



State of Minnesota

## Office of the Ombudsman for Mental Health and Developmental Disabilities

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*"Giving voice to those seldom heard"*

May 5, 2015

The Honorable Donovan W. Frank  
United States District Court-District of Minnesota  
Warren E Burger Federal Building  
316 North Robert Street  
St. Paul, MN 55101

Re: Jensen et al v Minnesota Department of Human Services et al  
Court File No: 09-CV-1775 DWF/FLN

Dear Judge Frank:

This letter is pursuant to the Court's April 14, 2015, Order (Doc. 415) requesting a response to the Court Monitor's Report to the Court Verification of Representations by the State.

While the role of the Court Monitor is to monitor compliance and advise the court accordingly, as the Ombudsman I have taken the approach of attempting to advise all parties of not just the technical aspects of compliance but to the broader vision of effects this compliance has for the quality of life of the citizens of Minnesota who have disabilities and who are waiting for the opportunity to live the lives envisioned in the settlement agreement. In that same spirit I submit the following comments.

I am not in a position to comment on all of the items contained in the report as I have not personally reviewed all of the records. However I can comment on the very slow pace of progress of actions related to the settlement agreement. I need not remind the parties that this agreement was to be implemented and discharged by December of 2013 without the need for a court monitor. It was only due to non-compliance with implementation that necessitated the need for a court monitor. It may well have been aspirational for DHS to believe it was possible to implement transformational system change within the original time frame.

### Crisis Teams

The settlement agreement specifically requires Community Support Systems (CSS) to serve as crisis response as part of the state safety net services. Specifically it requires a 3 hour response time. While staffing of the CSS system has been enhanced per the settlement requirements, they are not able to respond timely should they receive such a call. They do have teams that work with a number of individuals in their homes or group homes. However some of those case consultations have taken on a long term team participation as is the case for AL and KH, Jensen Class Members. Their role is consultative and recommending but without the ability to assure that the recommendations are accepted or implemented. As for the ability to respond quickly, information received by the Office of Ombudsman for Mental Health and



Developmental Disabilities (OMHDD) from the requests received, informs us that often the provider, the Guardian, or the case manager have already tried to receive assistance from CSS and have been advised that they do not have the capacity to be of assistance at that time. This leaves the client in crisis sometimes in their home but other times in a hospital setting or jail for months before there is any resolution. One recommendation I would put forth is for the CSS teams to be a more short term assistance by assessing the situation, assessing the client and the provider's capacity. Then provide the positive support plan and the training needed and then move on to serve others. Some CSS workers have been with their clients for years.

## OIO

The fact the Olmstead Implementation Office embellished their report by including presentations that did not occur is troubling and appears to have no benefit to the state but can only lead to confusion on the part of the public. As an ex-officio member of the sub-cabinet, it would be my recommendation that the focus should be on getting a plan together that the court can approve and only then to make public presentations enlisting the public's support for implementation of the plan. Right now there is a lot of confusing information floating in the public and the provider community because aspects of the plan have not been finalized or approved by the court.

## Mobile Support Teams

I was in attendance at the March 17, 2015 meeting where Mark Bostrom made the statement that they did not have mobile support teams and anticipated it would be July of 2015 before they were fully in place. As DHS indicated in their reply, Minnesota Life Bridge (MLB) does have staff that will go and meet with individuals both in an effort to resolve a placement issue or to conduct the follow up required of class members. However, the information received by the OMHDD again shows a lack of real capacity as well as organizational confusion of their role. One guardian who was seeking help and services for a Jensen Class Member, informed me that when a MLB staff member came to assess the individual in the hospital, they did not appear to be assessing the crisis the client was in but indicated that there simply are not crisis placements available. Just as with CSS, there seems to be confusion by the staff of what the purpose of the requirement is and how to document compliance.

## Staff training

The issue raised in the Court Monitor's report regarding training seems to have been resolved to the Monitor's satisfaction.

## Discussion

I agree with the court monitor that progress has been made in a number of areas. There are many staff at DHS who have been working nights and weekends to put out work on projects and reports. What is frustrating is that much of that work does not appear to have a clear focus, mission or clear lines of accountability. Aspects of the settlement agreement compliance have been farmed out to many different work groups or divisions who conduct the work using some

of the same processes that led to the need for a settlement agreement. These employees do their best to produce the intended outcome but in discussion with many of them, it is clear they do not have a comprehensive understanding of where their work fits in the larger picture of services to citizens or how it complies with the settlement agreement. Some do not understand why there are time lines or urgency. Many of the reports are submitted late or at the 11<sup>th</sup> hour allowing little or no opportunity to assure that items in the report have been documented and can be verified or that broad compliance statements are true. Reports are delivered but there is no centralized vetting of their contents and even typographical errors go noticed. Upon the discovery of an item that is not true, I have been surprised and even embarrassed to hear leadership staff admit they had not read the report before it was submitted. There have been a number of staff added to the Jensen Implementation Team as well as the departmental compliance office. There appears to be a new commitment to accuracy and completeness. However, as the Ombudsman we get way too many calls outlining the shortage of placement and support opportunities let alone in compliance with the Olmstead Principles. More and more the OMHDD receives calls outlining clients in crisis with no place to go, citizens with disabilities who are stuck in hospitals for weeks and months beyond the need for that level of care or worse yet sitting in jail. When these situations involve a class member and are brought to the attention of leadership, they scramble to find solutions but what has yet to become clear is any proactive system to support clients to prevent hospitalization or jail time.

At the same time there is a current staffing crisis in some of the state operated programs that has a serious effect on the services needed to be provided to these same citizens who should benefit from the promise of the settlement.

These are indicators of a social support system in crisis without the capacity of trained providers and appropriate placements able to handle complex needs. Too many of these calls involve class members to the Jensen Settlement Agreement. Transformational system change is hard work and often involves competing interests but for the individuals who rely upon those services, it is critical that it succeeds in a way that is beneficial to all clients served. I will continue to assist in efforts to achieve positive results. However, as of now, I still do not see that all of these efforts to date have led to the better quality of life for those served. While there has undoubtedly been class members who have benefited since the agreement, there are far too many who have yet to see the promise fulfilled.

I believe that continued monitoring by the court and the monitor will be needed to keep progress moving forward. We have a long way to go for our fellow citizens with disabilities to enjoy the quality of life outlined in the agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roberta C. Opheim".

Roberta C. Opheim  
Ombudsman

C: Lucinda Jesson, Commissioner

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Anne Barry, Deputy Commissioner

Amy Akbay, DHS

David Ferleger, Court Monitor

Colleen Wieck, Gov. Council on Developmental Disabilities

Scott Ikeda, Office of the Attorney General

Shamus O'Meara, Plaintiff's Counsel