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,

Plaintiffs,

v.

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.

Civil No. 09-1775 (DWF/FLN)

ORDER

Mark R. Azman, Esq., and Shamus P. O'Meara, Esq., O'Meara Leer Wagner & Kohl, PA, counsel for Plaintiffs.

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

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

INTRODUCTION

On November 10, 2014, the State of Minnesota submitted its proposed revisions to the *Olmstead* Plan ("Revised *Olmstead* Plan") to the Court and the Court Monitor for review. (*See* Doc. No. 369, Attach. 1-2.) For the reasons set forth below, the Court provisionally approves the Revised *Olmstead* Plan.

BACKGROUND

On April 25, 2013, the Court ordered the State of Minnesota and the Department of Human Services ("DHS") to "develop and implement a comprehensive *Olmstead* Plan that[] uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs, in the 'most integrated setting' and is consistent and in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.*" by November 1, 2013, for the Court's review and approval. (*See* Doc. No. 212 at 9.)

On October 31, 2013, the State submitted its proposed *Olmstead* Plan, titled *Putting the Promise of Olmstead into Practice: Minnesota's 2013 Olmstead Plan*, to the Court for review. (*See* Doc. No. 246, Attach. 1.) On January 22, 2014, the Court provisionally approved the State's proposed *Olmstead* Plan, subject to certain modifications, and directed the State to file an updated version of the *Olmstead* Plan by July 15, 2014. (Doc. No. 265.)

On July 10, 2014, the State filed a modified version of its *Olmstead* Plan. (*See* Doc. No. 326, Attach. 1.) On September 18, 2014, the Court declined to approve the State's modified *Olmstead* Plan after finding significant deficiencies, including a lack of measurable goals and a lack of accurate reporting, and directed the State to file a revised version of the *Olmstead* Plan by November 10, 2014. (Doc. No. 344.)

Pursuant to the Court's September 18, 2014 Order, the State filed the Revised *Olmstead* Plan that is now before the Court for review. (*See* Doc. No. 369, Attach. 1-2.) The State also submitted an accompanying exhibit that outlines the measurable goals for certain *Olmstead* Plan action items and, pursuant to the Court Monitor's request, includes worksheets with additional explanatory information. (*See* Doc. No. 369, Attach. 3-4.)

DISCUSSION

The Revised *Olmstead* Plan acknowledges that "now is the time for Minnesota to develop a comprehensive *Olmstead* Plan to work towards full inclusion of people with disabilities." (Doc. No. 369, Attach. 1, at 10.) Although the State has made progress in developing a comprehensive *Olmstead* Plan since its initial draft submission to the Court on October 31, 2013, the Court remains concerned that certain aspects of the Revised *Olmstead* Plan do not meet the requirements set forth in *Olmstead v. L.C.* and in the numerous prior orders of this Court. In reviewing the Revised *Olmstead* Plan, the Court finds a number of specific items to be deficient. The following is a section by section review of the seven topic areas included in the Revised *Olmstead* Plan.

I. Employment

The Revised *Olmstead* Plan first addresses the need for improved access to meaningful, integrated employment opportunities with prevailing wages for people with disabilities. (*See* Doc. 369, Attach. 1, at 40-47.) To meet this goal, the State identifies three "strategic actions": (1) "expand integrated employment"; (2) "align policies and funding"; and (3) "provide training, technical assistance, public information and outreach on employment in the most integrated setting." (*Id.* at 41, 44, 46.) However, the Revised *Olmstead* Plan does not adequately address how the State plans to accomplish these strategies and achieve its overarching employment goal. As the Court has reiterated in prior orders, these topical goals must be assessed as to whether they are concrete, realistic, strategic, measurable, and timely.

First, the State outlines its strategy to "expand integrated employment." (*See id.* at 41-44.) Although the Court finds many aspects of the State's strategy to be sufficient, the Court finds several specific deficiencies. For example, the State proposes an annual increase of twenty-five students in "competitive employment within one year of leaving secondary education" over the current baseline of 263 students. (*See id.* at 41-42.) This proposed numerical increase, from 2015 through 2019, while measurable, can hardly be considered significant or strategic to attain the State's self-proclaimed goal of expanding employment opportunities for individuals with disabilities. An approximate ten percent increase in the number of so-called "transition-age students" each year is insufficient if the State hopes to increase the "employment rate of persons with disabilities so that it is comparable to the employment rate of persons without disabilities." (*Id.* at 41.)

Similarly, with respect to expanding opportunities for adults with disabilities, the State proposes an increase of three "individuals receiving Workforce Development Unit services (State Services for the Blind)" who are competitively employed over the current baseline of 116 individuals by December 31, 2015, and an annual increase of four individuals thereafter through 2019. (*Id.* at 43.) The State offers no explanation for the discrepancy between its proposed increase of three individuals by December 31, 2015, and four individuals annually thereafter. Again, this proposed numerical increase is inconsistent with the overall employment goal heralded by the State. If the State truly wishes to increase employment opportunities for adults with disabilities, the State must strive for more progress than a proposal involving a limited number of individuals.

Likewise, with respect to "individuals receiving Vocational Rehabilitation Services (VRS)" who are competitively employed, the State's proposal reflects an aspirational setback or decline. (*See id.* at 43-44.) Although the State proposes an increase of 112 individuals by December 31, 2015, the State proposes an increase of only 57 individuals by December 31, 2017, and an increase of merely 31 individuals by December 31, 2019. (*See id.*) The Court is hard-pressed to accept such diminishing aspirations as furthering the State's professed goal with respect to employment.

Second, the State describes its strategy to "align policies and funding." (*See id.* at 44-46.) However, the State's strategy is deficient in several respects. The State fails to specify the responsible agency or individual for all but one of the twelve specific proposals to effectuate this strategy. (*Id.* at 45-46.) The Revised *Olmstead* Plan broadly provides that "the Commissioners of DEED, DHS, and MDE will designate responsible

persons" for the remaining proposals, which include a proposal to "clarify roles and responsibilities for cross-agency employment services planning and coordination." (*Id.* at 45.) In addition, the State proposes that, "[b]y December 31, 2015, in collaboration with members of the Interagency Employment Panel, there will be an alignment of workforce development policies, funding and data systems across state agencies." (*Id.*) Such a vague assurance of future alignment is insufficient to comply with the requirements and the spirit of the *Olmstead* Plan. The State further proposes that, "[b]y December 31, 2015, specific strategies to utilize waiver funding to expand employment in the most integrated setting will be implemented." (*Id.* at 46.) The State fails to describe such "specific strategies" or reference any proposed deadline for when such strategies will be finalized for implementation. This vague proposal, despite its laudable aspiration, is neither strategic nor measurable.

Finally, the State outlines its strategy to "provide training, technical assistance, public information and outreach on employment in the most integrated setting." (*Id.* at 46-47.) Regrettably, certain proposals are insufficiently concrete or measurable. For example, the Revised *Olmstead* Plan includes such vague proposals as "promote the business case for hiring people with disabilities" and "publicize statistics, research results and personal stories illustrating the contributions of persons with disabilities in the workplace" which, even with deadlines, fail to state with specificity the necessary details, such as the intended audience or the methods or channels of publicity. (*See id.* at 47.) In addition, many of the proposals are preliminary and require additional follow-up steps. Notably, all but three of the thirteen specific proposal deadlines for this strategy have

now passed, and yet some proposals, such as "establish [a] plan to provide cross-agency training on motivational interviewing" and "establish an outreach plan for families illustrating the impact of integrated competitive employment on individual benefits," are not accompanied with any necessary implementation-centered proposals. (*Id.* at 46-47.)

II. Housing

The Revised *Olmstead* Plan provides that "[t]he goal of this []Plan is to reduce the barriers on both an individual and systemic level that prohibit a person from being able to live in the most integrated setting of their choice." (*Id.* at 49-50.) To meet this goal, the State identifies five strategic actions: (1) "identify people with disabilities who desire to move to more integrated housing, the barriers involved, and the resources needed to increase the use of effective best practices"; (2) increase the number of affordable housing opportunities created"; (3) "increase housing options that promote choice and access to integrated settings by reforming programs that provide housing and supports to allow greater flexibility"; (4) "increase access to information about housing options"; and (5) "actively promote and encourage counties, tribes, and other providers to implement best-practices and person-centered strategies related to housing." (*Id.* at 51-55.) Although the Revised *Olmstead* Plan comprehensively describes the importance of these strategies, many of the specific proposals to accomplish these strategies are inadequate.

For example, to "actively promote and encourage counties, tribes and other providers to implement best practices and person-centered strategies related to housing," the State lists six specific proposals that are all related to counties participating in Individualized Housing Options, a "county-led initiative to help more persons with

disabilities live in the community setting of their choice." (*See id.* at 55-56.) However, none of the proposals address "tribes or other providers" referenced in the State's strategy. Furthermore, the responsibility for these proposals is not expressly addressed, other than providing that "[t]he Commissioner of DHS will designate a responsible person" for implementing the proposals. (*Id.* at 56.)

Similarly, the proposals to "increase access to information about housing options" all pertain to promoting access to HousingLink, an affordable housing locator online service, as a conduit for current vacancy information. (*Id.* at 54-55.) For example, the State proposes that "[b]y September 30, 2014, a plan to inform and educate people with disabilities, case workers, providers and advocates about HousingLink will be developed." (*Id.* at 55.) Although such proposals may "increase access to information about housing options," the proposals unfortunately limit such information to individuals with disabilities who have online access to the system or have case workers, providers, or advocates who can assist them in accessing the information.

III. Transportation

With respect to transportation, the Revised *Olmstead* Plan pledges that "[p]eople with disabilities will have access to reliable, cost-effective, and accessible transportation choices that support the essential elements of life such as employment, housing, education, and social connections." (*Id.* at 58.) To meet this goal, the State identifies four strategic actions: (1) "establish a baseline of transit expenditures and types of service provided across stage agencies to better support people with disabilities"; (2) "engage community members to expand flexibility in transportation systems";

(3) "integrate *Olmstead* principles into existing transportation plans so that Minnesota's transportation policy supports integration and inclusion of people with disabilities"; and (4) "[engage] the Minnesota Council on Transportation Access (MCOTA)." (*Id.* at 58-60.) Although the Court finds the State's specific proposals to accomplish these strategies to be mostly satisfactory, certain proposals require further refinement.

For example, to "engage community members to expand flexibility in transportation systems," the State proposes that by March 31, 2014, "community members will be convened by DHS to identify access issues and determine strategies to improve access and flexibility." (*Id.* at 59.) The State also pledges to "develop a plan to work with transit providers to improve access and flexibility of transportation to meet the goal." (*Id.*) However, there is no description of when or how such strategies and plans will be subsequently implemented or incorporated in furtherance of the State's goal of "reliable, cost-effective, and accessible transportation" for individuals with disabilities. (*See id.*) To effectuate the State's transportation goal, the Revised *Olmstead* Plan must contain strategic, concrete proposals with specific timetables.

IV. Support Services

The Revised *Olmstead* Plan provides that "people with disabilities of all ages will experience meaningful, inclusive, and integrated lives in their communities, supported by an array of services and supports appropriate to their needs and that they choose." (*Id.* at 63.) To achieve this goal, the State identifies four strategic actions: (1) "offer[] supports and services in the most integrated settings"; (2) "support people in moving from institutions to community living, in the most integrated setting"; (3) "build effective

systems for use of positive practices, early intervention, crisis reduction and return to stability after a crisis"; and (4) "provide access to the most integrated setting through the provision of supports and services." (*Id.* at 63-68.)

Although the Court finds the State's proposals to accomplish these strategies to be more comprehensive than those for other topic areas, certain proposals must be expanded with additional initiatives. For example, to "provide access to the most integrated setting through the provision of supports and services," the State includes a proposal to address the thousands of individuals "who have requested home and community-based waiver services, but are not yet receiving services." (Doc. No. 369, Attach. 2, at 3.) The proposal prioritizes individuals "who are at imminent risk of being placed in an institutional setting" and individuals "who need to exit an institutional setting." (*Id.*) However, with respect to residents of Intermediate Care Facilities, only eighty such individuals can expect to receive "home and community-based supports and services" by June 30, 2015. (*Id.*) This proposal does not adequately address the current baseline of 3,502 individuals who have requested a "Developmental Disabilities (DD) waiver" and 1,450 individuals who have requested a "Community Alternatives for Disabled Individuals (CADI) waiver." (*Id.*) If the State wishes to address existing services and support needs, the State must provide a deadline for completion of the waiting list. (*Id.*)

V. Lifelong Learning and Education

With respect to lifelong learning and education, the Revised *Olmstead* Plan provides that "[p]eople with disabilities will experience an inclusive education system at all levels and lifelong learning opportunities that enable the full development of

individual talents, interests, creativity, and mental and physical abilities." (*Id.* at 5.) To meet this goal, the State identifies five strategic actions: (1) "reduce the use of restrictive practices"; (2) "build staff capacity for positive behavioral interventions and supports"; (3) "support integrated employment options"; (4) "increase [the] number of students enrolling in postsecondary education and training"; and (5) "return students with disabilities who are placed out of state or in juvenile corrections to [the] resident district or [the] most integrated setting." (*Id.* at 5-8.)

The Court finds the State's strategies and underlying proposals with respect to its lifelong learning and education goal to be mostly satisfactory, although certain proposals require refinement. For example, to accomplish the State's strategy of "reduc[ing] the use of restrictive practices," the State proposes that by June 30, 2015, the number of students who experience a restrictive procedure in school will be reduced by 108, and that, by June 30, 2019, the number of students who experience a restrictive procedure will be reduced by only 92. (*See id.* at 6.) This proposal reflects an aspirational decline with respect to the reduction of the use of restrictive practices in schools. In addition, the proposal fails to identify how the State will achieve these numerical decreases among students. (*See id.* at 5-6.) Furthermore, the responsibility for this specific proposal is not expressly addressed, other than providing that "[t]he Commissioner of MDE will designate responsible persons." (*Id.* at 6.)

VI. Healthcare and Healthy Living

The Revised *Olmstead* Plan provides that "people with disabilities, regardless of their age, type of disability, or place of residence, will have access to a coordinated

system of health services that meets individual needs, supports good health, prevents secondary conditions, and ensures the opportunity for a satisfying and meaningful life." (*Id.* at 10.) To accomplish this goal, the State identifies two strategic actions:
(1) "integrate primary care, behavioral health and long-term care/supports"; and
(2) "reduce gaps in access and outcomes." (*Id.* at 10, 11.)

The Court finds that many of the State's specific proposals to accomplish these strategies are inadequate. For example, to "reduce gaps in access and outcomes," the State proposes that "[b]y July 1, 2016, the number of adult individuals with disabilities who receive dental services will increase by 335." (*Id.* at 12.) This proposal, while measurable, fails to identify any specific strategy or course of action to accomplish its goal. (*See id.*) In addition, the proposal fails to address increased access to dental services for children with disabilities. (*See id.*)

Similarly, to "reduce gaps in access and outcomes," the State includes a proposal to "establish baseline data for current care (medical, dental, chiropractic, and mental health) of people with disabilit[ies]; develop an implementation plan to further assess, develop, and respond," without identifying the subject matter of the "implementation plan" or defining the specific policy or strategy to be implemented. (*See id.* at 13.) In addition, the State fails to provide other relevant details, such as any necessary follow-up steps after the development of the implementation plan.

VII. Community Engagement

Finally, the Revised *Olmstead* Plan addresses the need for "[p]eople with disabilities[] to have the opportunity to fully engage in their community and connect with

others in ways that are meaningful and aligned with their personal choices and desires." (*Id.* at 16.) To accomplish this goal, the State identifies two strategic actions: (1) "support individuals to engage in their community in ways that are meaningful to them"; and (2) "provide access and opportunity for individuals to be full community participants." (*Id.* at 16-17.)

Although the Court finds the State's strategies for community engagement to be mostly satisfactory, certain proposals require refinement. For example, to "provide access and opportunity for individuals to be full community participants," the State includes one proposal: "By December 31, 2014, the State will evaluate, revise as necessary and disseminate guidelines and criteria when public dollars are used for ensuring that people with disabilities are incorporated in public planning processes, and that plans for public facilities and events are informed by attention to inclusion of people with disabilities." (*Id.* at 17.) This vague proposal, despite its admirable aspiration, is neither strategic nor measurable. The State must include more than vague assurances of future inclusion in public planning processes if the State truly wishes to achieve its community engagement goal.

In addition, with respect to the State's proposal to "support individuals to engage in their community in ways that are meaningful to them," the State pledges to "provide extensive training in person-centered planning statewide and establish protocols and processes for integrating person-centered practices for individuals desiring to move to the most integrated setting." (*Id.* at 16-17.) Again, there is no description of when or how such "extensive training" and "protocols and processes" will be established or

incorporated in furtherance of the State's goal. (*See id.*) In addition, the proposal fails to identify the responsible agency or individual for achieving this goal. (*See id.*)

CONCLUSION

Whether the State's *Olmstead* Plan ultimately will improve the lives of individuals with disabilities in Minnesota remains to be seen. The Court urges the State to apply the same passion, care, and concern with persons with disabilities that the State proclaimed when it agreed to "develop and implement a comprehensive *Olmstead* Plan" more than three years ago at the time of the Settlement Agreement. (*See* Doc No. 136, Ex. A, at 18.) Meaningful progress must be realized across the State. Justice requires no less.

Based upon the presentations of all parties and the current procedural status of the case, and the Court having reviewed the record and being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. The Court provisionally approves the State of Minnesota's proposed revisions to the *Olmstead* Plan (Doc. No. [369]), subject to the Court's review of the State's modifications and any submissions by Plaintiffs' Counsel.

2. Plaintiffs' Counsel may file any comments or objections to the *Olmstead* Plan as currently submitted by February 6, 2015.

3. The State shall file a revised *Olmstead* Plan by March 20, 2015.

Date: January 9, 2015

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