

**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

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.

Scott H. Ikeda, Aaron Winter, Anthony R. Noss, and Michael N. Leonard Assistant
Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

On December 18, 2019, the Court ordered the parties to meet and confer to select an individual to conduct an external review of the Forensic Mental Health Program (“FMHP”) (formerly, the Minnesota Security Hospital) and Anoka Metro Regional Treatment Center (“AMRTC”) to address the extent to which Defendants’ use of mechanical restraint reflects current best practices. (Doc. No. 779 (“December Order”) at 16-17.) In the event that the parties were unable to agree, the Court directed each party to nominate two individuals they would like to conduct the external review and advised that the Court would then select an external reviewer and notify the parties. (*Id.* at 16.)

The parties were unable to agree on an external reviewer. Per the Court’s direction, each party nominated two individuals via email. The Court reviewed the nominations and directed Defendants to select between Dr. Gary LaVigna (“LaVigna”) and David Ferleger (“Ferleger”).¹ (Doc. No. 795.) On February 7, 2020, Defendants notified the Court via email that while they objected to both LaVigna and Ferleger as unqualified, they selected LaVigna to conduct the external review.²

In accordance with its December 18, 2019 Order (Doc. No. 779), the Court directs Defendants to engage LaVigna to conduct an external review at the FMHP and AMRTC

¹ The Court found that it was economically prudent and in the interest of efficiency to engage an external reviewer already familiar with this matter.

² While the Court acknowledges Defendants’ objection to LaVigna, the Court finds that LaVigna has the requisite experience and education to properly determine whether Defendants’ use of mechanical restraint at FMHP and AMRTC. LaVigna co-founded and is the Clinical Director for the Institute of Applied Behavior Analysis which provides behavior management services, supported employment, supported living, and supported educational services to individuals with developmental disabilities. In October, LaVigna conducted an external review on the use of Prohibited Techniques in Facilities (Doc. No. 775) and advised on another matter in 2015 (Doc. No. 464).

to determine whether Defendants' use of mechanical restraint reflects current best practices, specifically quantifying type, frequency, and duration of mechanical restraint at those locations, and identifying whether Positive Supports were attempted prior to use. Prior to conducting the review, LaVigna shall meet with one or both of the Court Consultants, Colleen Wieck and Roberta Opheim, for additional context and background. The Court Consultants shall also serve as a resource throughout the review.

ORDER

Based upon the presentations and submissions before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Defendants must engage Dr. Gary LaVigna to conduct an external review of the Forensic Mental Health Program and Anoka Metro Regional Treatment Center.

a. The external review must address the extent to which Defendants' use of mechanical restraint at the Forensic Mental Health Program and Anoka Metro Regional Treatment Center reflects current best practices, specifically quantifying the type, frequency, and duration of mechanical restraint at each location, and identifying whether Positive Supports were attempted prior to use.

b. Prior to the review, Dr. Gary LaVigna shall meet with the one or both of the Court Consultants, Colleen Wieck and Roberta Opheim, for additional context and background. The Court Consultants shall also serve as a resource throughout the review.

Dated: February 13, 2020

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