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VIA EMAIL AND U.S. MAIL

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Logan T. Johnston
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1402 East Mescal Street
Phoenix, Arizona 85020

Re: *JK v. Gerard*

Dear Greg and Logan:

Plaintiffs hereby invoke the dispute resolution provisions of Section IX of the Settlement Agreement ("Disputes Regarding Implementation"). We have been unsuccessful in securing needed relief through other avenues.

As required by Paragraph 59 of the Settlement Agreement ("Written Statement of Issues in Dispute"), which we now specifically invoke, we describe our concerns, which we have also detailed in prior correspondence and meetings. We hope we can resolve these issues through collaborative negotiation with the aid of a mediator.

As you know, Plaintiffs have carefully followed Defendants' implementation activities. In addition to periodic meetings with Defendants, we stay in close touch with knowledgeable individuals at all levels of the behavioral health system. We also participate in key meetings and processes in Maricopa County where the majority of class members reside.

We recognize Defendants have taken important steps toward implementation, including in areas we highlighted during the 2006 dispute resolution process. We also acknowledge the many individuals who have worked hard to implement the Settlement Agreement. While progress has been made, key parts of the behavioral

health service system required by the Settlement Agreement remain underdeveloped and, in some areas, there has been little forward movement until recently. In addition, in many areas of the state outside of Maricopa County, efforts to implement the Settlement Agreement began in earnest only recently.

Setting appropriate expectations for the Regional Behavioral Health Authorities (RBHAs) and timely and effectively intervening when expectations are not being met remains a problem. While the Defendants have recently set and held RBHAs accountable for expectations regarding direct supports and case management, Defendants have not yet set appropriate expectations for RBHAs with respect to the fundamental obligation in the Settlement Agreement that services be delivered according to the Principles.

The situation in Maricopa County is a case in point. Magellan has performed poorly in implementing *J.K.* For well over a year, Magellan showed little leadership, and there was backsliding in the children's behavioral health system. Defendants did not effectively intervene. Magellan has now hired an excellent director of children's services, but she has uncertain authority and virtually no staff.

Slow and Uneven Progress

Under the Settlement Agreement, the state must "move as quickly as is practicable" to develop a functioning children's behavioral system that meets its clients' needs. Once that system is developed, it must be maintained. Settlement Agreement, Par. 15. The Settlement requires the children's behavioral health system to:

- Focus on keeping children at home, doing well in school, and staying out of trouble with the law.

- Ensure that children with complex needs have case managers and receive needed therapeutic foster care, respite, and community based direct supports.

- Use child and family teams to secure family input and cross-system coordination.

- Regularly review the adequacy of services, including whether they met children's needs.

- Provide needed services to youth aged 18 to 21.

- Provide needed substance abuse services.

Moving "as quickly as practicable," Defendants should have put these key elements in place before the original termination date of the Settlement Agreement. As detailed during the 2006 dispute resolution process, Defendants did not take the required actions to make this happen. As a compromise measure, Plaintiffs agreed in late 2006 to extend the term of the Settlement Agreement an additional three years. Since that compromise, Defendants have continued to move too slowly on these same key elements. For example, Defendants still do not have a functioning system, as required by the Settlement Agreement, for measuring whether services are provided according to the *J.K.* Principles. Consistently, relevant time lines in the *J.K.* Annual Plan are not met.

As a result of Defendants' slow and uneven implementation, including since the 2006 compromise, the following serious issues remain.

ISSUES IN DISPUTE

1. Delivering Services According to the *J.K.* Principles

Defendants have failed to meet their core obligation under the Settlement Agreement to develop (at first by July 2007, but now by July 2010); a Title XIX behavioral health system that delivers services according to the *J.K.* Principles. Defendants have not made changes to "contracts, decisions, practice guidelines and other policies" needed to achieve the Principles for class members. Major failings are described below.

2. Measuring Whether Services are Delivered According to the Principles

Defendants have repeatedly advised that they are using multiple sources of information to measure whether services are being delivered according to the Principles. However, no actual effort was being made along these lines until recently.

In July 2008, Defendants implemented a process for using multiple sources of information to measure whether services are being delivered according to the Principles. However, the information required to make such judgments does not exist. For example, there is not yet data from a functioning process for reviewing practice in

individual cases. In addition, the process is not informed by information on implementation of required *J.K.* practice protocols. Specifically, the system does not generate information on whether services are designed and implemented to achieve the *J.K.* functional outcomes, including stability, for example, minimizing multiple placements, avoiding removal in crises. In addition, the system does not generate information on whether services are provided in the most integrated setting, or on the sufficiency of interagency collaboration.

Defendants' use of the "WAFAS" to review practice in individual cases has long been problematic. There have been problems with the competence of reviewers, inappropriate constraints on what reviewers could report, inadequate guidance to reviewers including on scoring, and serious sampling issues. Furthermore, the WAFAS is focused on only a fraction of the children – those currently identified as having high needs. This limitation is especially concerning since the number of children so identified is very low, contributing to the problems discussed in other sections below. While Defendants have agreed to implement a revised process for reviewing practice in individual cases that should provide better information, this process is still in the pilot stage.

3. High Needs Children

Defendants still lack a functioning system for identifying enrolled children who have high needs. The last information we received was that only 6% of the enrolled children have been so identified, although there is a virtual consensus that 15 to 25% of enrolled children have high needs.

High needs children need ready access to direct supports, home-based respite, and therapeutic foster care. The 2006 dispute resolution process was initiated in large part because Defendants had failed to adequately develop these services. To their credit, Defendants have now made the development of these services a priority. However, expansion of these services has been slow and the need for such services far exceeds the system's capacity. This has hobbled the efforts of child and family teams to deliver services according to the Principles.

We have confidence in the team at ADHS that is nurturing the expansion of these services. However, they do not make the decisions regarding the scope and pace of expansion, or the funding to be devoted to this effort, which has been too little too late. We are unsure whether Defendants are planning any significant expansion of these services next fiscal year. Additionally, Defendants have failed to fully explore

expanding these services by reallocating money from costly and unnecessary (if direct supports, respite and therapeutic foster care were available) residential care.

High needs children also require case managers with low case loads. Too few such case managers exist. In fact, there are fewer intensive case managers in Maricopa County today (or there were until very recently) than when the state first required ValueOptions to hire such case managers. Fortunately, Defendants have made an impressive commitment to secure an adequate number of case managers. However, there seems little chance that a fully staffed case management system will be in place by July 2010.

4. Substance Abuse Treatment Services

Services to address substance abuse among high needs children remain inadequate. This is despite the fact that the Settlement Agreement required Defendants to begin addressing this issue in the first year of the Agreement. While the state has recently reviewed substance abuse services, there is no plan for expansion. The state continues to have little information on unmet needs.

5. 18-21 Year Olds

This is an area to which Defendants had paid virtually no attention until the 2006 dispute resolution process. Defendants have since made efforts to identify both the contours of the problem and possible solutions. However, because of the slow pace of the effort, and the relatively small investment that Defendants have made, there has been little change in how 18-21 year olds are treated by the behavioral health system. For the most part, these youth continue to be served by the adult behavioral health system, not the children's system, and services are not delivered according to the *J.K.* Principles. Children with high needs who are not identified as "SMI" (serious mental illness) have limited access to services, including case management and direct supports.

6. Training

The Settlement Agreement requires a training program to ensure that services are provided according to the Principles. A program meeting the specifications in the Settlement Agreement does not exist. Among other things, there are not qualified trainers in sufficient numbers, and the program fails to impart sufficient knowledge and skills to enable staff to provide services according to the Principles. We believe

that the RBHAs would implement such training programs if they faced meaningful consequences for their current failure to provide services according to the Principles.

Unfortunately, we believe another extension of the term of the Settlement Agreement is necessary. Additionally, the parties must agree on a plan for Defendants resolving the issues identified above. As we have mentioned, we are open to paring down the Settlement Agreement to focus only on these issues.

Thank you for your attention to these matters. We have confidence that, if Plaintiffs and Defendants approach these matters with an open mind and in good faith, we can negotiate a collaborative resolution of them.

Sincerely,

Anne Ronan
Ira A. Burnim

cc: Joe Kanefield
Laura Nelson
Michael Fronske
Robert Sorce
Brian Lensink