

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T.R., by and through his guardian and next friend, R.R.; S.P., by and through her mother and next friend, D.H.; C.A., by and through her mother and next friend, A.A.; T.F., by and through her father and next friend, D.F.; P.S., by and through his mother and next friend, W.S.; T.V., by and through his guardian and next friend, C.D.; G.B., by and through her mother and next friend, L.B.; E.H. by and through his mother and next friend, C.H.; E.D., by and through his mother and next friend, A.D.; and L.F.S., by and through his mother and next friend, B.S.,

Plaintiffs,

v.

SUSAN N. DREYFUS, not individually, but solely in her official capacity as Secretary of the Washington State Department of Social and Health Services,

Defendant.

No. 2:09-cv-01677-JPD

STIPULATED MOTION TO AMEND
SCHEDULING ORDER AND SECOND
JOINT STATUS REPORT REGARDING
MEDIATION

STIPULATED MOTION

Plaintiffs, on behalf of themselves and the class they represent, and Defendant respectfully file this Stipulated Motion to Amend Scheduling Order requesting a six (6) month extension of the

STIPULATED MOTION AND JOINT STATUS
REPORT REGARDING MEDIATION (No. 2:09-
cv-01677-TSZ) – 1

70787-0001/LEGAL20131671.1

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litigation deadlines included in the current case schedule (Dkt. 70) on grounds that the extension is necessary to allow the parties to continue settlement discussions. As detailed in the Second Joint Status Report Regarding Mediation set forth below, the parties have made significant progress towards reaching a conclusive resolution of all issues involved in this matter. Additionally, the parties have committed to a schedule of additional meetings and mediation, as well as a detailed process to reach their mutual goal of arriving at a settlement on or before August 30, 2011. The parties are unable to apply the resources required to continue settlement discussions, while at the same time prepare this case for trial under the current schedule. Accordingly, to avoid wasting judicial resources and the parties' resources, Plaintiffs and Defendant respectfully move for a six (6) month extension of the current litigation deadlines. A proposed order is submitted herewith.

SECOND JOINT STATUS REPORT REGARDING MEDIATION

1. On December 1, 2010, the Court entered a Minute Order (Dkt. 70) setting forth litigation deadlines in this matter. That Order included, among other things, the following litigation requirements and deadlines: August 31, 2011 deadline to complete mediation; October 31, 2011 deadline for Plaintiffs' expert reports; November 30, 2011 deadline for Defendant's expert reports; and March 16, 2012 deadline to complete all discovery.

2. On February 17, 2011 the parties submitted a joint status report regarding the three full days they spent in mediation (January 6, January 25 and 26, 2011), and additionally scheduled additional mediation sessions (February 15 – 16, 2011 and March 10 – 11, 2011). The parties have met and completed all of these sessions with their identified mediators, Teresa Wakeen and Kathleen Noonan. In addition, the parties held a phone conference without mediators on February 28, 2011.

3. During these mediation sessions, the parties identified their critical issues and reached mutual agreement on the key elements that must be resolved to reach final settlement. Outlined below

is the schedule the parties have set forth for completing negotiations on these elements and the deliverables upon which the parties intend to reach mutual agreement:

Element	Mutually Agreed Deliverables	Completion
1. Service Array	Analysis and conclusions regarding defined intensive home & community based (IHCB) mental health (MH) services, to include coverage under applicable Medicaid law	June 2, 2011
2. Principles and Practice Components	Guidance for providers and administrators on principles establishing service values and requiring service components for each child and family to receive over the course of treatment	March 29, 2011
3. Systemic Identification and Assessment of Needs	Determination of target population characteristics, size, and written description of how children will access intensive mental health services	June 2, 2011
4. System Management, Quality Assurance, and Governance	Analysis and plan to align data collection, quality control, cross-system coordination and collaboration, and governance with agreed principles	June 17, 2011
5. System Capacity and Funding	Review of existing system capacity to deliver IHCBS in accordance with practice components and development of funding mechanisms	June 2, 2011
6. Implementation	Plan for implementing the practice components, including commitments and time frames and systemic outcomes	June 2, 2011

4. Provided these six elements can be resolved within the timeframes the parties have allocated for negotiation, the parties intend to begin drafting their final settlement agreement in June 2011, with a target date of June 29, 2011 for the completion of a first draft. A final comprehensive settlement agreement is anticipated to be finalized by August 30, 2011. During this time, the parties

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2 will also discuss exit strategies and criteria, plans to monitor implementation, and enforcement
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4 procedures to be incorporated into their agreement and settlement order.

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6 5. The parties agreed to continue settlement negotiations through August 2011 in order to
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8 reach final agreement. The parties have committed to at least one additional mediation session with
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10 both mediators on May 3, 2011, as well as a series of in-person full day negotiation meetings without
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12 the mediators (March 29, April 11, May 2, May 17, June 2, June 15, and June 29, 2011). In addition,
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14 both parties are committing to participate in subgroups to meet in between the scheduled negotiation
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16 meetings in order to address each of the six identified elements with the assistance of stakeholder third
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18 parties and experts. The parties have agreed to submit an additional Joint Status Report on or before
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20 August 15, 2011 to advise the Court of the mediation status.

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22 6. As reported to the Court in the parties' February 17, 2011 Joint Status Report, the
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24 parties have continued to voluntarily stay any new discovery while engaging in mediation. Under the
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26 Court's current Scheduling Order, both parties acknowledge the need to reengage in significant
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28 discovery efforts, including intensive document production and depositions, beginning not later than
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30 March 21, 2011. The parties continue to desire to focus their respective resources on the mediation
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32 process. At the same time, the parties continue to believe they cannot unnecessarily encumber their
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34 ability to prepare the lawsuit in the event a settlement is not achieved and in light of the Court's
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36 current scheduling order. Accordingly, the parties have filed a Stipulated Motion requesting a six
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38 month extension to the current litigation deadlines.

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40 7. The parties mutually agree that settlement progress has been made during the past 30
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42 days and that the agreed mediation schedule represents their best effort at providing a framework in
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44 which to mediate and resolve the issues in this case. Therefore, as reported to the Court in February
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46 17, 2011 Joint Status Report, the parties hereby jointly request a six (6) month continuance of the
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48 deadlines included in the Court's current Scheduling Order. If such a continuance is requested and
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2 granted, the current voluntary discovery freeze will continue during the continuance so the parties may
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4 concentrate their resources to the mediation process.

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6 8. If the Court has questions about the current mediation process, the parties are agreeable
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8 to status conference to discuss these matters.

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10 Respectfully submitted this 15th day of March, 2011.
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: John K. McIlhenny, Jr. (JohnM5@atg.wa.gov), Catherine Hoover (CatherineH1@atg.wa.gov), Bill G. Clark (BillC2@atg.wa.gov), and Eric Nelson (EricN1@atg.wa.gov).

s/Mona Rennie

Legal Secretary

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