

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James and Lorie Jensen, as parents, guardians,
and next friends of Bradley J. Jensen; James
Brinker and Darren Allen, as parents,
guardians, and next friends of Thomas M.
Allbrink; Elizabeth Jacobs, as parent, guardian,
and next friend of Jason R. Jacobs; and others
similarly situated,

Civil No. 09-1775 (DWF/BRT)

Plaintiffs,

v.

ORDER

Minnesota Department of Human Services,
an agency of the State of Minnesota; Director,
Minnesota Extended Treatment Options, a
program of the Minnesota Department of
Human Services, an agency of the State of
Minnesota; Clinical Director, the Minnesota
Extended Treatment Options, a program of
the Minnesota Department of Human Services,
an agency of the State of Minnesota; Douglas
Bratvold, individually and as Director of the
Minnesota Extended Treatment Options, a
program of the Minnesota Department of Human
Services, an agency of the State of Minnesota;
Scott TenNapel, individually and as Clinical
Director of the Minnesota Extended Treatment
Options, a program of the Minnesota Department
of Human Services, an agency of the State of
Minnesota; and the State of Minnesota,

Defendants.

Shamus P. O'Meara, Esq., and Mark R. Azman, Esq., O'Meara Leer Wagner & Kohl,
PA, counsel for Plaintiffs.

Scott H. Ikeda, Aaron Winter, and Anthony R. Noss, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

In previous orders, the Court established a plan to convene biannual status conferences with Defendants' Counsel, Plaintiffs' Class Counsel, and the Consultants to facilitate the Court's continued oversight in this matter. (*See* Doc. Nos. 544, 545.) The Court will hold a Biannual Status Conference in this matter on Thursday, January 5, 2017, at 9:30 a.m., in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, before Judge Donovan W. Frank and Magistrate Judge Becky R. Thorson. (*See* Doc. No. 601.) The Status Conference will address the *Jensen* Settlement Agreement ("JSA") and the Comprehensive Plan of Action ("CPA") and "will include time for the parties, Court Monitor, and Court Consultants to present positions, comments, or recommendations regarding the current status of compliance or non-co[m]pliance."¹ (Doc. No. 599 at 3.)

The last Biannual Status Conference in this matter was held on June 6, 2016. (Doc. No. 576.) Since that time, multiple items have been submitted to the Court. On August 31, 2016, Defendants submitted a Semi-Annual Compliance Report covering the period of October 1, 2015 to June 30, 2016. (Doc. No. 589.) Thereafter, the Court directed the Court Monitor to review this and other reports and submit a Compliance Assessment assessing "substantial compliance with regard to all components of the JSA and CPA based on his review of those documents." (Doc. No. 595 at 3.) On

¹ A separate Status Conference addressing the *Olmstead* Plan will be held at a later date. (*See* Doc. No. 599 at 3 n.2.)

November 29, 2016, the Court Monitor's Amended Compliance Assessment was publicly filed on the docket.² (Doc. No. 604.) On December 12, 2016, Defendants submitted a Response to the Court Monitor's Compliance Assessment. (Doc. No. 606.) The Court has also received proposed agenda items for the January 5, 2017 Biannual Status Conference.

Based upon the submissions and presentations of the parties, the entire record before the Court, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

The Court's agenda for the January 5, 2017 Status Conference is as follows:

- 1. Call to Order**
- 2. Introductions**
- 3. Overview by the Court**
- 4. Discussion of Selected Evaluation Criteria ("ECs")**
 - a. Defendants shall report on what actions they have completed or efforts they have undertaken with respect to the following ECs:
 - i. EC 6. Restraint: Prohibited Restraint Not Used

² After the Court Monitor submitted an initial version of his Compliance Assessment to the Court, the Court directed the Court Monitor to meet with the parties regarding the Compliance Assessment report and provided that "[t]he Court Monitor may amend his compliance assessment report as he finds appropriate after the meet and confer." (Doc. No. 599 at 2-3.) The Amended Compliance Assessment was provided via e-mail to the Court and the parties on November 22, 2016. The Court permitted the parties to propose redactions prior to public filing, and the publicly-filed report includes minor redactions.

- ii. EC 8. Restraint: Emergency Restraint Only
 - iii. EC 9. Restraint Policy Followed
 - iv. EC 25. Abuse/Neglect Investigations
 - v. EC 26. Abuse/Neglect Staff Discipline
 - vi. EC 27. Abuse/Neglect: Prosecution Referral
 - vii. EC 89. MLB Staff Experience
 - viii. EC 90. Integrated Vocational Options
 - ix. EC 91. Person-Centered Planning Requirements Met
 - x. EC 92. Transition Planning Requirements Met
 - xi. EC 93. Diversion Supports and Data Analysis
 - xii. EC 94. Licensure Required Under CPA
 - xiii. EC 96. Staff Training Emphasizes Community
 - xiv. EC 98. Successful Life Project
- b. To accomplish item 4a., above, Defendants shall identify individuals with knowledge to report on what actions they have completed or efforts they have undertaken with respect to each EC, along with presentations by counsel for Defendants, if any.
- c. Following Defendants' presentation for each EC, the Court Monitor, Plaintiffs' Class Counsel, and the Consultants may present or provide comments or observations regarding these ECs.

5. Follow-Up Items from June 6, 2016 Biannual Status Conference

- a. Defendants' Verification Protocols. (*See* Doc. No. 578 at 6-7.)

- b. Communications Plan Addressing Misconceptions. (*See id.* at 11.)

6. Opportunities for Clarification in Compliance Reporting

- a. DHS request for clarification in compliance reporting on ECs 1, 51, 65, 66, 69, 93, 96.

7. Next Steps

Date: December 22, 2016

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge