



State of Minnesota

Office of the Ombudsman for Mental Health and Developmental Disabilities

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"Giving voice to those seldom heard"

February 21, 2014

The Honorable Donovan Frank
United States District Judge
724 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Re:

James and Lorie Jensen, as parents,
Guardians and next friends of Bradley J.
Jensen, et al.,
Plaintiffs,

Civil No. 09-1775 (DWF/FLN)

v.

Minnesota Department of Human Services,
an agency of the State of Minnesota, et al.,
Defendants.

Office of Ombudsman for Mental Health and Developmental Disabilities comments on
Minnesota's Olmstead Plan

Dear Judge Frank,

Per Order of the Court dated January 22, 2014; I am providing you with comments regarding
Minnesota's Olmstead Plan as required by the Jensen Settlement Agreement.

First I would like to commend the Governor and the Executive Branch of state government for the comprehensive way the Olmstead Sub-Cabinet has embraced the principles of Olmstead and for the diligence in moving forward with implementation. Much of the credit goes to Lucinda Jesson, Commissioner of the Department of Human Services (DHS) for her commitment and drive to make this happen and for engaging the Governor's Cabinet in promoting the importance of this effort. Regardless of the Court Order, Commissioner Jesson's commitment fully embraces the principle that this is the "right thing to do" for Minnesota's citizens with disabilities. The Ombudsman could not agree more and applauds her leadership. The Sub-Cabinet effort was skillfully led by Minnesota's Lt. Governor Yvonne Prettner Solon who also adopted this effort and dedicated the full weight of her office behind the Olmstead Plan.

Early on, the Ombudsman was struck by the sheer enormity of the project and the unprecedented interagency cooperation that would be necessary, not only to develop the plan but with its implementation. Frankly, the Ombudsman was not optimistic about the State's ability to meet the challenge given the short timeline for development. I am pleased to say that the product exceeds



my expectations and is the result of a lot of hard work done by the staff of the agencies involved and their leadership.

The Ombudsman believes that Minnesota has a good plan that is clearly a road map to the improvement of the quality of life of citizen's with disabilities. The Ombudsman supports the establishment of the Olmstead Implementation Office which is independent of the agencies that comprise the sub-cabinet. We believe that is critical to the credibility of the plan. However, the current efforts and supports currently provided by the Sub-Cabinet agencies while this independent office is getting established, clearly demonstrates the commitment of the individual agencies involved. They deserve recognition for these efforts.

While the Office of Ombudsman is pleased with the effort to date, the office would offer some observations on where the plan could benefit from further consideration or where there are areas of concern. It is important to acknowledge that all projects require a starting point. However with the Olmstead Plan it is also important to take note that when the items in this plan have been accomplished, the plan is not done. This plan is only the beginning steps in bringing the full principles of Olmstead into the fabric of Minnesota life. The plan must be an ongoing, living document with future goals to improve the quality of life and achieve the full integration of persons with disability into the ordinary life of an inclusive society, regardless of their needs for supports and services.

The principles adopted by the Sub-Cabinet must always be the driving force of all who work on the full implementation of the plan. The citizens served by this plan must be always the focus of the work or the project will get lost in the difficulty of the tasks and the budget challenges that will surely come.

Comments regarding the plan:

- The plan is often worded in an aspirational manner without a lot of specificity of how many of the goals will be accomplished.
- Base line data. One of the shortcomings of the current plan is a lack of comprehensive base line data about what the system is doing now in almost all areas of the plan. It is hard to know where we are going if we do not know where we are starting from. Data is critical in the effort to measure whether or not Minnesota is meeting the goals outlined. Much data is collected by many departments but is often based on what is important to the specific needs of the agency. The DHS has collected large volumes of data but it is not easily presented in a way that is helpful to this process. The data is also not easily accessible to the public and stakeholders of the process. The concern is too much time will be lost to the process of establishing the base line data of where we are today and where we are starting from.
- While the plan covers all persons with disabilities, the plan could better articulate the specificity needed by types of disability. The uniqueness of needs based on type of disability is not clearly identified. Individuals from the mental health community feel that the plan does not adequately address their needs. Efforts are being made by DHS and

others to address their concerns. It is essential that all persons with disabilities feel that the plan address their needs both collectively and individually.

- Discharge from state operated facilities will require appropriate housing and supports as well as employment opportunities that have historically been hampered by fear, false assumptions and stigma that have surrounded persons with disabilities. Plans for dealing with this issue could benefit if they are clearly articulated in this plan. To declare that people served have choice has little meaning if some of the promised options do not exist. The plan must fully engage providers, developers, employers, landlords and the general public in education about what the state needs from them to insure these choices are real and available. This could easily be incorporated into the Community Engagement section of the plan.
- The plan should be amended to adequately address the needs of persons with disabilities who are involved in the criminal justice system. This includes the policies, what happens in the court room as well as in our prisons, jails and detention facilities. The Minnesota Department of Corrections (DOC) submitted some options that were edited out by a sub group of the plan drafting work group. These as well as broader goals need to be added to the plan. Commission Roy of DOC, to his credit, identified the weakness of the plan in this area.
- Corrections and Criminal Justice could benefit from having its' own specific topic area and not be melded into the Health Care and Healthy Living section of the plan.
- In order for the plan to be successful much will depend on whether individuals will have access to the services and supports they will need when they need it. For example, if housing and services cannot be made available when a person is ready to leave a hospital or institution, then a person will remain institutionalized longer than necessary. This has been a long standing problem with individuals who are stuck at St. Peter or Anoka, as well as other settings. There are not enough services and supports available that can meet their needs or they are not available in the region where the person would choose to live. Once a person is ready to leave the institution setting, depending on their support needs, it can take from 60 – 180 days before a placement can be realized. While the plan identifies, in Action Two, a number of activities to achieve discharges from targeted institution settings, it does not clearly identify any strategies to which they can be held accountable to assure that services and placements will be in the right area at the right time.
- Additionally, the Ombudsman remains concerned that some areas identified in the plan regarding services and supports were not new and were in place before the development of the Olmstead Plan. Some of these projects have long been in the works but without achieving clear outcomes. We appreciate that there are specific dates for completion of these goals. The issues identified are either not new or not innovative enough for the systems reform needed to achieve the principles of Olmstead. Compared to the comprehensive reforms needed, these were the relatively easy to achieve goals. Even

saying that, the new service referred to as CFSS was identified to be complete by April 1, 2014 has already been pushed back.

- The plan clearly relies heavily upon Minnesota's Disability Waiver program to achieve many of the support outcomes. The plan could benefit by identifying ways to address long waiting lists.

Having expressed those concerns, the Ombudsman recognizes that many of the problems identified are complex and will need to be adjusted and amended once the challenges of implementation become known. Clearly an endeavor of this scope will take time. I support the efforts of the Sub-Cabinet and the Executive branch of government and the plan in moving forward and look forward to participation in the process to improve the Olmstead Plan.

In closing, the Ombudsman wishes to emphasize the positive aspects of the plan submitted and the significant dedication and effort advanced by all parties involved. The Sub-Cabinet and staff or their respective agencies has demonstrated their commitment to fulfill the promise of Olmstead.

Respectfully,

A handwritten signature in blue ink, reading "Roberta C. Opheim". The signature is fluid and cursive, with the first name being the most prominent.

Roberta C. Opheim
Ombudsman