

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANKLIN BENJAMIN, by and through :
his next friend, Andreé Yock; RICHARD :
GROGG and FRANK EDGETT, by and :
through their next friend, Joyce :
McCarthy; ANTHONY BEARD, :
by and through his next friend, :
Nicole Turman, on behalf of themselves :
and all others similarly situated, :

C. A. No. 1:09-cv-1182-JEJ

Class Action

Complaint Filed June 22, 2009

Plaintiffs

and

CRAIG SPRINGSTEAD, by and through :
his father and guardian, Bertin :
Springstead; MARIA MEO, by and :
through her mother and guardian, :
Grace Meo; DANIEL BASTEK, by and :
through his father and guardian, John :
Bastek; MICHAEL STORM, through his :
guardian, Polly Spare; BETH ANN :
LAMBO, by and through her father and :
guardian, Joseph Lambo; RICHARD :
KOHLEK, by and through his sister and :
guardian Sara Fuller; MARIA :
KASHATUS, by and through her father :
and guardian, Thomas Kashatus; :
WILSON SHEPPARD, by and through :
his brother and next friend, Alfred :
Sheppard; and DIANE SOLANO, by and :
through her brother and guardian, Carl :
Solano, :

Intervenors

v.

DEPARTMENT OF PUBLIC WELFARE :
 OF THE COMMONWEALTH OF :
 PENNSYLVANIA and BEVERLY :
 MACKERETH, in her official capacity as :
 Acting Secretary of Public Welfare of :
 the Commonwealth of Pennsylvania, :
 :
 Defendants :

REVISED SETTLEMENT AGREEMENT

I. Introduction

WHEREAS on June 22, 2009, Plaintiffs filed this class action lawsuit, alleging, *inter alia*, that Defendants violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by unnecessarily segregating class members in state intermediate care facilities for individuals with intellectual disabilities (ICFs/ID);

WHEREAS the District Court by Order dated September 2, 2009 certified this case to proceed as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) on behalf of all individuals who (1) currently or in the future will reside in one of Pennsylvania's state ICFs/ID; (2) could reside in the community with appropriate supports and services; and (3) do not or would not oppose community placement;

WHEREAS the District Court by Memorandum and Order dated January 27, 2011, ruled that Defendants violated and were liable under

Title II of the ADA and Section 504 of the RA by failing to offer community services to Plaintiffs and class members;

WHEREAS Plaintiffs and Defendants entered into a proposed Settlement Agreement regarding a remedy that they submitted to the District Court for approval;

WHEREAS nine state ICF/ID residents, by their guardians and next friends, objected to the proposed settlement agreement and moved to intervene for the limited purpose of objecting to the proposed settlement, contending that the proposed settlement was not fair and reasonable and that the class should not have been certified ;

WHEREAS the District Court denied the motions to intervene, considered but overruled all objections to the proposed settlement, and approved the proposed settlement on September 2, 2011;

WHEREAS the proposed intervenors appealed the District Court's rulings that denied their intervention motions and approved the Settlement Agreement;

WHEREAS the United States Court of Appeals for the Third Circuit on December 12, 2012, vacated the District Court's approval of the Settlement Agreement and directed the District Court to allow intervention

by the nine state ICF/ID residents to challenge the District Court's certification of a class and its approval of the Settlement Agreement;

WHEREAS the District Court granted the intervention motions of the nine state ICF/ID residents ("Intervenors") by Order entered on December 13, 2012; and

WHEREAS Plaintiffs, Defendants, and Intervenors desire to reach a consensus on an appropriate remedy to resolve this litigation amicably without conceding another Party's position, avoid the risks and expense of further litigation, and provide for relief based on the freedom of choice of all ICF/ID residents;

NOW, THEREFORE, Plaintiffs, Defendants, and Intervenors enter into this Revised Settlement Agreement.

II. Definitions

1. As used in this Agreement, the following terms have the following meanings:

a. "AEs" means the Administrative Entities that contract with the Department of Public Welfare to administer the community intellectual disabilities system in specific geographic areas.

b. "Agreement" means this Revised Settlement Agreement.

c. "Class members" means all individuals who have resided or will reside in a state ICF/ID at any time from the effective date of this Agreement until the termination of this Agreement under Paragraph 40.

d. "Choice" means the decision to remain in a state ICF/ID or to reside in the community.

e. "Community placement" means relocation from a state ICF/ID to the community and provision of those Community residential services and non-residential services and supports that are appropriate to meet the needs of the individual.

f. "Community residential services" means services provided to enable an individual to live independently in that person's own home or with family while receiving supportive services; to live in a family living ("life-sharing") home licensed under 55 Pa. Code Ch. 6500; or to live in a group home licensed under 55 Pa. Code Ch. 6400.

g. "CPP" means the Community Placement Plan that is developed for each resident of a state ICF/ID pursuant to the individual support planning process and that establishes what services and supports the resident would need if he or she were to live in the community.

h. "DPW" means the Department of Public Welfare of the Commonwealth of Pennsylvania, its officials, employees, agents, and successors.

i. "Effective Date" means the date that the Agreement is signed by all parties, or, if they do not all sign on the same date, then the date on which the last of the parties signs it.

j. "Facility Director" means the administrative head of a state ICF/ID with the powers and duties specified in Section 417 of the Mental Health and Intellectual Disability Act of 1966, 50 P.S. § 4417, including any interim or acting Facility Director.

k. "Guardian" means an individual appointed by a Pennsylvania court pursuant to 20 Pa. Cons. Stat. Chap. 55 to serve as the guardian of the person for a resident of a state ICF/ID, and includes any court-appointed successor guardian.

l. "Interdisciplinary Team" means the group of State Center professionals and staff as well as other professionals or staff who develop the state ICF/ID resident's ISP.

m. "ISP" means the Individual Support Plan created for each class member (through a process in which the class member, the class member's guardians or substitute decision-makers, family members, the

AE, the Supports Coordinator, the Facility Advocate, and members of the class member's Interdisciplinary Team participate) that assesses, identifies, and coordinates the needed supports and services for the class member.

n. "ODP" means the DPW Office of Developmental Programs, its officials, employees, agents, and successors.

o. "Parties" means Defendants and Plaintiffs and Intervenors identified in the caption to this Agreement.

p. "Planning List" means the list of those class members for whom DPW is to provide community placements, comprised of class members in any of the following three groups: (1) those who had the capacity to make an informed choice and chose community placement in Fiscal Year 2011-2012 or Fiscal Year 2012-2013, (2) those for whom a choice of community placement was made by their guardians or substitute decision-makers in Fiscal Year 2011-2012 or Fiscal Year 2012-2013, and (3) those who choose or on whose behalf community placement is chosen based on the procedures in this Agreement.

q. "Settlement Class" means, and for purposes of Federal Rule of Civil Procedure 23 is defined as, all individuals who have resided or will reside in a state ICF/ID at any time from the Effective Date until the termination of this Agreement under Paragraph 40.

r. "State ICFs/ID" means the Intermediate Care Facilities for Individuals with Intellectual Disabilities that are operated by the Commonwealth of Pennsylvania - Ebensburg Center, Hamburg Center, Polk Center, Selinsgrove Center, and White Haven Center.

s. "Substitute decision-maker" means any person designated on the Personal Data Profile Sheet of a state ICF/ID resident to make decisions on behalf of that resident, which includes anyone who is currently designated in any other record of the state ICF/ID as the person authorized to make decisions on behalf of the resident, whether identified using the term "substitute decision maker" or any other term.

t. "Supports Coordinator" means the individual responsible for locating, coordinating, and monitoring community services and supports for a class member.

III. Choice to Live in a State ICF/ID or in the Community

2. No Party will seek the removal of a class member from a state ICF/ID to a community placement or will seek to restrict the ability of any class member to move to a community placement other than in accordance with this Agreement.

3. Any class member who has the capacity to make an informed choice and expresses a preference for community placement will move to

the community unless the class member's guardian opposes community placement.

4. If the guardian or substitute decision-maker of any class member expresses a preference for community placement for that class member, then the class member will move to the community unless the class member has the capacity to make an informed choice and wants to continue to live at the state ICF/ID.

5. Consistent with its authority under state law, DPW will take all precautions and steps determined by the class member's treatment professionals to be necessary to insure the health and safety of the class member, up to and including involuntary commitment.

6. Every class member who has the capacity to do so may make a choice at any time. A class member's guardian or substitute decision-maker may make a choice on behalf of that class member at any time, except that a substitute decision-maker may not override the choice of a class member who has the capacity to make a choice. Once a choice has been made, the class member, or the class member's guardian or substitute decision-maker, may change that choice at any time.

7. Within ninety (90) days after the Effective Date, DPW will inform all class members, guardians, and substitute decision-makers of their

ability to make a choice as specified in this Agreement and will advise them of the procedure by which they can make their choice and can change any choice after they make it. If a class member is admitted to a state ICF/ID after the Effective Date, DPW will provide this information to that class member and to the class member's guardian or substitute decision-maker within ninety (90) days after the Effective Date or thirty (30) days after the class member's admission, whichever is later.

8. Thereafter, at their annual ISP and CPP meetings, class members, guardians, and substitute decision-makers will be informed of their ability to make a choice and the procedure by which they can make their choice and can change any choice after they make it. If a class member, guardian, or substitute decision-maker informs DPW that he or she no longer wishes to receive this information at those annual meetings, DPW will no longer provide this information at those meetings.

9. DPW will make available the names of organizations or entities that can provide resources to assist class members, guardians, and substitute decision-makers to make their choice, will inform all class members, guardians, and substitute decision-makers of the availability of the resource information, and will provide the information to them upon request: A list of those organizations, which may be amended from time to

time by agreement of the parties, is appended to this Agreement as Exhibit "A."

10. If a class member's treatment professionals determine that the class member does not have the capacity to make an informed choice, and if that class member does not have a guardian or substitute decision-maker (either because the guardian or substitute decision-maker has died without appointment of a successor, or for any other reason), the Facility Director of the state ICF/ID in which the class member resides will, acting within the Director's authority under state law at 50 P.S. § 4417 and 20 Pa. Cons. Stat. § 5521, decide whether the class member should continue to live at the state ICF/ID or move to a community placement.

a. Before making the decision, the Facility Director will meet with and, if appropriate in light of the class member's capacity, interview the class member regarding the class member's preferences and give appropriate weight to those preferences.

b. Before making the decision, the Facility Director will review and consider all relevant records of the class member and will notify and consult with members of the class member's Interdisciplinary Team, staff members who know the class member, any family members of the

class member, and other persons who ask to speak with the Facility Director.

c. If a class member had a guardian or substitute decision-maker who died, the Facility Director will honor the stated preference of the former guardian or substitute decision-maker unless significantly changed circumstances warrant a departure from that stated preference.

“Significantly changed circumstances” include the closure of the state ICF/ID in which the class member resides and any other circumstances set forth in writing by the guardian or substitute decision-maker after discussion of such potential circumstances at the class member’s ISP meeting.

d. The Facility Director will make an individualized determination for each class member based exclusively on what is in the best interest of the specific class member, and not any general policy considerations, budgetary or financial considerations, or numerical quotas, taking into account the following: (i) whether community placement is appropriate for the class member; (ii) any preference regarding community living that was stated by a guardian or substitute decision-maker who has died; (iii) any evidence regarding the preference of the class member; and (iv) the services and supports (including, but not limited to, psychiatric, behavioral health, medical, dental, and nursing supports) the class member

is currently receiving in the state ICF/ID, the services and supports the class member would need to move to and live in the community safely and whether those services and supports are available or are able to be developed in the community;

e. The Facility Director will make the determination for each current class member as specified in this Paragraph within 120 days after the Effective Date, and for any class member admitted to a state ICF/ID after the Effective Date, within 60 days after that class member's admission. The Facility Director will set forth his or her decision in writing, along with an explanation of the reasons for the decision. Except as specified in subparagraph f below, the Facility Director will not change the decision unless he or she learns that the initial decision was based on erroneous information or receives information that had not previously been considered. Any change in the decision will be set forth in writing, along with an explanation of the reasons for the change and will be reviewed by the review committee described in subparagraph f below.

f. Within 30 days of the date the Facility Director makes the decision or changes an initial decision, the decision will be reviewed by a committee comprised of the Deputy Secretary for Developmental Programs, the Executive Assistant for ODP, the Director of the Bureau of

Supports to People with Intellectual Disabilities, the ODP Medical Director, and the ODP Clinical Director (“review committee”), to confirm that the decision conforms to the protocol specified in this Paragraph. If the review committee concludes that the decision of the Facility Director does not conform to the specified protocol, the Facility Director will be instructed to revise the decision so that it does so conform.

g. DPW will provide Plaintiffs’ counsel with a report of the decisions and explanations of the Facility Director and review committee two weeks after the review committee makes its decision. DPW will provide Intervenors’ counsel with a copy of the same report provided to Plaintiffs’ counsel but redacted to shield the identities of the class members. Counsel for Plaintiffs and counsel for Intervenors will maintain the decisions and explanations in confidence and will not share them with their clients or any third parties. In the event that the decisions or explanations are submitted to the Court, they will be filed under seal. In the event that counsel for Plaintiffs or counsel for Intervenors contends that a decision of the Facility Director or of the review committee does not conform to the protocol specified in this Paragraph, the sole remedy, after the parties meet and confer, will be for the Facility Director and the review

committee to re-conduct the review in accordance with the specified protocol.

IV. Protections for Class Members Who Choose to Remain in a State ICF/ID

11. DPW will continue to maintain the level of care currently provided to class members in state ICFs/ID and will assure that the state ICFs/ID continue to meet the criteria needed to satisfy all federal and state certification and licensure requirements; to protect the health, welfare, and safety of class members; and to provide class members with active treatment.

12. No provision of this Agreement shall be construed to waive any potential claims that a class member, or a guardian or substitute decision-maker acting on behalf of the class member, may assert (a) to challenge or object to a decision to close or attempt to close that state ICF/ID, or (b) to transfer from a state ICF/ID that has closed or is scheduled to close to a state ICF/ID that has not closed. No provision of this Agreement shall be construed to create in or confer on class members a right to challenge or object to the closure of a state ICF/ID or to transfer to a state ICF/ID that has not closed. No Party waives its position on these issues.

13. DPW will not use funds appropriated for state ICFs/ID to fund community services and supports. DPW will not give funding of state

ICFs/ID any lower priority in its budget requests than funding for community placements.

V. Development and Implementation of a Viable Integration Plan

14. DPW will place any class member who chooses or on whose behalf a choice is made for a community placement pursuant to this Agreement on a Planning List for development of an individualized plan to enable that class member to move to the community. The Planning List will not include any class member who has not chosen or on whose behalf a choice was not made for a community placement.

15. DPW will implement a viable integration plan for those class members who are on the Planning List. To implement the integration plan, DPW will:

a. request as one of its top budget priorities funding to develop community placements for fifty (50) class members on the Planning List, or the number of class members on the Planning List if fewer than 50, in each of the Fiscal Years 2013-2014 through 2017-2018; and

b. provide community placements to class members on the Planning List to enable class members to move to and stay in the community according to the following schedule: eighty (80) class members, or the number of class members on the Planning List if fewer

than eighty (80), by June 30, 2015; and fifty (50) class members on the Planning List, or the number of class members on the Planning List if fewer than fifty (50), in each of the Fiscal Years 2015-2016 through 2017-2018.

16. No later than sixty (60) days after the Effective Date, DPW will:

a. Submit a grant proposal to the federal Money Follows the Person program to obtain funding for Supports Coordinators to assist in the community placement process for class members on the Planning List and for start-up costs needed to develop new Community residential services for class members on the Planning List.

b. Identify each Regional DPW staff person who will serve as the single point of contact in the region for community service providers regarding class members seeking community placement; and

c. Identify specialists who will be available to evaluate class members on the Planning List who have challenging needs such as mental health, behavioral health, or medical issues.

17. No later than thirty (30) days after the Effective Date for each class member who is on the Planning List for Fiscal Years 2011-2012 and 2012-2013 and thereafter within thirty (30) days after a class member is placed on the Planning List, DPW will develop a redacted one-page summary about each class member that describes the class member's

need for community residential services and associated non-residential services and supports and post the summary about each such class member on a website that is accessible to providers and AEs throughout the Commonwealth. The website will provide information on how to contact DPW to obtain additional information about any of the class members on the Planning List. The one-page summaries will also be used by state ICF/ID staff, ODP Regional staff, and the AEs to determine whether any class members on the Planning List can safely and adequately be served in a vacancy in an existing community residential program or in any new vacancy in such programs as it arises and to determine whether any class member on the Planning List appears to be sufficiently compatible with any other class member on the Planning List or with an individual in the community to be that person's roommate in the community. Thereafter,

- a. DPW will instruct the AEs to contact a provider that expresses interest in providing community services and supports to a class member on the Planning List within ten (10) business days after the provider expresses interest, to offer any additional information needed, answer any questions, and assist the provider in deciding whether to provide community services to the class member.

b. If within forty-five (45) days of posting a class member's information on the website, no provider expresses interest in providing community services and supports to that class member, the DPW regional staff person will contact potential providers to discuss what they would need in order for them to be willing and able to provide community services and supports to the class member.

c. If within ninety (90) days of posting a class member's information on the website, no provider has been selected to provide community services and supports to that class member, the DPW regional staff person will again contact potential providers to discuss what the providers would need in order to be willing and able to provide community services and supports to the class member.

18. Within thirty (30) days after the Effective Date for those class members on the Planning List for Fiscal Years 2011-2012 and 2012-2013 and thereafter within thirty (30) days after a class member is placed on the Planning List, DPW will review the case record of each class member to determine whether the class member should be evaluated by one or more specialists with expertise relevant to the challenging needs of the class member. Within sixty (60) days thereafter, the specialist(s) will evaluate those class members in consultation with the class members'

Interdisciplinary Teams and will identify with specificity those services and supports the class member needs to live in the community safely. The specialists will also be available to consult with providers interested in or selected to provide community services and supports to the class member. The one-page summary for each such class member will be supplemented as needed to reflect the outcome of the evaluation.

19. To support the transition of class members on the Planning List to the community, DPW will:

- a. Identify a person in each Regional Office of ODP who will be responsible to assure that the class member continues to have access to the services and supports he or she needs to live successfully in the community and to help to solve any problems that arise;
- b. Request that the provider of community residential services for the class member contact the class member's Supports Coordinator, AE, and the Regional Office of ODP if it encounters any difficulty in serving the class member in the community;
- c. Require that community residential services providers comply with 55 Pa. Code § 51.31(c) before terminating services to a class member;

d. Work with the class member's providers, the Supports Coordinator, and the AE to identify, if necessary, alternative temporary or permanent service providers to provide any services that the class member needs.

20. An ISP, including a CPP, will be developed for each class member on the Planning List prior to his or her discharge that specifies the projected date by which the class member will move to the community and describes the services and supports needed in order for the class member to live successfully in the community. The ISP and CPP will be developed by the class member's Interdisciplinary Team, the class member, the class member's guardians or substitute decision makers, family members, the AE, the Supports Coordinator, and the Facility Advocate.

a. The ISP will identify each type of service, including the residential placement; day or vocational programs; health care or nursing services; community psychiatric or behavioral health services; and assistive technology the class member will receive in the community, the amount of the service, and the provider who will provide the service.

b. The ISP will identify any needs that a class member has and any needs that a class member may have for physical accessibility or

accommodations for sensory or other disabilities and how those needs will be addressed in the community.

c. The Team will consider any anticipated difficulties in transitioning the class member from the state ICF/IID to a community placement and, if needed, the ISP and CPP will include a transition plan.

d. If necessary for a particular class member, the Team will develop a Crisis Management Plan as part of the ISP, to specify the steps to be taken in the event of a behavioral or psychiatric crisis that places the class member at risk of voluntary or involuntary commitment to a psychiatric hospital, incarceration, or return to a state ICF/IID. The Crisis Management Plan will detail information regarding plans or procedures that have been successful or unsuccessful for the class member in the past, including return to a state ICF/IID after living in the community, and will provide instructions for referring the class member for a Positive Practices Resource Team evaluation. The Crisis Management Plan will also identify the concerns that the class member or guardian or other substitute decision-maker has about particular psychiatric or psychological treatments or treatment facilities. The Crisis Management Plan will include instructions that when a class member is in crisis; the class member's team will meet to review, and utilize as appropriate, the information detailed in the Crisis

Management Plan in order to develop a plan to provide supports for the class member.

21. If any class member voluntarily wishes to return to a state ICF/ID, or if any class member's guardian or substitute decision-maker wishes for the class member to return to a state ICF/ID:

a. The class member may return to the state ICF/ID without the need for a court order or other process if the class member or his or her guardian or other substitute decision-maker expresses a desire to do so within one year after the class member has moved to the community, which time period may be extended in increments of six (6) months in light of the class member's individualized circumstances with the agreement of the class member's ISP team.

b. Before being permitted to return to the state ICF/ID under this Paragraph, the class member, guardian, or substitute decision-maker will consult with the class member's Supports Coordinator, AE, and the Regional Office of ODP to attempt to resolve the dissatisfaction or other concerns with the community residential services provider or with the community services provided to the class member that motivate the desire to return. If the Supports Coordinator, AE, and the Regional Office of ODP are unable to resolve the concerns to the satisfaction of the class member,

guardian, or substitute decision-maker, the Central Office of ODP will be consulted for additional assistance. ODP will use the same resources (including, as appropriate, the Positive Practices Resource Team) that apply to involuntary commitments to attempt to resolve the stated concerns and prevent the return.

c. If the consultation process and procedures set forth in subparagraph (b) have not remedied the reasons for the request to return within sixty (60) days of the date the request was made, the class member will be permitted to return to the state ICF/ID as promptly as possible but in no event more than ten (10) days after the end of the 60-day consultation period, or any extensions thereof. The 60-day period may be extended in 30-day increments if the class member, guardian or other substitute decision-maker, Supports Coordinator, AE, and ODP all agree to the extension.

d. Other than as provided in this Paragraph, nothing in this Agreement shall be construed to address whether or not class members may return to a state ICF/ID without a court order or other legal process and whether or not DPW is required to admit a class member to a state ICF/ID without a court order. No Party waives its position on these issues.

VI. Status Reports and Monitoring

22. Beginning fifteen (15) days after the first full quarter following the Effective Date and every three (3) months thereafter, DPW will provide counsel for Plaintiffs with a report that includes the following information for the previous quarter:

a. an updated list identifying all class members on the Planning List, the fiscal year in which each person on the Planning List is scheduled to move to the community, and the date that each person on the Planning List moved to the community;

b. the identities of any class members removed from or added to the Planning List;

c. for any class member as to whom no provider has expressed an interest in providing Community Residential Services within five months of the start of planning for a community placement, a description of the steps DPW has taken to identify interested providers and of any barriers to placement of the class member;

d. the identity of each class member who, after community placement, was admitted or committed to a psychiatric hospital or a state ICF/ID, or returned to a state ICF/ID after moving to the community, or was arrested or jailed, and for each such class member, the date of, and a

description of the circumstances that led to, the admission, commitment, return, arrest, or incarceration; the class member's current status; and what steps, if any, DPW plans to take to address the issue and prevent recurrence;

e. the number and percentage of class members who were the subjects of founded incidents of abuse or neglect (as defined in Exhibit "B" hereto) in the state ICFs/ID and in the community, categorized by provider;

f. the number and percentage of class members who died for reasons other than natural causes in the state ICFs/ID and after they moved to the community;

g. the identity of any class member whose community residential services provider issued a notice of termination of services or otherwise terminated the class member's services and a statement of the reasons for such termination and what actions were or are being taken to resolve them.

23. At the same time that it provides Plaintiffs' counsel with the report specified in Paragraph 22, DPW will provide Intervenors' counsel with a copy of the report that includes the same information regarding any

Intervenor who is on the Planning List and is redacted to shield the identities of other class members.

24. Within thirty (30) days of the Effective Date, Plaintiffs, DPW, and Intervenors will identify a neutral third party with whom DPW will promptly contract to serve as a consultant, if necessary, to make recommendations as specified in Paragraph 25 for implementing the terms of this Agreement. If the Parties are unable to agree on the identity of the third party, they will request that a United States Magistrate Judge assist them in identifying an acceptable third party.

25. DPW will consult with the neutral third-party if in any fiscal year the number of class members that moved to community placements, including the number of class members who moved to community placements after having returned to a state ICF/ID - minus the number of class members who return, either voluntarily or involuntarily, to a state ICF/ID but remain on the Planning List after returning to the State ICF/ID - is less than 90% of the number of class members to be provided community placement under subparagraph 15.b; or if in any consecutive 6-month period, eight (8) or more class members are voluntarily or involuntarily committed to a psychiatric hospital, arrested, or jailed after moving to the community.

a. DPW will initiate consultation with the third party within fourteen (14) days of the date on the status report that reflects one of the conditions specified in this Paragraph.

b. The third party will conduct an assessment and issue a report with his or her recommendations within sixty (60) days of the request for consultation, and DPW will meet with the third party to discuss whether the recommendations are workable and reasonable.

c. Within thirty (30) days of receiving the third party's report, DPW will meet with counsel for the Parties to review the third party's recommendations, its response to the recommendations, and its reasons, if any, for not accepting those recommendations it believes are unworkable or unreasonable.

VII. Certification of Settlement Class and Approval of Agreement

26. Solely for purposes of this Agreement, the parties agree that certification of the following Settlement Class is appropriate under Federal Rules of Civil Procedure Rule 23(a) and (b)(2): All individuals who have resided or will reside in a state ICF/ID at any time from the Effective Date until the termination of this Agreement under Paragraph 40.

27. Plaintiffs will petition the District Court for preliminary approval of the Agreement and for permission to provide class notice and to

schedule a fairness hearing. If the District Court grants preliminary approval, DPW will distribute the class notice to class members and their guardians or substitute decision-makers. Plaintiffs will petition for final approval of the Agreement, which Defendants and the Intervenors will not oppose.

28. At the same time that they petition for preliminary approval of this Agreement, Plaintiffs will file a motion to certify the Settlement Class and to request that the District Court vacate its class certification order dated September 2, 2009, and enter a new order certifying the Settlement Class solely for purposes of this settlement and providing that vacatur of the September 2, 2009 order and certification of the Settlement Class are contingent on final approval of this Agreement by the District Court.

29. The Parties' agreement to the terms of this settlement is contingent on the District Court's certification of the Settlement Class, and this Agreement will not be effective if the District Court does not certify the Settlement Class or if certification of the Settlement Class is overturned on appeal.

30. The Parties' agreement to certification of the Settlement Class is contingent on the District Court's approval of this Agreement. If the District Court does not approve this Agreement, or if final approval is over-

turned on appeal, then Plaintiffs will withdraw the motion for certification of the Settlement Class or, if the motion has already been granted, then the Parties will take steps to decertify the Settlement Class. In that event, the case will be reinstated in the same procedural posture that it had at the time the Parties executed this Agreement, and Intervenors may seek decertification of the class certified by the District Court on September 9, 2009, as authorized by the December 12, 2012, decision of the Court of Appeals.

31. The Agreement will be binding on Plaintiffs, class members, Intervenors, and Defendants, as well as their successors, only if the Agreement is approved by the District Court, except that Defendants agree to implement the terms of the Agreement beginning on the Effective Date, subject to the Court's ruling on approval of the Agreement. If the Court does not approve the Agreement or if final approval is overturned on appeal, Defendants' agreement under this Paragraph will end and the litigation will be reinstated in the same procedural posture as it had at the time the Parties executed the Agreement.

VIII. Enforcement, Jurisdiction, and Attorneys' Fees

32. If the District Court approves the Settlement Agreement, it will retain jurisdiction over the lawsuit for purposes of interpretation and enforcement of the Agreement.

33. Except as specified in Paragraph 36, any of the Parties may file a motion for specific performance to enforce alleged noncompliance with the Agreement, subject to the requirements of Paragraphs 34 and 35. Defendants reserve the right to assert any available defense to a claim for specific performance, including lack of funding that is not attributable to Defendants' actions, and Plaintiffs and Intervenors reserve the right to contest the validity of any asserted defense.

34. A Party may not file a motion for specific performance for failure to comply with subparagraph 15.b based on the number of class members who have moved to and stayed in the community until after the third party has issued its report and the Parties have met as specified in Paragraph 25.

35. A Party must provide written notice of any alleged noncompliance to Defendants at least forty-five (45) days before it files a motion for specific performance and must offer Defendants the opportunity to meet to discuss the alleged noncompliance in an effort to resolve the

dispute without judicial intervention, except that: (a) a Party must provide written notice of alleged noncompliance with Paragraphs 22 or 23 twenty-one (21) days before filing a motion for specific performance, and (b) a Party must provide written notice of alleged noncompliance with subparagraph 15.b ten (10) days before filing a motion for specific performance.

36. A Party may not file a motion for specific performance for alleged failure to comply with Paragraphs 16 to 19 or for the alleged failure of DPW to accept or adopt the recommendations of the third party as set forth in Paragraph 25. This Paragraph is not intended to foreclose any Party from using the testimony or recommendations of the third party as evidence in support of or to defend against a motion for specific performance for failure to comply with subparagraph 15.b, as defined in Paragraph 25, of the Agreement, but no Party may request the Court to order specific performance of any of the recommendations of the third party.

37. The Agreement is not, and is not to be construed as, a consent decree. Plaintiffs and Intervenors may not seek a remedy of contempt of court for any alleged noncompliance with the Agreement.

38. Subject to the District Court's approval, Defendants will pay Plaintiffs' counsel, the Disability Rights Network of PA, \$532,500 for attorneys' fees, litigation expenses, and costs incurred through the District Court's final approval of the Agreement. Nothing in this Agreement should be construed to entitle Plaintiffs to or preclude Plaintiffs from recovery of attorneys' fees, litigation expenses, and costs incurred after the District Court's final approval of the Agreement.

39. Subject to the District Court's approval, Defendants will pay Intervenors' counsel \$399,500 for attorneys' fees, litigation expenses, and costs incurred through the District Court's final approval of the Agreement. Intervenors have agreed that this amount will be divided and paid as follows: Defendants will pay to Sidley Austin LLP, the sum of \$199,750; and to Schnader Harrison Segal & Lewis LLP, the sum of \$199,750. Nothing in this Agreement should be construed to entitle Intervenors to or preclude Intervenors from recovery of attorneys' fees, litigation expenses, and costs incurred after the District Court's final approval of the Agreement.

40. This Agreement will terminate on June 30, 2018 or thirty (30) days after counsel for Defendants notifies counsel for Plaintiffs and counsel for Intervenors that the last class member on the Planning List as of June 30, 2018, has moved to the community, whichever is later, unless the

Agreement has been extended by agreement of the Parties or by order of the District Court or the Court of Appeals, or unless a motion for specific performance is pending. If a motion for specific performance is pending at the time the Agreement is scheduled to terminate, only those provisions of the Agreement that are implicated solely for the purpose of resolving any issues raised in that motion will continue in effect until thirty (30) days after disposition of the motion or any appeal relating to the motion.

41. The parties will file a stipulation of dismissal ten (10) days after the Agreement terminates under Paragraph 40.



Robert W. Meek
Kelly Darr
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1315 Walnut Street, Suite 500
Philadelphia, PA 19107-4105
215-238-8070

Counsel for Plaintiffs and the Class

Dated: 5/29/14



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Dated: 5-30-14

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Dated:

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215-751-2000

Counsel for Intervenor Solano

Dated:

41. The parties will file a stipulation of dismissal ten (10) days after the Agreement terminates under Paragraph 40.

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Kashatus, and Sheppard

Counsel for Intervenor Solano

Dated: *June 10, 2014*

Dated:

41. The parties will file a stipulation of dismissal ten (10) days after the Agreement terminates under Paragraph 40.



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Dated:

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215-751-2000

Counsel for Intervenor Solano

Dated: *June 11, 2014*

EXHIBIT A

Resource List

STATEWIDE & NATIONAL	
<p>The Arc of Pennsylvania 101 S. 2nd Street #8 Harrisburg, PA 17101 (717) 234-2621 Maureen Cronin, Executive Director</p>	<p>VOR P.O. Box 1208 Rapid City, SD 57709-1208 www.vor.net Tamie Hopp, Director of Government Relations & Advocacy thopp@vor.net (605) 399-1624</p>
<p>Vision for EQuality 718 Arch St. #6N Philadelphia, PA 19106 (215) 923-3349 Audrey Coccia, Co-Executive Director Maureen Devaney, Co-Executive Director</p>	<p>Autism Society of Pittsburgh 4371 Northern Pike Monroeville, PA 15146 www.autismsocietypgh.org Deborah Dawson, Executive Director ddawson@autismsocietypgh.org (412) 856-7428</p>
	<p>Pennsylvania League of Concerned Families 3100 Laurel Run Avenue Reading, PA 19605 John Bastek, President jjb19605@verizon.net (610) 921-0780</p>

Community Facility and Provider Incident Reports

To locate License Inspection Summaries (LIS's) for an Office of Developmental Programs (ODP) provider, there are two websites that you will need to use. The first site is the Human Services Provider Directory (HSPD). This site contains all LIS's prior to June 1, 2012. The second site is the Services and Supports Directory (SSD) homepage. This site contains many recent LIS's completed after September 1, 2013. If an LIS for a provider cannot be found on the HPSD site they will be found on the SSD site.

The Human Services Provider Directory (HSPD)

1. Go to :
<http://www.dpw.state.pa.us/searchforprovider/humanservicesproviderdirectory/index.htm>. This link will take you to a page which displays a search box with a variety of options to search all human services providers.
2. The second option in the search box is for a program office. Click on this box and choose "Office of Developmental Programs" from the list of program offices that appears.
3. The last option in the search box is for the name of the facility. Type the name of the name of your facility of interest.
4. Click "Submit Search" button at the bottom of the search box.
5. A list of facilities with a matching provider name will be provided
6. Locate the facility you are interested in on the list and click the link labeled "Inspection Summaries", located to the right of the facility name under the heading "Status & License #".
7. You will then be directed to the "Violation Reports History" page where you can see the dates of inspections for a facility.
8. By clicking on the "View Report" link on the right hand side of the page, you can see the Certificate of Compliance and any Plans of Correction required for the provider.

The Services and Supports Directory (SSD)

Since use of this site is newer, not all providers or provider locations will have LIS's on this site.

1. Go to:

<https://www.hcsis.state.pa.us/hcsis-ssd/pgm/asp/prhom.asp>. This link will take you to the homepage for the HCSIS Service and Supports Directory.

2. Click on the "Providers" link found on the left-hand side of the screen.

3. From there, you will be taken to a page which lists all provider names which begin with an "A". Select the first letter of the individual provider in which you are interested from the index of letters found above the list of "A" name providers on this page.

4. Once you have located your provider of interest using the alphabetical listings, select the provider by clicking on its name.

5. Then, in the yellow box on the top, right-hand side of the provider's page, select the second link titled "'Go to this service provider's certification information".

6. This link will bring you to a list of all service locations for the selected provider.

7. Clicking on a service location name will bring you to the Certificate History specific to that service location.

8. On this page there are four tabs labeled "Certificate History", "Waivers", "Inspections", and "Negative Sanctions."

9. Under the tab labeled "Inspections" will be the most recent inspection summary information for that provider service location.

Ebensburg Center	
<p>The Arc of Cambria County 960 Bedford Street Johnstown, PA 15902 814-535-1511 Executive Director Jennifer Zufall</p>	<p>Parents and Friends of Ebensburg Center Mary Wills, President mlwziq@yahoo.com (814) 674-8509</p>
Hamburg Center	
<p>The Arc Alliance 3075 Ridge Pike Eagleville, PA 19403 610-265-4700 CEO Paul Stengle</p>	<p>Parents and Friends of Hamburg Center John Bastek, President jjb19605@verizon.net (610) 921-0780</p>

Polk Center	
<p>The Arc of Clarion & Venango Counties 22 South 2nd Avenue Clarion, PA 16214 814-226-7033 Executive Director Luanne McNamara</p>	<p>Parents and Friends of Polk Center Joe Lambo, President jolambo@aol.com (724) 652-0344</p>

Selinsgrove Center	
<p>The Arc, Susquehanna Valley P O Box 892 Sunbury, PA 17801 570-286-1008 Executive Director Ed Coup</p>	<p>Parents and Friends Association of Selinsgrove Center Lana Snyder, President mom3434@aol.com (570) 768-4605</p>
White Haven Center	
<p>The Arc of Luzerne County 69 Public Square, Ste. 1020 Wilkes-Barre, PA 18701 570-970-7739 Executive Director Pamela Zotynia</p>	<p>White Haven Center Relatives & Friends Association Thomas Kashatus, President tomkash@verizon.net (570) 736-6981</p>

EXHIBIT B

Abuse. The allegation or actual occurrence of the infliction of injury, unreasonable confinement, intimidation, punishment, mental anguish, sexual abuse or exploitation. Abuse is reported on from the victim's perspective, not on the person committing the abuse.

(i) Physical abuse. An intentional physical act by staff or other person which causes or may cause physical injury to an individual, such as striking or kicking, applying noxious or potentially harmful substances or conditions to an individual.

(ii) Psychological abuse. An act, other than verbal, which may inflict emotional harm, invoke fear or humiliate, intimidate, degrade or demean an individual.

(iii) Sexual abuse. An act or attempted acts such as rape, incest, sexual molestation, sexual exploitation or sexual harassment and inappropriate or unwanted touching of an individual by another. Any sexual contact between a staff person and an individual is abuse.

(iv) Verbal abuse. A verbalization that inflicts or may inflict emotional harm, invoke fear or humiliate, intimidate, degrade or demean an individual.

(v) Improper or unauthorized use of restraint. A restraint not approved in the individual support plan or one that is not a part of an agency's emergency restraint procedure is considered unauthorized. A restraint that is intentionally applied incorrectly is considered an improper use of restraint.

Individual-to-individual abuse. An interaction between one individual receiving services and another individual receiving services resulting in an allegation or actual occurrence of the infliction of injury, unreasonable confinement, intimidation, punishment, mental anguish, sexual abuse or exploitation. Individual-to-individual abuse is reported on from the victim's perspective, not on the person committing the abuse.

(i) Physical abuse. An intentional physical act that causes or may cause physical injury to an individual, such as striking or kicking, or applying noxious or potentially harmful substances or conditions to an individual.

(ii) Psychological abuse. An act, other than verbal, which may inflict emotional harm, invoke fear or humiliate, intimidate, degrade or demean an individual.

(iii) Sexual abuse. An act or attempted act such as rape, incest, sexual molestation, sexual exploitation or sexual harassment and inappropriate or

unwanted touching of an individual by another. Nonconsensual sex between individuals receiving services is abuse.

(iv) Verbal abuse. A verbalization that inflicts or may inflict emotional harm, invoke fear or humiliate, intimidate, degrade or demean an individual.

Neglect. The failure to obtain or provide the needed services and supports defined as necessary or otherwise required by law or regulation. This includes the failure to provide needed care such as shelter, food, clothing, personal hygiene, medical care, protection from health and safety hazards, attention and supervision, including leaving individuals unattended and without other basic treatment and necessities needed for development of physical, intellectual and emotional capacity and well-being. This includes acts that are intentional or unintentional regardless of the obvious occurrence of harm.