UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

WALTER STEPHEN JACKSON, et al.,

Plaintiffs,

v. **CIV No. 87-0839-JP/LCS**

LOS LUNAS HOSPITAL CENTER, et al.,

Defendants,

and

THE ARC OF NEW MEXICO,

Intervenor,

And

MARY TERRAZAS, et al.,

Intervenors.

JOINT STIPULATION ON AGREED ACTIONS TO COMPLY WITH JOINT STIPULATION ON DISENGAGEMENT AND PLAN OF ACTION AND TO RESOLVE PENDING MOTIONS TO SHOW CAUSE AND TO RE-ENGAGE

The Parties stipulate and agree as follows:

I. PURPOSE

1. This Stipulation is intended to resolve the pending Motions to Show Cause filed by the Plaintiffs and Intervenor Arc and the Plaintiffs' pending Motion to Re-engage Case Management.

2. This Stipulation is intended to obligate Defendants to take certain actions outside the Plan of Action as more specifically outlined in Appendix A to this Stipulation. More specifically, the actions identified in Appendix A are intended to facilitate compliance with the JSD, to promote

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completion of certain 1998 Audit Recommendations, to further address Case Management even though Plan of Action Desired Outcomes related to Case Management have been previously disengaged by an order of the Court and to address certain aspects of Vocational Rehabilitation.

3. Except as explicitly provided herein, nothing contained in this Stipulation is intended to change or modify the terms of the Joint Stipulation on Disengagement, (the "JSD"), and all provisions of the JSD remain in full force and effect. Nothing in this Stipulation is intended to bind Intervenor ARC to the terms of the JSD to which Intervenor ARC has previously objected. The Parties further agree that nothing in this Stipulation, nor any of the actions undertaken by the Division of Vocational Rehabilitation, is intended to change the relationship to the Plan of Action or the 1998 Audit Recommendations of the Division of Vocational Rehabilitation, nor of any other defendant.

II. AGREED ACTIONS TO BE TAKEN BY THE PARTIES.

4. The Defendants agree to implement all of the actions identified and listed in Appendix A to this Stipulation (the "Appendix A Actions") by the due date identified with respect to each such action in Appendix A.

5. The Parties understand and agree that some of the Appendix A Actions supplant or modify activities currently contained in the Plan of Action (as modified on May 31, 2000). Following entry of this Stipulation, the Parties will work together to identify those Plan of Action Desired Outcome Activities that are supplanted or modified by the Appendix A actions, and will seek modification of the Plan of Action to delete or modify all such jointly-identified activities in accordance with paragraph 13 of the JSD.

6. The Parties further recognize, understand and agree that certain of the Appendix A Actions may have some relationship with certain Plan of Action Desired Outcomes. Notwithstanding any such relationship, the Parties understand and agree that all Appendix A Actions shall be deemed independent of the Plan of Action and that disengagement of any Plan of Action Desired Outcome shall not be contingent on Defendants' completion of any of the Appendix A Actions that may bear some relationship with that Plan of Action Desired Outcome.

7. The provisions of the JSD related to funding contained in Section VII of the JSD shall apply to this Stipulation and the Appendix A Actions.

III. ROLE OF MONITORS

8. The Parties will utilize the Internal and Community Monitors to informally assist in resolution of any conflicts that arise regarding the Appendix A Actions.

9. For the Appendix A Actions that require the development of plans with the input and/or approval of the Parties, which are designated by the Parties in Appendix A as actions subject to Joint Plan Development and Approval, the Parties agree to utilize the Internal and Community Monitors in that input and approval process.

10. In the event that an agreement cannot be reached by the Parties related to Joint Plan Development and Approval after consultation with the Internal and Community Monitors, or in the event that a dispute related to Appendix A Actions is not resolved by the Parties after consultation with the Internal and Community Monitors, any Party may submit the unresolved issue to the Court for *de novo* resolution.

IV. COMMUNICATION AND REPORTING.

11. The Defendants will continue to provide their quarterly report to Plaintiffs and Intervenors and will continue to meet with Plaintiffs and Intervenors in accordance with paragraph 41 of the JSD. At those meetings, the Parties will discuss progress on relevant Appendix A Actions

12. Defendants will also report to Plaintiffs and Intervenors in writing on significant issues related to their progress in implementing the Appendix A Actions as such issues may arise. The form of any such additional reports shall be in a form of Defendants' choosing and will be timed by Defendants to correspond or relate to the respective deadlines and time lines for the Appendix A Actions in advance of any meeting held pursuant to paragraph 41 of the JSD.

V. MISCELLANEOUS.

13. This Stipulation binds the Parties and employees, agents, and any successors in interest of the defendant agencies and officials.

14. The Parties agree and represent to the Court that this Stipulation is fair and reasonable under the circumstances.

15. The Court has ordered that notice of this Stipulation be provided to class members and may, in its discretion, schedule a fairness hearing pursuant to Federal Rule of Civil Procedure 23. If the Court determines the Stipulation is fair and reasonable, it shall approve it and enter it as an Order of the Court.

16. This Stipulation shall not be deemed final and binding until approved by the Court.

17. On entry of this Stipulation by the Court, Plaintiffs and Intervenor ARC shall withdraw their pending Motions to Show Cause and Motion to Re-Engage Case Management without prejudice.

18. Whenever the terms "Party" or "Parties" are used in this Stipulation, such terms are intended to refer to the Plaintiffs, Defendants, and Intervenors.

Michelle Lujan Grisham, Secretary
NM Department of Health

Pamela Hyde, Secretary
NM Human Services Department

Catherine Cross Maple, PhD
Assistant Secretary,
NM Public Education Department
for Division of Vocational Rehabilitation

Rebecca Shuman
Executive Director
Arc of New Mexico

Gregory L. Biehler
Counsel for Defendants

Peter Cubra
Counsel for Plaintiffs

Maureen Sanders
Counsel for Arc of New Mexico

APPENDIX A
AGREED ACTIONS TO ADDRESS CONTEMPT MOTIONS

All references are with regard to Jackson classmembers

CASE MANAGEMENT		
Ref #	***Due***	***Requirement***
CM1	18 months	Provide responsive, effective case management by improving the current case management system. The case management system will maintain independent case management.
CM2	Complete	Establish workgroups to begin planning improvements in case management system.
CM3	6 months	Draft a Case Management Operations Manual with input from stakeholders, including parties and monitors, which.establishes the mission, authority and duties of case management.
CM4	9 months	Present the draft Case Management Operations Manual to the monitors and parties for final review.
CM5	1 year	Finalize the Case Management Operations Manual.
CM6	1 year	Based upon the mission statement in the Case Management Operations Manual, Long Term Services Division (LTSD) will develop measurable outcome indicators for improvement in the case management system.
CM7	As per initiative W/in 18 months	Complete the current case management redesign initiative and implement the changes that result from that process.
CM8	6 months	Maintain and strengthen the case management unit and hire a qualified individual with the requisite skills to administer case management, using a mutually agreed upon job description.
CM9	6 months	Assess the quality of Individual Service Plans (ISPs) to determine how to improve their quality and usefulness, and whether standards and/or regulations need to be changed.
CM10	6 months	Complete the pilot of the revised ISP process and documentation.
CM11	7 months	Meet with parties and monitors to review the outcome of the pilot and to establish revised ISP processes and documentation.
CM12	12 months	Based upon the outcome of the pilot, determine whether standards and/or regulations need to be changed.
CM13	6 months	Evaluate the utilization review process and how to make regional offices more effective monitors and overseers for development of quality ISPs.
CM14	6 months	Complete analysis of Annual Resource Allotment (ARA) system.
CM15	12 months	Make allowable adjustments or changes as needed to promote quality and cost effective services.
CM16	1 year	Perform the rate study recommended by the community monitor in 1998.
CM17	6 months	Implement the recommendations made by the internal monitor in her summer 2003 report regarding the ARA system.
CM18	6 months	Work with the monitors to remedy problems with the Omnicaid utilization review system.
CM19	9 months	Establish a system for case managers to have access to information regarding billing services.

QUALITY ENHANCEMENT		
Ref #	**Due**	**Requirement**
QE1	6 months	Develop implementation plan for Division of Health Improvement (DHI) assumption of responsibility for corrective action follow-up, including resource requirements.
QE2	6 months	Address each recommendation in the internal monitor's October 2003 report.
QE3	1 year	Based upon the DOH staffing analysis, as reviewed by the monitors, DOH will determine how to best meet resource needs related to quality enhancement.
QE4	6 months	DOH will work with the internal monitor to establish a plan to transfer responsibility for follow-up to DHI.
QE5	Per priority schedule 18 months	Areas of concern listed in Dr. Willcox's report will be prioritized and addressed.
QE6	1 year	DOH will establish systematic capacity/competence to address medical and behavioral needs of persons served.
QE7	1 year	DOH will establish an adequate process for follow-up after hospitalization to ensure that appropriate medical care is provided.
QE8	6 months	Modify Internal Review Committee (IRC) procedures to improve its ability to identify deficiencies at provider agencies that require corrective action, for promptly establishing adequate corrective action plans and for ensuring that corrective actions are completed in a timely manner.

INCIDENT MANAGEMENT		
Ref #	**Due**	**Requirement**
IM1	3 months	DHI will be responsible for follow-up verification/closure resulting from incidents.
IM2	1 year	DHI will have adequate resources to follow-up, verify, and close incidents requiring follow up.
IM3	3 months	The Internal Monitor will review IRC use of trends data from incidents.
IM4	3 months	DHI's intake/triage process will appropriately assign incidents for investigation, especially emergency room visits.
IM5	6 months	Improve the process for evaluating incident reporting during provider reviews.
IM6	6 months	Establish and implement effective sanctions for under reporting.
IM7	1 year	Sufficient numbers of investigators will be assigned to perform investigations and all investigators will demonstrate ability to perform professionally adequate investigations.
IM8	1 year	Implement all recommendations regarding Mortality Review made by Dr. Willcox in his December 2003 report.
IM9	6 months	Ensure that Dr. Willcox makes written recommendations regarding both individual and systemic corrective actions when he writes each death review report, and establish a reliable mechanism to ensure that those recommendations are promptly implemented.
IM10	6 months	Establish an adequate process for improving the reporting of incidents to the Incident Management Bureau of DHI.
IM11	6 months	Establish adequate protocols for assessing whether a provider is reporting all reportable incidents and for properly sanctioning providers that fail to report.

INCIDENT MANAGEMENT		
Ref #	**Due**	**Requirement**
IM12	6 months	Ensure that after appropriate intake of emergency room visit incidents medical technical assistance is provided.
IM13	3 months	Improve the quality of investigations of abuse, neglect, and exploitation.
IM14	3 months	Implement changes to the system for performing intake/triage of incident reports, to ensure that investigations are conducted of all incidents of suspected abuse, neglect, and exploitation.

BEHAVIOR		
Ref #	**Due**	**Requirement**
B1		Continue the contract for the current clinical consultant at least through June 2006.
B2	Per contract	Through the Office of Behavioral Services (OBS) and the clinical consultant, complete the tasks, strategies, and products specified in the contract consistent with the time lines in the contract.
B3	As recmnd	Implement the recommendations of the clinical consultant as contained in the reports produced pursuant to the contract to the extent that defendants agree with such recommendations. Such agreed-to recommendations will be implemented within the time lines set out in the consultant's recommendation. Disagreements concerning implementation of recommendations are subject to the dispute resolution process in paragraph 10 of the Stipulation.
B4	6 months	Develop new practice guidelines for behavior therapists.
B5	1 year	DOH will review Behavior Support Plans (BSP) and ensure that behavior therapists comply with new and existing behavior practice guidelines.
B6	1 year	Beginning January 2005, participate in regularly scheduled annual team meetings for at least 20 of the class members with the most challenging behaviors and ensure the BSP is adequate, is integrated into the ISP, and is consistently implemented.
B7	1 year	Provide required training to regional offices, case managers, behavior therapists, and provider staff.
B8	3 months	Use the data collected during the 2003 annual review of BSPs to track performance by behavior therapists and to hold those behavior therapists accountable.

CRISIS		
Ref #	**Due**	**Requirement**
C1	Complete	Present a proposal regarding crisis services to the Monitors and the parties by September 30, 2004.
C2	3 months	Jointly develop a "Plan for Crisis Services" with input from the monitors for providing Tier I, II, and III services statewide. This action is subject to Joint Plan Development and Approval, and disagreements concerning recommendations are subject to the dispute resolution process in the Stipulation.
C3	Per plan Within 18 months	Implement the plan in accordance with the time lines specified in the plan.

CRISIS		
Ref #	**Due**	**Requirement**
C4	6 months	Establish an effective mechanism to finance crisis response services that require a cash expenditure.
C5	6 months	Work with plaintiffs to develop an adequate plan with time lines for establishing regional capacity for crisis services.
C6	6 months	Hire a qualified individual with the requisite skills to administer crisis services provided by DOH.
C7	6 months	Establish an adequate plan to fill staff vacancies at the Los Lunas Community Program.

SEXUALITY		
Ref #	**Due**	**Requirement**
S1	6 months	Jointly develop a Plan, with timelines, in collaboration with parties, monitors, OBS, etc. to create a regional capacity with a choice of qualified providers to address sexuality needs of individuals. Ensure that the Plan offers a choice of qualified providers in each region. This action is subject to Joint Plan Development and Approval, and disagreements concerning recommendations are subject to the dispute resolution process in the Stipulation.
S2	Per plan Within 18 months	Implement the Plan in accordance with the time lines specified in the plan.
S3	6 months	Retain mutually agreeable clinicians to conduct assessments.
S4	6 months	Work with plaintiffs to identify all class members who need specialized sexuality services.
S5	Completed	Retain a qualified consultant.
S6	12 months	Offer assessments to the 38 identified class members. Assessments will meet criteria established by the Office of Behavioral Services.
S7	18 months	Offer assessments to other class members who meet needs criteria as established by the Office of Behavioral Services. Assessments will meet criteria established by the Office of Behavioral Services.
S8	September 2005	Arrange for an experienced clinician to promptly provide sexuality training to relevant persons. Such training will be provided at least annually.
S9	18 months	For identified class members with sexuality problems, develop individualized plans, based upon the assessments, with time lines to provide adequate treatment to such individuals

SUPPORTED EMPLOYMENT		
Ref #	**Due**	**Requirement**
SE1	6 months	LTSD will retain new full time equivalent personnel to develop an employment institute (center) and to initiate, support and provide technical assistance for job development and innovative employment practices including customized employment and micro-enterprises at the local level in conjunction with the Supported Employment consultants.
SE2	As per contract	Ensure that the consultants are used for job development at least to the same extent they were used in past years.

SUPPORTED EMPLOYMENT		
Ref #	**Due**	**Requirement**
SE3	As per contract	Use the employment consultants at least to the same extent that the previous administration did to provide quality supported employment services to more class members.
SE4	6 months	Implement the "Plan of Action: Supported Employment Outcome B" (119) work plan.
SE5	6 months	Develop a plan with time lines to provide quality supported employment at the minimum criteria to all priority class members who are determined to be appropriate for work.
SE6	8 months	LTSD will develop indicators for supported employment improvement that are measurable.
SE7	8 months	Analyze all policies and practices that are inconsistent with "employment first" principles and make necessary changes.
SE8	6 months	LTSD will clarify that "meaningful day" includes employment.
SE9	6 months	LTSD will set and enforce standards that define expectations for all day services, including work.
SE10	6 months	Develop consequences for case management agencies whose case managers do not carry out DOH policies regarding employment in line with employment first principles and as identified in individual comprehensive personal profiles.
SE11	8 months	Develop criteria outlining competencies for staff involved in supported employment.
SE12	18 months	LTSD will recruit employment providers in areas of the state where there are few/no quality outcomes and innovative approaches.
SE13	8 months	Performance-based contracts will be developed, implemented, and enforced.
SE14	1 year	Provide incentives for innovation in employment.
SE15	6 months	LTSD will revise the new comprehensive personal profile to ensure that they fully explore employment potential and are consistent with the Department's "employment first" principle.
SE16	6 months	Develop guidelines, consistent with the Department's employment first principles, for case managers regarding the need for adequate comprehensive personal profiles and implementation of career development plans.
SE17	6 months	Work with plaintiffs, monitors, etc., to establish clear criteria for teams regarding what constitutes retirement from work.

DIVISION OF VOCATIONAL REHABILITATION (DVR)		
Ref #	**Due**	**Requirement**
DVR1	6 months	Annually, DVR will target outcomes, in conjunction with LTSD, for specific Jackson class members who have work goals but who are not working and collaborate with LTSD to obtain employment for them.
DVR2	9 months	DVR will take referrals for certain Jackson class members and take the lead in getting an employment profile done to establish a blue print for job development. DVR will assist in obtaining employment in conjunction with LTSD.
DVR3	9 months	DVR and LTSD will use creative approaches to getting jobs for Jackson class members with significant disabilities and seek methods of providing incentives through innovation contracts.

DIVISION OF VOCATIONAL REHABILITATION (DVR)		
Ref #	**Due**	**Requirement**
DVR4	6 months	DVR will participate in selected team meetings of the "119" individuals whose teams are not supportive of work and assist individuals to consider other providers if necessary. DVR will ideally be provided 8-10 weeks notice, but in no event less than 4 weeks notice, of these meetings.
DVR5	9 months	DVR will take the lead in developing and implementing quality vocational profiles for Jackson class members who do not have an updated one.
DVR6	6 months	DVR will ensure that all liaisons understand their role as facilitators of employment for individuals with significant disabilities.
DVR7	1 year	DVR will co-sponsor training for key stakeholders on quality employment outcomes, innovative approaches, best practices, employer negotiations.
DVR8	6 months	DVR will do case reviews at the local level and collaborate with LTSD to solve individual and systemic issues.

DAY SERVICES		
Ref #	**Due**	**Requirement**
DS1	6 months	LTSD will implement the Rucker plan, as operationalized by the meaningful day work group chaired by the community monitor.
DS2	6 months	LTSD will work with plaintiffs, monitors, etc., to establish a measurable definition of a meaningful day.
DS3	1 year	Establish criteria for teams as to what constitutes a meaningful day for retired individuals.
DS4	9 months	Based upon the definition of meaningful day, LTSD will develop measurable outcome indicators for improvement.
DS5	6 months	LTSD will develop and implement consequences for case managers and their agencies for failure to carry out DOH policies regarding meaningful day services.
DS6	6 months	LTSD will retain a full time equivalent qualified expert(s) who will lead the meaningful day and employment initiatives. This person will also oversee the work of two full time lead staff persons: one in the area of meaningful day and one in the area of supported employment.
DS7	6 months	LTSD will increase the full time equivalent (FTE) assigned to each region (at least 1 FTE in each region and 2 in Metro) to work exclusively on meaningful day. LTSD will increase the full time equivalent assigned to each region (at least 1 FTE in each region and 2 in Metro) to work exclusively on supported employment.
DS8	1 year	LTSD will increase the expectations and demands for providers of day services other than work in line with the meaningful day definition and outcome indicators developed by the meaningful day work group.
DS9	6 months	Develop criteria outlining competencies for staff involved in meaningful day area.
DS10	6 months	Develop rigorous performance expectations that are measurable for all staff and providers involved in meaningful day and enforce them.
DS11	FY06	Performance-based contracts will be developed, implemented, and enforced.

DAY SERVICES		
Ref #	**Due**	**Requirement**
DS12	FY06	LTSD will design and implement a pilot which will determine how to best tie reimbursement to accomplishments.
DS13	FY07	Results of the pilot will be used to inform the rate methodology and sustain the practice of payments being tied to accomplishments.
DS14	1 year	Provide incentives for innovation.
DS15	6 months	Give teams/providers technical assistance when they request it.
DS16	6 months	With assistance from the Internal Monitor identify an individual/organization with expertise to continue the work begun by Lyn Rucker to improve day services in line with the meaningful day definition and outcome indicators developed by the meaningful day work group.
DS17	9 months	Based upon the completed day services plan undertake the required evaluation of manpower and seek needed funds.