

**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 SETTLEMENT AGREEMENT**

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 February 2, 2016, the Defendants submitted the *Jensen Settlement Agreement Comprehensive Plan of Action (CPA) – Ninth Compliance Update Report, Reporting Period: May 1 – September 30, 2015* ("Gap Report").¹ (Doc. No. 531.)

Currently before the Court is the Plaintiffs' Proposal for Reporting on *Jensen* Agreement, received by the Court on February 10, 2016 (Doc. No. 537), and the Defendants' Proposal on Compliance Reporting, received by the Court on February 12, 2016 (Doc. No. 539). Both parties seek an Order from the Court establishing a schedule for compliance reporting with respect to the Stipulated Class Action Settlement

¹ The Court is currently reviewing Defendants' Gap Report and will address this report in a forthcoming order. In particular, the Court may provide directives as to the adequacy and format of the Gap Report in this subsequent order.

Agreement (“Settlement Agreement”) (Doc. No. 136-1) and the Comprehensive Plan of Action (“CPA”) (Doc. No. 283).

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 for 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”) exception, semi-annual, and annual Comprehensive Plan of Action (“CPA”) reports based on the schedule listed in the attached Exhibit A entitled “Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.” (*See* attached Exhibit A.)

2. Semi-annual reporting shall occur according to the following schedule:

a. First semi-annual (January, February, March, April, May, June) CPA report due date August 31.²

b. Second semi-annual (July, August, September, October, November, December) CPA report due date February 28, or, in the case of a leap year, February 29.

² The first semi-annual report due August 31, 2016 shall also include reporting for October, November, and December 2015.

3. Annual Reports shall cover the period of January 1 to December 31 and shall be due on or before March 31.

4. Exception reporting is to be in accordance with the time frame and for the reasons listed in Exhibit A, with the exclusion of reports for Emergency Use of Manual Restraint (“EUMR”) which are governed by the terms of the Stipulated Class Action Settlement Agreement (Doc. No. 136-1).

5. 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).

6. 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.

7. DHS shall provide a draft of the semi-annual and annual reports for comment to the Consultants no fewer than fifteen (15) business days prior to the due date of each report.

8. The Consultants may provide comment or feedback to DHS no later than close of business seven (7) business days before the due date of each report.

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

10. The Court understands that DHS has hired Dr. Daniel Baker as the new *Jensen* Internal Reviewer, replacing Dr. Richard Amado. (*See* Doc. No. 531, Gap Report at 28-29.) The Court approves of this replacement. DHS shall advise the Court, after

consultation with the Consultants regarding replacement of the Internal Reviewer (CPA Evaluation Criteria (“EC”) 39), when the person responsible as the Internal Reviewer changes. Such change shall be reflected in the first semi-annual or annual CPA report following the change.

11. DHS shall reflect changes to a designated “Person responsible” in the first semi-annual or annual CPA report following the change.

12. Plaintiffs’ Class Counsel and the Consultants are permitted, but not required, to submit written comments to the Court following DHS’s submission of an exception, semi-annual, or annual report. Such comments must be submitted to the Court no later than ten (10) days following the report’s submission.

13. 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 Defendants’ compliance with the CPA and the *Jensen* Settlement Agreement. 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.

14. 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.

15. Prior orders of the Court (Doc. Nos. 136, 136-1, 159, 211, 212, 223, 224, 266, 284, 323, 340, 457, 462, & 472) and the CPA (Doc. No. 283), 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.

16. The Court understands that DHS is developing a “pool” of independent subject matter experts. (*See* Doc. No. 531, Gap Report at 6.) The Court will consider proposals by both parties regarding how the independent subject matter experts may be utilized for external reporting. Such proposals must be submitted to the Court within seven (7) days of this Order.

17. The Court will issue separate Orders regarding the role and reporting requirements of the Court Monitor, the external reviewer, and the independent subject matter experts.

18. 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

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
1	Annual	<p>1. The Facilities will comply with Olmstead v. L.C. The Facilities are and will remain licensed to serve people with developmental disabilities. The Facility will eliminate unnecessary segregation of individuals with developmental disabilities. People will be served in the most integrated setting to which they do not object. Each individual's program will include multiple opportunities on an ongoing basis to engage with: (1) citizens in the community, (2) regular community settings, (3) participating in valued activities (4) as members of the community. These community activities will be highly individualized, drawn from the person-centered planning processes, and developed alongside the individual. C1+C1</p> <p>1.1 Each individual's planning processes will specifically address integration within the following life areas: (1) home; (2) work; (3) transportation; (4) lifelong learning and education; (5) healthcare and healthy living; and (6) community and civic engagement.</p> <p>1.2 Cambridge and successor facilities apply strong efforts to individualize and personalize the interior setting of the home. This includes exerting maximal feasible efforts to assist individuals to personalize and individualize their bedrooms and common areas, to make each common area aesthetically pleasing, and to actively support individuals to bring, care for, acquire, and display personal possessions, photographs and important personal items. Consistent with person-centered plans, this may include the program purchasing such items which will build towards transition to a new place to live.</p>	
2	Semi-Annual	<p>2. Facilities utilize person-centered planning principles and positive behavioral supports consistent with applicable best practices including, but not limited to the Association of Positive Behavior Supports, Standards of Practice for Positive Behavior Supports .</p>	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
3	Semi-Annual	3. Facilities serve only "Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety."	
4	Annual	4. Facilities notify legal representatives of residents and/or family to the extent permitted by law, at least annually, of their opportunity to comment in writing, by e-mail, and in person, on the operation of the Facility.	
5	Exception	5. The State/DHS immediately and permanently discontinues all the prohibited restraints and techniques.	Reporting will occur more frequently than semi-annually if concerns are noted.
6	Exception	6. The State/DHS has not used any of the prohibited restraints and techniques.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
7	Exception	7. Medical restraint, and psychotropic/ neuroleptic medication have not been administered to residents for punishment, in lieu of habilitation, training, behavior support plans, for staff convenience or as behavior modification.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
8	Exception	8. Restraints are used only in an emergency.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
9	Exception	9. The Policy (Settlement Agreement Att. A, as it may be revised after court approval, dissemination and staff training) was followed in each instance of manual restraint	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
10	Exception	10. There were no instances of prone restraint, chemical restraint, seclusion or time out. [Seclusion: evaluated under Sec. V.C. Chemical restraint: evaluated under Sec. V.D.]	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
11	Exception	11. There were zero instances of the use of Seclusion. Facility policy shall specify that the use of seclusion is prohibited.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
12	Exception	12. There were zero instances of the use of Room Time Out from Positive Reinforcement. Facility policy shall specify that the use of time out from positive reinforcement is prohibited.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
13	Exception	13. There were zero instances of drug / medication use to manage resident behavior OR to restrain freedom of movement. Facility policy specifies the Facility shall not use chemical restraint. A chemical restraint is the administration of a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
14	Exception	14. There were zero instances of PRN orders (standing orders) of drug/ medication used to manage behavior or restrict freedom of movement. Facility policy specifies that PRN/ standing order medications are prohibited from being used to manage resident behavior or restrict one's freedom of movement.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
22	Exception	22. The responsible Facility supervisor contacted the DHS medical officer on call not later than 30 minutes after the emergency restraint use began.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
23	Exception	23. The medical officer assessed the situation, suggested strategies for de-escalating the situation, and approved of, or discontinued the use of restraint.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
24	Exception	24. The consultation with the medical officer was documented in the resident's medical record.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
25	Exception	25. All allegations were fully investigated and conclusions were reached. Individuals conducting investigations will not have a direct or indirect line of supervision over the alleged perpetrators; the DHS Office of the Inspector General satisfies this requirement. Individuals conducting investigations, interviews and/or writing investigative reports will receive competency-based training in best practices for conducting abuse / neglect investigations involving individuals with cognitive and/or mental health disabilities and interviewing.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
28	Exception	28. Form 31032 (or its successor) was fully completed whenever use was made of manual restraint.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
29	Exception	29. For each use, Form 31032 (or its successor) was timely completed by the end of the shift.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
30	Exception	30. Each Form 31032 (or its successor) indicates that no prohibited restraint was used.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
32	Exception	32. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Ombudsman for MH & DD	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
33	Exception	33. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the DHS Licensing	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
35	Exception	35. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the legal representative and/or family to the extent permitted by law.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
36	Exception	36. Within 24 hours, and no later than one business day, Form 31032 (or its successor) in each instance was submitted to the Case manager.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
38	Annual	38. Other reports, investigations, analyses and follow up were made on incidents and restraint use.	
39	Semi-Annual	39. In consultation with the Court Monitor during the duration of the Court's jurisdiction, DHS designates one employee as Internal Reviewer whose duties include a focus on monitoring the use of, and on elimination of restraints.	
40	Exception	40. The Facility provided Form 31032 (or its successor) to the Internal Reviewer within 24 hours of the use of manual restraint, and no later than one business day.	Reporting will occur more frequently than semi-annually or annually if concerns are noted.

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
41	Semi-Annual	41. The Internal Reviewer will consult with staff present and directly involved with each restraint to address: 1) Why/how de-escalation strategies and less restrictive interventions failed to abate the threat of harm; 2) What additional behavioral support strategies may assist the individual; 3) Systemic and individual issues raised by the use of restraint; and 4) the Internal Reviewer will also review Olmstead or other issues arising from or related to, admissions, discharges and other separations from the facility.	
45	Annual	45. The following have access to the Facility and its records: The Office of Ombudsman for Mental Health and Developmental Disabilities, The Disability Law Center, and Plaintiffs' Class Counsel.	
46	Annual	46. The following exercised their access authority: The Office of Ombudsman for Mental Health and Developmental Disabilities, The Disability Law Center, and Plaintiffs' Counsel.	
47	Semi-Annual	47. The State undertakes best efforts to ensure that each resident is served in the most integrated setting appropriate to meet such person's individualized needs, including home or community settings. Each individual currently living at the Facility, and all individuals admitted, will be assisted to move towards more integrated community settings. These settings are highly individualized and maximize the opportunity for social and physical integration, given each person's legal standing. In every situation, opportunities to move to a living situation with more freedom, and which is more typical, will be pursued.	
48	Semi-Annual	48. The State actively pursues the appropriate discharge of residents and provided them with adequate and appropriate transition plans, protections, supports, and services consistent with such person's individualized needs, in the most integrated setting and to which the individual does not object.	
49	Semi-Annual	49. Each resident, the resident's legal representative and/or family to the extent permitted by law, has been permitted to be involved in the team evaluation, decision making, and planning process to the greatest extent practicable, using whatever communication method he or she (or they) prefer.	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
50	Semi-Annual	50. To foster each resident's self-determination and independence, the State uses person-centered planning principles at each stage of the process to facilitate the identification of the resident's specific interests, goals, likes and dislikes, abilities and strengths, as well as support needs.	
51	Semi-Annual	51. Each resident has been given the opportunity to express a choice regarding preferred activities that contribute to a quality life.	
52	Semi-Annual	52. It is the State's goal that all residents be served in integrated community settings and services with adequate protections, supports and other necessary resources which are identified as available by service coordination. If an existing setting or service is not identified or available, best efforts will be utilized to create the appropriate setting or service using an individualized service design process.	
53	Semi-Annual	53. The provisions under this Transition Planning Section have been implemented in accord with the Olmstead decision.	
54	Annual	54. Facility treatment staff received training in positive behavioral supports, person-centered approaches, therapeutic interventions, personal safety techniques, crisis intervention and post crisis evaluation.	
55	Annual	55. Facility staff training is consistent with applicable best practices, including but not limited to the Association of Positive Behavior Supports, Standards of Practice for Positive Behavior Supports (http://apbs.org). Staff training programs will be competency-based with staff demonstrating current competency in both knowledge and skills.	
56	Annual	56. Facility staff receive the specified number of hours of training: Therapeutic interventions (8 hours); Personal safety techniques (8 hours); Medically monitoring restraint (1 hour).	
57	Annual	57. For each instance of restraint, all Facility staff involved in imposing restraint received all the training in Therapeutic Interventions, Personal Safety Techniques, Medically Monitoring Restraint.	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
58	Annual	58. Facility staff receive the specified number of hours of training: Person-centered planning and positive behavior supports (with at least sixteen (16) hours on person-centered thinking / planning): a total 40 hours; Post Crisis Evaluation and Assessment (4 hours).	
59	Annual	59. Residents are permitted unscheduled and scheduled visits with immediate family and/or guardians, at reasonable hours, unless the Interdisciplinary Team (IDT) reasonably determines the visit is contraindicated.	
60	Annual	60. Visitors are allowed full and unrestricted access to the resident's living areas, including kitchen, living room, social and common areas, bedroom and bathrooms, consistent with all residents' rights to privacy.	
61	Annual	61. Residents are allowed to visit with immediate family members and/or guardians in private without staff supervision, unless the IDT reasonably determines this is contraindicated.	
62	Annual	62. There is no marketing, recruitment of clients, or publicity targeted to prospective residents at the Facility.	
64	Semi-Annual	64. The Facility has a mission consistent with the Settlement Agreement and this Comprehensive Plan of Action.	
65	Annual	65. The Facility posts a Patient / Resident Rights or Bill of Rights, or equivalent, applicable to the person and the placement or service, the name and phone number of the person within the Facility to whom inquiries about care and treatment may be directed, and a brief statement describing how to file a complaint with the appropriate licensing authority.	
66	Annual	66. The Patient / Resident Bill of Rights posting is in a form and with content which is understandable by residents and family / guardians.	
67	Semi-Annual	67. The expansion of community services under this provision allows for the provision of assessment, triage, and care coordination to assure persons with developmental disabilities receive the appropriate level of care at the right time, in the right place, and in the most integrated setting in accordance with the U.S. Supreme Court decision in <i>Olmstead v. L.C.</i> , 527 U.S. 582 (1999).	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
68	Semi-Annual	68. The Department identifies, and provides long term monitoring of, individuals with clinical and situational complexities in order to help avert crisis reactions, provide strategies for service entry changing needs, and to prevent multiple transfers within the system.	
69	Semi-Annual	69. Approximately seventy five (75) individuals are targeted for long term monitoring.	
70	Semi-Annual	70. CSS mobile wrap-around response teams are located across the state for proactive response to maintain living arrangements.	
71	Semi-Annual	71. CSS arranges a crisis intervention within three (3) hours from the time the parent or legal guardian authorizes CSS' involvement.	
72	Semi-Annual	72. CSS partners with Community Crisis Intervention Services to maximize support, complement strengths, and avoid duplication.	
73	Semi-Annual	73. CSS provides augmentative training, mentoring and coaching.	
74	Semi-Annual	74. CSS provides staff at community based facilities and homes with state of the art training encompassing person-centered thinking, multi- modal assessment, positive behavior supports, consultation and facilitator skills, and creative thinking.	
75	Semi-Annual	75. CSS' mentoring and coaching as methodologies are targeted to prepare for increased community capacity to support individuals in their community.	
76	Semi-Annual	76. An additional fourteen (14) full time equivalent positions were added between February 2011 and June 30, 2011, configured as follows: Two (2) Behavior Analyst 3 positions; One (1) Community Senior Specialist 3; (2) Behavior Analyst 1; Five (5) Social Worker Specialist positions; and Five (5) Behavior Management Assistants.	
77	Semi-Annual	77. None of the identified positions are vacant.	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
78	Semi-Annual	78. Staff conducting the Functional Behavioral Assessment or writing or reviewing Behavior Plans shall do so under the supervision of a Behavior Analyst who has the requisite educational background, experience, and credentials recognized by national associations such as the Association of Professional Behavior Analysts. Any supervisor will co-sign the plan and will be responsible for the plan and its implementation.	
79	According to the Olmstead Plan reporting process	79. The State and the Department developed a proposed Olmstead Plan, and will implement the Plan in accordance with the Court's orders. The Plan will be comprehensive and will use measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and which is consistent and in accord with the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 581 (1999). The Olmstead Plan is addressed in Part 3 of this Comprehensive Plan of Action.	
80	Annual	80. Rule 40 modernization is addressed in Part 2 of this Comprehensive Plan of Action. DHS will not seek a waiver of Rule 40 (or its successor) for a Facility.	
81	Annual	81. The State takes best efforts to ensure that there are no transfers to or placements at the Minnesota Security Hospital of persons committed solely as a person with a developmental disability.	
82	Exception	82. There are no transfers or placements of persons committed solely as a person with a developmental disability to the Minnesota Security Hospital (subject to the exceptions in the provision).	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
83	Annual	83. There has been no change in commitment status of any person originally committed solely as a person with a developmental disability without proper notice to that person's parent and/or guardian and a full hearing before the appropriate adjudicative body.	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
84	Annual	84. All persons presently confined at Minnesota Security Hospital who were committed solely as a person with a developmental disability and who were not admitted with other forms of commitment or predatory offender status set forth in paragraph 1, above, are transferred by the Department to the most integrated setting consistent with <i>Olmstead v. L.C.</i> , 527 U.S. 581 (1999).	
85	Exception	85. All AMRTC residents committed solely as a person with a developmental disability and who do not have an acute psychiatric condition are transferred from AMRTC to the most integrated setting consistent with <i>Olmstead v. L.C.</i> , 527 U.S. 581 (1999).	Reporting will occur more frequently than semi-annually or annually if concerns are noted.
89	Annual	89. Staff hired for new positions as well as to fill vacancies, will only be staff who have experience in community based, crisis, behavioral and person-centered services and whose qualifications are consistent with the Settlement Agreement and currently accepted professional standards. Staff reassigned from MSHS-Cambridge will receive additional orientation training and supervision to meet these qualifications within 6 months of reassignment.	
90	Annual	90. Provide integrated vocational options including, for example, customized employment.	
91	Annual	91. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Person-Centered Planning.	
92	Annual	92. All requirements in this Comprehensive Plan of Action are fully met for each individual served in the area of Transition Planning.	
93	Semi-Annual	93. DHS will provide augmentative service supports, consultation, mobile teams, and training to those supporting the person. DHS will create stronger diversion supports through appropriate staffing and comprehensive data analysis.	
94	Annual	94. All sites, programs and services established or utilized under this Comprehensive Plan of Action shall be licensed as required by state law.	
96	Annual	96. Training plan for staff strongly emphasizes providing tools and support services in a person's home as quickly as possible. Staff will also be trained in delivering community based programs and processes.	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
98	Semi-Annual	98. DHS will maintain therapeutic follow-up of Class Members, and clients discharged from METO/MSHS-Cambridge since May 1, 2011, by professional staff to provide a safety network, as needed, to help prevent re-institutionalization and other transfers to more restrictive settings, and to maintain the most integrated setting for those individuals.	
100	Annual	<p>100. Within the scope set forth above, the rule-making process initiated by the Department of Human Services pursuant to the Settlement Agreement, the Department shall by December 31, 2014 propose a new rule in accordance with this Comprehensive Plan of Action ("Proposed Rule"). This deadline may be extended for good cause shown upon application to the Court not later than 20 days prior to the deadline.</p> <p>Should the Department of Human Services believe that it requires additional rule-making authority to satisfy the requirements of this Plan, in order to apply the rule to all providers covered by Rule 40 and the scope of this Plan, the Department will seek an amendments to statutes in the 2014 Minnesota Legislative session to ensure that the scope of the Rule 40 modernization stated above is fulfilled and will apply to all of the facilities and services to persons with developmental disabilities governed by Rule 40. Any proposed amendment(s) are subject to the notice and comment process under EC __ below.</p> <p>If legislative approval for the requested authority is not obtained in the 2014 Minnesota Legislative session, the Court may use its authority to ensure that the Adopted Rule will apply consistent with the scope set forth in EC 99.</p> <p>By August 31, 2015, the Department of Human Services shall adopt a new rule to modernize Rule 40 ("Adopted Rule"). This deadline may be extended for good cause shown upon application to the Court not later than 60 days prior to the deadline.</p>	

Jensen Settlement Agreement Comprehensive Plan of Action Reporting Schedule. Appendix A.

EC #	Reporting Color Key Green: Semi-Annual Pink: Annual Purple: Exception	Comprehensive Plan of Action Evaluation Criteria	Exception Reporting: Exception Reporting has the meaning that the reporting will occur more frequently than semi-annually, if concerns are noted.
101	Annual	<p>101. The Proposed Rule shall address the temporary use and tapering of carefully monitored individual medical restraints for self-injurious behavior while non-restraint positive behavior supports are implemented under professional supervision.</p> <p>In formulating the Proposed Rule, and any other methods or tools of implementation, the Department shall carefully consider the recommendations of Dr. Fredda Brown, whose consultation on the Rule 40 modernization the Department requested with regard to matters on which the Advisory Committee had not reached consensus. The Department shall document the results of this review.</p>	
103	Semi-Annual	<p>103. Within thirty (30) days of the promulgation of the Adopted Rule, Plaintiffs' Class Counsel, the Court Monitor, the Ombudsman for Mental Health and Developmental Disabilities, or the Executive Director of the Governor's Council on Developmental Disabilities may suggest to the Department of Human Services and/or to the Olmstead Implementation Office that there are elements in the Rule 40 Advisory Committee Recommendations on Best Practices and Modernization of Rule 40 (Final Version - July 2013) which have not been addressed, or have not adequately or properly been addressed in the Adopted Rule. In that event, those elements shall be considered within the process for modifications of the Olmstead Plan. The State shall address these suggestions through Olmstead Plan sub-cabinet and the Olmstead Implementation Office. Unresolved issues may be presented to the Court for resolution by any of the above, and will be resolved by the Court.</p>	<p>DHS is in the process of discussing items to be included in the Olmstead plan.</p>