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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

JEFF D., et al.,	)	
	)	CASE NO. 80-4091
Plaintiffs,	)	
	)	PLAINTIFFS' MEMORANDUM
vs.	)	ON DEFENDANTS' COMPLIANCE
	)	AND UPON UNDISPUTED FACTS
DIRK KEMPTHORNE, et al.,	)	
	)	
Defendants.	)	
_____	)	

**PRELIMINARY STATEMENT**

COME NOW the Plaintiffs, by and through their attorneys, Howard A. Belodoff and Charles Johnson, to hereby file Plaintiffs' Memorandum in accordance with the Court's Case Management

Order, Docket No. 453. On January 6, 2006, the parties submitted their Joint Statement of Stipulated Facts, Docket No. 459, hereinafter Joint Statement. Plaintiffs believe it would be useful for the Court to know the process that led to the submission of the Joint Statement.

Starting in November 2005, Plaintiffs' counsel met several times with Defendant Reinke's, hereinafter Department of Juvenile Justice's ("DJC") counsel. During these meetings, DJC counsel provided information and documentation that enabled Plaintiffs' counsel to determine DJC's compliance. This is reflected in the Joint Statement by indicating "DJC Compliance Undisputed." This signifies that the DJC had complied with the terms of the Court's Plan as far as it was able to comply as an individual state agency. However, that did not mean that full compliance by all of the Defendants had been obtained.

Also in November 2005, Plaintiffs' counsel began the laborious process of reviewing thousands of pages of documents provided by Defendants Kempthorne and Kurtz, hereinafter Department of Health and Welfare ("DHW"). These are the documents that DHW asserts establish their compliance with the 1998 Compliance Agreement and Order, Docket No. 305, hereinafter "1998 Compliance Order," and the Court Plan Recommendations, Docket No. 354, hereinafter "Plan." Plaintiffs' counsel reviewed the documents and noted what documents were being requested for copying. This process occurred over many days and weeks. Plaintiffs' counsel, in addition to requesting copies so he could thoroughly review and analyze the documents individually, requested additional documents that were relevant to compliance issues. In Plaintiffs' counsel's review of DHW's documents, some of the documentation that was made available related to FY 2001, FY 2002, and FY 2003. There was no documentation for FY 2004 and FY 2005. Plaintiffs' counsel requested more current documentation. In addition, Plaintiffs' counsel requested further documentation including, but not limited to minutes

of meetings between DHW administrators, regarding Children's Mental Health Services, documents that were referenced in other documents and not provided, and budget request documents. Not only were many of the documents that DHW provided out of date, but in many cases, the documentation failed to address the actual requirements of the Court Plan. During this process, the previously reviewed documents were not taken to be copied but remained in the boxes. Consequently, Defendants' counsel did not provide Plaintiffs' counsel with access to the disk containing copies of the documents until Friday, January 20, 2006. In addition, DHW's counsel has verbally indicated that Plaintiffs' additional document requests would probably not be provided until after the hearing scheduled for February 24, 2006, if at all. DHW is asserting a "privilege" with regard to the budget request documents, even though budget requests are required by the 1998 Compliance Order, and the Court's Implementation Plan. This has prevented Plaintiffs' counsel from obtaining and utilizing the documentation necessary to establish the current status of compliance.

After completing the review of DHW's documents, but without being able to review many of the actual documents that DHW contends establishes their compliance, the Plaintiffs prepared a Plaintiffs' Statement of Undisputed Facts and presented it to DHW's counsel for its consideration. Plaintiffs' Statement of Undisputed Facts is being filed contemporaneously with this Memorandum. DHW's counsel would not agree or stipulate that many of the Plaintiffs' Statement of Undisputed Facts were in fact undisputed, even when this clearly was the case. In Plaintiffs' counsel's opinion, DHW would not concede that matters were undisputed if it established their noncompliance, but only stipulated to undisputed facts only if DHW thought it assisted them in their compliance arguments. Consequently, the Joint Statement reflects very little of the actual status of the compliance with the 1998 Compliance Order or the Court's Plan Recommendations. As a result, Plaintiffs' counsel's

position is that unless it is indicated that it is undisputed, DHW is not in compliance and the factual issues should be determined at trial after appropriate discovery.

The Plaintiffs' Statement of Undisputed Facts provides the Court with its current view of the Defendants' noncompliance with the Court's Orders. The Plaintiffs may have additional disputed or undisputed facts once a through review of the documents provided and requested can be accomplished. The Plaintiffs intend at trial to offer documentary evidence and witnesses, including, but not limited to, parents, mental health providers, juvenile judges, county probation and detention officers, current and former state employees, advocates, teachers, and counselors that will establish that the Defendants have ignored the Court's Orders and Plan and that appropriate sanctions and remedies should be instituted so children with SED and their families can obtain access to minimally adequate community based mental health services without the necessity of being institutionalized and incarcerated.

The Plaintiffs feel it is necessary fo the Court to review where this case has been before it can move forward and bring compliance to a close. Plaintiffs submit the following summary, recognizing that the Court is not prepared to resolved disputed issues at this time. Therefore, Plaintiffs have not submitted all their evidence or documentation in support of this Memorandum.

It has been over five years since this Court served notice on the Defendants that it expected full compliance with the 1998 Compliance Order. The Court's September 28, 2000 Order, Docket No. 341, hereinafter "Order," made findings which substantiate the long history of the Defendants' resistance and intransigence to implementing a comprehensive system of care for mentally ill children in the state of Idaho.

**It has been twenty years since the plaintiffs filed their lawsuit and seventeen since the State agreed to provide community-based care to the children.** The Court has seen this case through numerous motions for contempt by the plaintiffs, several appeals to the Ninth Circuit, and one appeal to the United States Supreme Court. Despite the time and resources that have been expended on this matter, the State has, at this point, addressed only the most obvious violations of the plaintiffs' constitutional rights. . . . **There can be no legitimate argument, however, that the State has lived up to the promise of more complete care embodied in the original Consent Decree.** Indeed, the State is currently proposing to create *model* community-based care programs in only three of the seven regions in the State in the next several years. **Yet the State agreed seventeen years ago to provide working – not model – programs in all seven regions of the State.**

This Court has no desire to hold the defendants representing the State of Idaho in contempt. **Yet the Court is growing weary.** Year after year, the plaintiffs demonstrate that the State has not fulfilled its promises or respected this Court's order. Year after year, this Court has entered decrees giving the State more time to provide the care promised to a class of its neediest citizens. **This year, after apparently failing even to request funding adequate to comply with the Decrees, the State sought to escape its obligations under the Decrees by claiming that it has either already complied or is no longer obligated to comply with the requirements of the Decrees.**

Order, p. 2. Emphasis added.

The Defendants, rather than comply, chose to appeal this Court's refusal to vacate the Consent Decree and dismiss the Plaintiffs' request to enforce the Court's Orders. The Ninth Circuit, in a sharp rebuke of the Defendants, aptly observed what has been painfully obvious for at least two decades, that the Defendants have done little to address the mental health needs of the thousands of Idaho children who have been or will be diagnosed with serious emotional disturbances (SED) and their families. *Jeff D. v. Kempthorne*, 365 F.2d 844 (9<sup>th</sup> Cir. 2004). The Ninth Circuit found: "[t]he history of this case is a sad record of promises made and broken over two decades. The defendants have repeatedly promised to provide appropriate services to the plaintiffs, . . . ." *Jeff D. v. Kempthorne*, at 846. The Ninth Circuit's recitation of the repeated efforts by the Plaintiffs and the Court to enforce

the Defendants' compliance by seeking contempt sanctions and supplemental agreements giving them more time have done little to create a community-based system of care which addresses their needs. *See also*, Order, pp. 10-15.

The Court's Order gave the Defendants a clear warning that it would no longer tolerate their delaying tactics and empty promises of full compliance. Order, p. 15. ("The Court wishes to ensure that an end to this matter is on the horizon.<sup>2</sup> It appears, given the long history of this case, that additional oversight by the Court is necessary to ensure that this is the beginning of the end."). Footnote omitted.

It has been over five years since the Court's Order declared "the beginning of the end." Order, p. 15 n. 2. The Court's Order found that the Defendants had not complied with the previous Consent Decrees because "the entire system of childrens' mental health services in Idaho was inadequate and underfunded and that Jeff D. programs needed to be better integrated into a system of care provided to **all** SED youth in order to improve service and efficiency." Order, p. 10. The Court was explicit in what it expected of the Defendants. The Court's Order clearly and directly ordered the Defendants to create a compliance plan which "provide[s] a detailed and comprehensive blueprint of how the State will meet the requirements of the previous Decrees and the 1998 Consent Decree [Compliance Agreement]." Order, p. 10. The Defendants were ordered to "**specify the funding required** to meet those goals and **expected sources of funding**" and "**clear deadlines and funding sources identified. The aim of the plan should be complete compliance.**" Order, p. 11. Emphasis added.

The Court's Plan includes the Defendants' Forward and an explanation of the process used to create the plan. Each of the fifty **Recommendations** taken from the Needs Assessment, together

with the **Background/Framework for Implementation** and the **Desired Result**, have to be considered for any determination of compliance. Most of the Plan was written by the Defendants in consultation with their experts since the Plaintiffs did not have the resources to hire independent experts to write a plan and the Defendants indicated that all fifty **Recommendations** and **Desired Results** would be achieved. *See*, Plan, p. 5. It was anticipated that there would be revisions during the implementation process. “Revisions will be made where appropriate from the learning experiences of the implementation process.” Plan, p. 5. The Plan was not static but a work in progress. *See Also* Order, p.1, Dk. No. 360 (“The Plan represents a purposeful first step towards providing those children of Idaho who suffer from severe emotional disturbance the care and resources the state agreed to provide as part of a consent decree reached by the parties and adopted by the Court.”). However, it did set a two year deadline for establishing a final date of implementation.

**Consistent with that language, there will, of course, also be a conscious effort over the next two years to expand the service capacity and quality, which will be reflected through the oversight of the ICCMH in reviewing set targets and monitoring progress toward those targets.** Even while the infrastructure is being developed there will be an increase in the number of children with SED who are able to be served through the new funding. **The next two years will allow the development of the ability to size service capacity and needs, establish consistent measurements and data, and to support future requests for funding as we point to an established system of accountability, management and successful progress in meeting our focused goals.** It is anticipated that **in two years, with the data collected to size and identify gaps in the service system, the parties will set about reviewing the plan with the goal of revising and setting new actions for future expansion of the core services, with the primary service expansion taking place in the following years.** It will be necessary to revisit the plan and to further develop the actions and goals based on the learning of the first two years. Continuous planning is realistic if we are to achieve a successful integrated system of care for children with SED and their families.

A final date for completion has not yet been set. The parties agree that until sizing of the service capacity has been done and service expansion goals have been set, there

is no way to accurately determine the time it will take to create an integrated system of care. **In the next year, the parties will meet to begin planning the final phase of the plan, and therefore, the end of the suit.**

Plan at 6. Emphasis added.

The 1998 Compliance Order, declared “that additional community-based treatment programs and services are required to serve mentally ill children in their communities but the lack of resources prevents the provision and expansion of needed treatment programs and services.” *Id.* at p. 2. The Defendants agreed to the foregoing terms to achieve compliance:

a. The Defendants shall **increase the dedicated funding as required to implement the recommendations of the Needs Assessment** for child mental health services as provided for in this Agreement, **whether by an increase or realignment of existing resources or through an increase in legislative funding. Such increase shall be in addition to the funding from all sources currently being expended** for children and their families’ mental health needs. **The Defendants will provide the Plaintiffs with the documentation which substantiates such increase and how it is allocated and spent** to serve mentally ill children and their families.

*Id.* at p. 4, ¶ 4.a (emphasis added). See also, Order p. 9.

The 1998 Compliance Order required the Defendants to implement the recommendations of the 1998 Compliance Review including to “develop, disseminate, and promote a ‘master plan’ or ‘vision’ based upon the needs assessment . . . for Idaho’s children’s mental health system which includes a complete understanding of the size of the population of children and families with mental health needs, the nature and scope of their needs and maximization of the resources available and necessary to meet their needs.” The Defendants were required to seek input from all stakeholders for creating an “entire system of care for Seriously Emotionally Disturbed (SED) children and their families regardless of system or agency.” *Id.* at p. 8, ¶ 8.a. This provision requires collaboration of the Idaho Department of Health and Welfare (IDHW), Idaho Department of Juvenile Corrections



(IDJC), and the State Department of Education (SDE) to achieve compliance. The Defendants have yet to prepare and provide Plaintiffs with a master plan meeting these requirements. The Defendants were required by the 1998 Compliance Agreement to:

- maximize the impact of existing and new resources;
- clarify the roles within Health and Welfare and its partners, FAC, the Regional Offices, and other systems and entities;
- focus case management on the most intensive mental health services;
- use additional resources to “expand the capacity of lower intensity community based services such as in-home, mental health case management, intensive outpatient, partial or integrated day treatment, crisis stabilization, therapeutic foster care, respite care, and consultation services. The State Medicaid Plan should maximize feasible service capabilities and adjustments to the rehabilitation option should be requested as necessary.”
- bring SED children back to Idaho from out of state placements by expanding community based resources to serve these children;
- develop more service capacity at the community level to quickly respond to the needs of children who need acute treatment, stabilization, and assessment;
- establish a 14 day target length of stay for acute treatment;
- develop more service capacity at the community level to more quickly respond and provide for the needs of SED children following stabilization;
- improve the integration between state hospital staff and regional case managers;
- ensure planning efforts to improve the system of care involves families;
- provide transition planning for children moving to the adult mental health system;
- implement an effective training program of persons who interact with children with SED which educates all stakeholders regarding the needs of the children and families and the system of care.

The Needs Assessment made fifty (50) recommendations from the “data that describes the gaps between current Idaho needs, capacity, and resources and a statewide model of best practices for meeting the needs of children with serious emotional disturbances and their families.” *Id.* p. 25. The authors noted that “**it is critically important that all recommendations be viewed as an interlocking, interdependent set**” and “**it will be very difficult to implement separate recommendations in isolation from others.**” *Id.* p. 25 (emphasis added). The authors used as an example of the interdependence the “recommendations regarding service development [which] depend[ed] significantly upon implementation of key financing recommendations, and their success depends upon implementation of key management and collaboration recommendations. *Id.*, p. 25. The 1999 Needs Assessment, Exhibit A, Docket No. 308, divided its Recommendations into five categories which can be summarized as follows:

Parents should have meaningful involvement in all levels of the system by ensuring “all processes which affect policies, procedures, and actual practice must include input by parents and parent advocacy organizations.” *Id.* p. 22.

Collaboration: Establishment of a state council of directors of state departments who should lead in “system restructuring and community service development.” *Id.* p. 22. Local councils “should be established and charged with the collaborative responsibilities of managing local service development and access to the most intensive, expensive services.” *Id.* p. 23.

Management: The state council, using a statewide planning process, should implement methods to integrate services using local schools as a base and review children committed to IDJC who could be served in the community without commitment. “The Legislature needs to create management linkages between local schools and the Department of Education, and between local courts and the Department of Juvenile Corrections, . . . IDHW needs to integrate management across its several child-serving responsibilities, especially including Medicaid resources.” *Id.* p. 23. The state council should use video conferencing to create electronic access to specialized expertise for children, families, and staff. *Id.* p. 23.

Financing: “Resources must be made available to support the expansion of community based services and supports” which, over time, “should lead to a systemic decrease in resources

purchasing institutionally-based care and any savings there must be reinvested in community based services and supports.” *Id.* p. 23. The Needs Assessment recommended that several million dollars be transferred from the IDJC budget to the state council for community grants to support development of community based services. *Id.* p. 23.

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Program Development: Community based services must be developed, especially including therapeutic foster care, day programming, care management, and crisis services, family and child supports, including respite care. The local schools should be used as a base for service access and delivery. The system must support training of community staff regarding the philosophy and delivery of community based services and the general level of child clinical expertise must be raised. *Id.* p. 23.

Accountability: State agency must implement quality improvement practices and monitor such practices at a community level. The information management systems must be improved and linked to support data driven management decisions and to improve tracking of outcomes which are expected to be achieved. *Id.* p. 23.

The Defendants have failed to make the changes the Needs Assessment recommended because of the failure to request new resources or use the existing resources in a more efficient and effective manner so the state agencies and regional and local councils can develop the community based services needed by the children with SED and their families. *See* 1999 Needs Assessment and Court Plan Recommendation Nos. 22 & 23.

The Defendants have not made the budget requests necessary to expand the capacities of the ten core services. In FY 2004 Idaho provided \$6,757,100 in general funds to develop and increase the community-based mental health services required by the Order. In FY 2005, it was the same amount. *See* FY 2004 and FY 2005 State of Idaho Mental Health Plan for Children. Without substantial new resources the Defendants cannot increase the services and make the structural changes necessary in the current system to provide the community-based core services required to serve the

needs of the over eight thousand children with SED and their families.<sup>1</sup> The Defendants have failed to make the additional funding requests to the Legislature so that children with SED and their families could be provided access to necessary and critical mental health services. *See* Reports to Governor, December 2003, pp. 7-8, Reports to Governor, December 2004, p. 3, Reports to Governor, December 2005, pp. 7-8. The ten new clinical positions required by the Court and the funding which was appropriated in FY 2003 by the Legislature was never used to hire clinicians to provide services to the Plaintiffs. The money was used to fund budget hold-backs so the budget reserve account could increase. In addition, many other positions were eliminated and many more were left vacant. Response to Interrogatory No. 29.<sup>2</sup> It has been almost six years since the 1998 Compliance Agreement and Order

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<sup>1</sup> The 1999 Needs Assessment made many findings and recommendations which bear on the Defendants' current compliance with the Court's Orders. The Needs Assessment identified the SED population and defined the target population as 40% of those children with SED that will likely need public services in a year. *Id.*, p. 9. The Needs Assessment identified and defined the ten core services composing the "Revised Idaho Service Model." These included 24 hour a day, 7 days a week crisis services; screening/assessment; higher levels of diagnostic evaluation; individual and group outpatient therapies with trained professionals delivered in homes, schools, and their communities responsive to the level of needs; case management for advocacy and support of the child and family; family support services as adjuncts to treatment services including respite care; day treatment programming which is age appropriate; therapeutic foster care by trained providers with ongoing and crisis support; residential treatment in highly structured settings to provide intensive therapeutic intervention; and inpatient hospitalizations for highly clinical and acute treatment. *Id.* at pp. 11-12. The authors further found that 68% of the children receiving outpatient Medicaid services under Idaho's system incurred less than \$500 in charges which indicated these "children either had low-level needs (therefore not SED) or they were drastically under-served." *Id.* at 14. This indicated the services were not being used by children with SED or that necessary services could not be obtained on an outpatient basis.

<sup>2</sup> The IDH&W Defendants have attempted to explain their failure to fill 12½ positions by asserting these duties were shifted to the private sector under the Psycho-Social Rehabilitation (PSR) program to Medicaid to do assessments. However, these positions also provided other clinical services such as case management and it was contingent on a child receiving Medicaid so thousands of children were denied services. The PSR workers do not have the qualifications of the clinicians and there is no direct supervision of the services they perform. The increase in the

was entered and almost four years since the Court entered its Order requiring the Defendants to “specify funding required” and to establish “clear deadlines and funding sources identified.” Order p.11. This has not been accomplished at this time.

The Defendants have also refused to expand the type of mental health services which could be paid for with mostly federal funds under the Medicaid program. Response to Interrogatory No. 30. The mental health services for children that exist are still fragmented among the state agencies which have individual responsibilities and funding to serve children with SED and their families. No efforts have been made and none are planned to pool agency funds so children with SED can be served more effectively and efficiently. Response to Interrogatory No. 34. The Defendants have made no effort to change Idaho law which they contend prevents them from pooling resources to serve children.

The Defendants themselves have calculated that it needs at least \$27.5 million in new resources to fund community based services for the target population. *See* Response to Interrogatories.<sup>3</sup> Despite the need for resources to fund community based services, the Defendants have not proposed a budget request to increase services but continue to expend millions of dollars hospitalizing and incarcerating children with SED because of the lack of core services and their failure to collaborate in creating a community based system of care. The 1999 Needs Assessment’s **“OVERVIEW OF SERVICES”**

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number of clinicians since FY 1991 is attributable to the Court’s order to increase funding. However, IDH&W still has only 65 clinicians to serve thousands of children with SED and their families. *See* FY 2004 State of Idaho Mental Health Plan for Children, p. 53.

<sup>3</sup>The Defendants’ own calculations of the actual number of children receiving the core services in FY 2001-FY 2005 will illustrate their lack of compliance. *See* DHW’s CMH Services for FY 2001-FY 2005. *See* Exhibit 1 attached.

found that the **majority of the resources for mental health services were spent purchasing institutional services which is “the least effective in helping children with SED and their families.”**

*Id.* at 17. Emphasis added. In contrast, community based care, manifest in the “Revised Idaho Service Model” “has been shown to achieve much more desirable outcomes, keeping children from offending, avoiding expensive institutional care, and aiding their growth toward adult productivity and success.”

*Id.* at 17. The authors noted “[k]ey recommendations in this report are aimed at changing this balance to better support key services at the community level, with a focus on meeting more serious needs in the community. One expected outcome is better access to diversion services to lower the number of children needing to utilize institutional services.” *Id.* at 18. What is discouraging is that since 1999, the number of persons needing to be hospitalized has continued to expand from **399 to 833**, costing millions of dollars, even though the projected capacity that need this service is 443. *See* Response to Interrogatories and DHW’s CMH Services for FY 2001-FY 2005. This has occurred while the community based services continue to be underfunded and can only serve a small fraction of the target population. The Defendants have never provided the Plaintiffs or the Court with the date it will be able to serve all the Plaintiffs and have failed to identify the resources required and the source of those resources necessary to make the structural changes required to serve the target population with an integrated system of care in their communities. The Defendants’, in the Responses to Plaintiffs’ Interrogatories, have for the first time disclosed the amount of new resources it believes are necessary to expand the core services.<sup>4</sup>

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<sup>4</sup>The Defendants’ calculations for the number of children it has served are imprecise and conflict with other calculations they have provided to the Plaintiffs. This is a direct result of their failure to make the management and accounting structural changes, which were identified in the Needs Assessment, that would allow them to track the actual number of children served and the

The documentation provided by the Defendants, including the Governor's Reports and the Community Report Cards, all establish the actual capacity of services has changed little for children and their families because the funding has not been provided to expand the core services needed to serve the target populations.<sup>5</sup> Parents continued to be denied services because there are insufficient community-based services and resources. DHW staff continue to advise parents to press charges and have their children arrested so services can be provided during their incarceration in the juvenile justice system. Approximately one-third of the children committed to the Department of Juvenile Corrections has been diagnosed with SED. The preferred way for families and children to obtain mental health services continues to be through hospitalization or commitment to the juvenile justice system.

The Defendants have chosen not to provide the resources nor staff necessary to achieve compliance with the Court's 1998 Compliance Order and Court Plan.<sup>6</sup> If the measurement of the Defendant's compliance efforts is "competing priorities" then the current system will not change and the budgets for children mental health services will not increase. The DHW Defendants have not

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services which are provided.

<sup>5</sup> The Defendants, in the Court's Plan, stated "[A]t all stages of the implementation of the action plan, the court and counsel will receive documentation, where available, of the developed protocols, guidelines, agreements, targets, reports, and any other material that will aid in the court's determination of the efforts being made in this process. Where a desired result is measurable, definable, and demonstrable, that evidence will be provided to the court and Plaintiffs." The Plaintiffs have not received any documentation showing compliance with the Court's Order or the Action Plan. Court Plan, p. 5.

<sup>6</sup> The Defendants' Forward in the Court Plan summarized the three factors which they contend limited their ability to comply with the recommendations of the Needs Assessment. *See* Plan, p. 3. These were: (1) limited resources and staff time and competing governmental and program priorities; (2) inability to command full participation of community partners; and (3) factors unknown or qualified which make the strategies chosen to build a new system ineffective.

expanded the core services to serve the target population. *See* Community Report Cards, 2003-2005. The Defendants Service Delivery Goals project little or no improvement in the expansion of the core services and in some regions services will actually be decreasing.<sup>7</sup>

At the present time, the Defendants have no incentive to corroborate to create an integrated system of care.<sup>8</sup> Corroboration would exist if there was an integrated system with adequate funding. The Defendants have not made the necessary structural reforms to make the systemic changes required by the Needs Assessment. Without these crucial elements, there is not the slightest hope that the process established in the Court's Plan would succeed and it has not.

The Defendants' compliance with the 1998 Compliance Order and the 1999 Needs Assessment have failed to achieve the results ordered by the Court's Plan. The Defendants have utterly failed to recognize that the 1998 Compliance Order and the Court's Order requiring them to implement the Needs Assessment's Recommendations and the Court's Plan require more than the production of paper, the formation of committees, and the generation of meetings. Real progress can and will only be made when the rhetoric is matched by real progress including, most importantly, providing the new funding for the development of increased service capacity for the ten core services to meet the

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<sup>7</sup> The Service Delivery Goals are based upon a smaller estimate of the number of children estimated to need services than the estimate used in the projected additional cost for services or staff. *See* Interrogatories.

<sup>8</sup> The Needs Assessment found that "each of the child-serving systems (child welfare and mental health in IDHW, juvenile justice, and education) brings important components . . . , but **as long as the efforts within each system are disconnected from each other those efforts will remain duplicative, uncoordinated, and unsuccessful.** In fact, primary recommendations in this report are aimed at establishing an appropriate interagency infrastructure to integrate and develop coordinated efforts from all major systems around this population of children." *Id.* at 19. Emphasis added. The child serving agency and system continues to be disconnected and no real restructuring has taken place to require collaboration.



real needs of children with SED and their families. Real progress will not be achieved until more children with SED and their families have access to community based services in a collaborative system of care which respects and includes parents in all treatment decisions. The ICCMH has failed to achieve what the 1998 Compliance Order, the 1999 Needs Assessment, the Court's Order and Plan required because it has failed to ensure that the policies it creates are supported by new resources or using resources in a more efficient and effective manner so the state agencies and regional and local councils can develop the community based services needed by the children with SED and their families. The FY 2005 State of Idaho Mental Health Plan for Children lists twenty-eight (28) separate "**Unmet Service Needs and Critical Gaps**" and nineteen (19) of the "**States's Priorities.**" See Exhibit 2 attached. This refutes any assertion by the Defendants that full compliance has been achieved pursuant to the 1998 Compliance Order, the Court's Order and the Court's Plan.

In reviewing the Defendants' compliance it is instructive to read the Plan's "Defendants' Forward" in which they expressed their own view of the implementation process during the two years following the Court's approval of the Plan. As Plaintiffs anticipated, the "Defendants' Forward" is a step backward and, for the most part, become the reality, except the Defendants failed even to comply with their minimal representations to the Court of what would be accomplished over these two years. The State of Idaho currently has a budget surplus of over 200 million dollars and tens of millions of dollars in reserve accounts, but the Defendants have chosen to ignore the needs of the children and violate the 1998 Compliance Order, the Court's Order and the Court's Plan. The Defendants represented to the Court when the Plan was adopted that it would "support and advocate" for "additional funding and resources" and "provide the court documentation to that end."

The request for additional funding and resources has been made on the part of the Defendants; . . . . [T]he Defendants do not have the unilateral ability to ensure additional resources will be dedicated. Throughout the budget process Defendants will support and advocate for the budget request and will provide the court with documentation to that end. . . . The Department of Health and Welfare will use the additional funds allocated to provide the level of services that the amount will buy. However, the Defendants' ability to implement this plan is dependent on the appropriation of additional funding and resources.

Action Plan, p. 1.

The Defendants' Forward summarized the three factors which they contend limit their ability to comply with the recommendations of the Needs Assessment. *See* Action Plan, p. 3. These were: (1) limited resources and staff time and competing governmental and program priorities; (2) inability to command full participation of community partners; and (3) factors unknown or qualified which make the strategies chosen to build a new system ineffective. The Defendants' Forward has become a self-fulfilling prophecy. For 25 years the Defendants have chosen not to provide the resources nor staff necessary to achieve compliance with the Court's Orders and the settlement agreements. The Defendant's have always attempted to excuse their inability to comply with Court Orders by contending there have been competing "priorities." The fact is that for the thousands of children with SED and their families there always be "competing priorities" which will prevent them from obtaining services and treatment in their communities. If the measurement of the Defendant's compliance efforts is "competing priorities" then the current system will not change and the budgets for children's mental health services will not increase. The DHW Defendants have specifically rejected the 1998 Compliance Agreement, Needs Assessment, and the Court's Plan requirements to expand the core services to serve the target population.

## CONCLUSION

The Defendants have abandoned the vision of the Court's Plan because of their alleged limited resources and lack of corroboration between state agencies. The Defendants have chosen to once again return to the strategy they used successfully for the last 25 years. That is to stall and delay compliance while engaging in litigation in the hopes they will find a legal loop hole to exhaust or destroy the Plaintiffs' counsels ability to enforce the agreements.

DATED this 27<sup>th</sup> day of January, 2006.

/s/ Howard A. Belodoff  
Attorney for Plaintiff  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of January, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following person:

Jody Carpenter  
Idaho Department of Health and Welfare  
Division of Human Services  
PO Box 83720  
Boise ID 83720-0036

Nancy Bishop  
Deputy Attorney General  
Department of Juvenile Corrections  
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/s/ Howard Belodoff