

**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 FOR REPORTING
ON OLMSTEAD PLAN**

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.

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

On May 28, 2015, this matter came before the Court for a Status Conference. (Doc. No. 456.) Following this Status Conference, the parties participated in mediation meetings with Magistrate Judge Becky R. Thorson between June 2015 and October 2015. On June 18, 2015, the Court stayed the parties' and the Court Monitor's reporting obligations to the Court based on the status of the mediation proceedings. (Doc. No. 462 at 2.) On July 9, 2015, the Court extended the stay of the reporting requirements during the pendency of the mediation period to August 10, 2015. (Doc. No. 472 at 2.) The Court reserved the right to address the resumption of status reports or any modified reporting obligations by separate Order. (*Id.*)

On August 10, 2015, the Defendants submitted a revised *Olmstead* Plan for approval by the Court. (Doc. No. 486-1.) The Court approved this version of the *Olmstead* Plan on September 29, 2015.¹ (Doc. No. 510.) In approving the *Olmstead* Plan, the Court emphasized the State's commitment to relying on the *Olmstead* Implementation Office ("OIO") to oversee the plan's successful implementation. (*Id.* at 9.) The Court particularly highlighted the OIO's role of "quality assurance and accountability, including compliance evaluation, verification and oversight." (*Id.*) The

¹ The Court does not express any opinion on the merits of the related case *Guggenberger, et al. v. State of Minnesota, et al.*, 15-CV-3439 (D. Minn. Aug. 28, 2015) through this Order.

Court also noted the State's commitment to establishing an annual review and formal amendment process to ensure deliberate efforts to update and add goals to the *Olmstead* Plan over time. (*Id.*) While "applaud[ing] the parties for their collaboration in developing this landmark *Olmstead* Plan," the Court also emphasized that it "fully expects the State to act on its promises to ensure that the *Olmstead* Plan will truly put the promise of *Olmstead* into practice across the state." (*Id.* at 14.) The Court reserved ruling on the *Olmstead* Plan's implementation plan, and reserved its right to exercise its continuing jurisdiction with respect to the revised *Olmstead* Plan. (*Id.* at 14-15.) Specifically, the Court noted that it "will continue to carry out its oversight responsibility to oversee the State's efforts in following through on the significant commitments it has made." (*Id.* at 15.)

On October 9, 2015, the Defendants submitted the *Olmstead* Plan Workplans for Court approval. (Doc. No. 515.) The Defendants explained that these workplans "form the blueprint for implementing the *Olmstead* Plan." (*Id.* at 1.) On November 6, 2015, the Court approved the *Olmstead* Plan Workplans. (Doc. No. 521.) The Court again reserved its right to exercise continuing jurisdiction to ensure that compliance with the Settlement Agreement is verified in the future. (*Id.* at 2-3.) The Court noted that it would identify a reporting schedule for the State to submit periodic reports on the *Olmstead* Plan's implementation in a subsequent Order. (*Id.* at 3.) On January 5, 2016, the Defendants submitted the *Minnesota Olmstead Subcabinet Report to the Court: Status Update, March 1, 2015 - September 30, 2015, Gap Report*. (Doc. No. 529.)

Currently before the Court is the Plaintiffs' Proposal for Reporting on *Olmstead* Plan, received by the Court on February 10, 2016 (Doc. No. 538), and the Defendants' Proposal for *Olmstead* Plan Compliance Reporting, received by the Court on February 12, 2016 (Doc. Nos. 540-1 & 540-2).² Both parties seek an Order from the Court establishing a schedule and format for *Olmstead* Plan compliance reporting.

ORDER

Based upon the submissions of the parties, the entire record before the Court, the Court's determination that there is a need for an Order establishing a schedule and format for *Olmstead* Plan compliance reporting, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. The Minnesota Department of Human Services ("DHS") shall submit to the Court, Plaintiffs' Class Counsel, the Ombudsman for Mental Health and Developmental Disabilities, and the Executive Director of the Minnesota Governor's Council on Developmental Disabilities ("Consultants") quarterly and annual status reports regarding *Olmstead* Plan implementation based on the schedule listed in the attached Exhibit A entitled "Quarterly Reporting Schedule for *Olmstead* Plan Measurable Goals." (*See* attached Exhibit A.)

² On February 12, 2016, the Court also received a letter and accompanying attachments from *Olmstead* Subcabinet Chair Mary Tingerthal regarding proposed compliance evaluation, verification, and oversight of the *Olmstead* Plan. (Doc. No. 540.) And on February 18, 2016, the Court received a letter from the Defendants making a correction to their proposal and accompanying proposed order. (Doc. No. 543.)

2. The initial quarterly status report shall include data acquired by the Olmstead Implementation Office through the last day of January 2016, and shall be due on February 29, 2016.

3. After the initial quarterly status report, quarterly reporting shall occur according to the following schedule:

a. First Quarter (data acquired by the Olmstead Implementation Office through the last day of April) quarterly status report due date May 31.

b. Second Quarter (data acquired by the Olmstead Implementation Office through the last day of July) quarterly status report due date August 31.

c. Third Quarter (data acquired by the Olmstead Implementation Office through the last day of October) quarterly status report due date November 30.

d. Fourth Quarter (data acquired by the Olmstead Implementation Office through the last day of January) quarterly status report due date February 28, or, in the case of a leap year, February 29.

4. The attached Exhibit A entitled “Quarterly Reporting Schedule for Olmstead Plan Measurable Goals” lists measurable goals for each topic area and corresponding reporting deadlines for each goal. In addition to reporting on the long-term measurable goals identified in Exhibit A, DHS shall also include in its quarterly reports the status of each Annual Goal included in the approved *Olmstead Plan*

(Doc. No. 486-1). This information shall be reported in the next quarterly report following the Annual Goal deadline identified in the *Olmstead Plan*.³

5. Annual reports shall cover data acquired by the Olmstead Implementation Office during the period of October 1 through September 30 and shall be due on or before the following December 31.

6. DHS shall report to the Court on the implementation of the annual *Olmstead Plan* amendment process. Potential Plan amendments shall be identified and included in each annual report due on or before December 31. Plan amendments adopted by the Subcabinet shall be reported to the Court on or before February 28, or, in the case of a leap year, February 29.

7. When the reporting date is a Saturday, Sunday, or a legal holiday, the reporting shall be effected on the next day that is not a Saturday, Sunday, or legal holiday, as provided in Federal Rule of Civil Procedure 6(a)(1)(C).

8. All data included in reports to the Court must be confirmed as reliable and valid. All statements made in the reports must be accurate, complete, timely, and verified.

9. DHS shall submit all reports to the Court according to formal court filing procedures.

³ For example, the *Olmstead Plan*'s Person Centered Planning Goal One includes the following Annual Goal: "By June 30, 2016, the percent of plans that meet the required protocols will increase to 30%." (Doc. No. 486-1 at 35.) Information regarding whether this goal has been met shall be reported to the Court in the August 2016 quarterly report.

10. Upon receipt of each quarterly and annual report, the Court will notify DHS if further information is needed or if the report fails to meet the Court's expectations. The Court presently approves the templates submitted as Attachments C and D to Olmstead Subcabinet Chair Mary Tingerthal's February 12, 2016 letter to the Court. (*See* Doc. No. 540.) The Court reserves the right to request further or other detail, or to request a different format in subsequent reports.

11. Plaintiffs' Class Counsel and the Consultants are permitted, but not required, to submit written comments to the Court following DHS's submission of a quarterly or annual report. Such comments must be submitted to the Court no later than ten (10) days following the report's submission.

12. The Court will convene bi-annual status conferences with Defendants' Counsel, Plaintiffs' Class Counsel, and the Consultants to facilitate the Court's continued oversight of the *Olmstead* Plan's implementation. Status conferences will be convened by the Court each June and December, beginning in June 2016. Prior to each status conference, the Court will issue an Order clarifying the timing and location of each status conference as well as a planned agenda explaining topics to be discussed.

13. DHS shall consult with Plaintiffs' Class Counsel and the Consultants if DHS contemplates proposing to modify the reporting schedule or format, and any such proposals must be submitted to the Court for approval. If the Court requires modifications to the reporting schedule or format, it will notify DHS.

14. Prior orders of the Court (Doc. Nos. 136, 211, 212, 223, 224, 265, 340, 344, 457, 462, and 472) as they relate to the schedule for and submission of compliance

reporting, are superseded by this Order to the extent they are inconsistent with this Order only as to reporting requirements.

15. At this time the Court places all Court Monitoring duties with respect to *Olmstead* Plan oversight on hold. The Court, however, reserves the right to facilitate additional Court oversight in the future through Court Monitoring.

16. Based on all of the above and the current status of this matter, and pursuant to the Settlement Agreement § XVIII.B and the Court's September 3, 2014 Order (Doc. No. 340), the Court's jurisdiction is extended to December 4, 2019. The Court expressly reserves the authority and jurisdiction to order an additional extension of jurisdiction, depending upon the status of Defendants' compliance and absent stipulation of the parties.

Dated: February 22, 2016

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