the Settlement Agreement, Defendant's position is that the Court should evaluate whether Plaintiffs have met their burden to demonstrate substantial non-compliance. [Doc. 136-1, p. 39.](#)

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Regarding a briefing schedule, Defendant originally proposed to Plaintiffs that the parties submit briefs on August 22, with a response 14 days later. Because Plaintiffs have already filed a brief, Defendants respectfully propose they be allowed to file a brief by August 29 addressing the above issues, with Plaintiffs receiving no reply. Defendants ask that the Court hear argument on these issues as soon as possible thereafter.

Sincerely,

s/ Scott H. Ikeda

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