

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

Civil No. 09-1775 (DWF/FLN)

Plaintiffs

v.

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

Defendants

Independent Consultant and Monitor

THIRD REPORT TO THE COURT:
Amendments to the Settlement Agreement

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Independent Consultant and Monitor

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Amendments to Settlement Agreement

For the last couple months, the monitor has been discussing with the parties possible amendments to the Settlement Agreement with respect to restraints, timing of notice of restraint use to the internal reviewer, and the external reviewer. Except for the prohibition of all mechanical restraint, none of the amendments affect the major substantive provisions of the settlement.

The amendments attached to this draft report in the form of a proposed order are acceptable to the parties. Therefore, there need be no waiting period for response. The monitor respectfully submits the proposal to the Court for its consideration and, if accepted, adoption.

The areas covered by the amendments are:

Prohibition of All Mechanical Restraint. In a development acknowledged by the parties to be noteworthy and very positive, the parties have agreed to amend the settlement to prohibit all mechanical restraints, including in emergency situations. Currently, the settlement permits emergency use of two types of mechanical restraint (Velcro soft cuffs and fabric ankle straps). The amendment prohibits even the emergency use of these mechanical restraints. The Department's clinical and administrative judgment is that this change is appropriate. Plaintiffs agree. I strongly support the parties in this regard.

The amendment would incorporate that change, and would require the Department to modify the relevant policy and reporting form after submission of draft revisions to the plaintiffs and monitor.

Restraint Reporting. There had been an internal inconsistency on the timing of notice of restraint use to the Department's internal reviewer (24 hours v. one business day). The inconsistency is removed by providing for notice within 24 hours but no later than one business day.

External Reviewer Role. It is agreed that the functions of the settlement's external reviewer will be incorporated into the responsibilities of the Court's Independent Consultant and Monitor. The amendment renames and amends the relevant section of the Settlement Agreement.¹

¹ Sub-paragraphs 4 and 5 of the new Section VII.B. each refer to a single quarterly report.

The monitor respectfully recommends approval of the attached proposed order.

Respectfully submitted,

/s/ David Ferleger

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