UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSEPH S. and ~~STEVEN~~ W.; and DISABILITY ADVOCATES, INC.,

Plaintiffs,

-against-

MICHAEL F. HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health; THE NEW YORK STATE OFFICE OF MENTAL HEALTH; NIRAV R. SHAH, in his official capacity as Commissioner of the New York State Department of Health; THE NEW YORK STATE DEPARTMENT OF HEALTH; and ANDREW CUOMO, in his official capacity as Governor of the State of New York,

Defendants.

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STIPULATION AND ORDER OF SETTLEMENT

No. 06-CV-1042 (BMC)(SMG)

WHEREAS, Plaintiffs Joseph S.; ~~Steven~~ Stephen W.; and Disability Advocates, Inc.; (collectively, "Plaintiffs") brought this action by the filing of a Complaint seeking declaratory and injunctive relief against Defendants alleging unlawful segregation of individuals with a serious mental illness in nursing homes in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 ("ADA"); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and the Nursing Home Reform Act, 42 U.S.C. § 1396r ("NHRA"); and

WHEREAS, Plaintiffs further allege that the Defendants have denied New Yorkers with a serious mental illness the opportunity to live in integrated community settings where they could lead more independent and productive lives because Defendants failed to properly implement the federally mandated Preadmission Screen and Resident Review ("PASRR") system; and

WHEREAS, Defendants Commissioner of the New York State Office of Mental Health. Commissioner of the New York State Department of Health, and the Governor of the State of New York, all in their official capacities, and the New York State Office of Mental Health ("OMH") and the New York State Department of Health ("DOH"), (collectively, "Defendants" or "the State"), answered the Complaint; and

WHEREAS, Defendants deny that they have violated the ADA, the Rehabilitation Act, or the NHRA; and

WHEREAS, DOH has, since 2008, undertaken, and will continue to carry out, state-wide, through September 30, 2016, the Centers for Medicare and Medicaid Services ("CMS") Money Follows the Person Demonstration Project ("the MFP Demonstration Project"), a federal demonstration project through which nursing home residents, including nursing home residents with mental illness, are provided information they need to make informed decisions about long-term care options; and

WHEREAS, on September 21, 2010, DOH issued a "Dear Administrator" letter advising administrators of all New York State nursing homes that Section Q of Version 3.0 of the Minimum Data Set ("MDS") was revised so that all nursing home residents are periodically assessed to determine the feasibility of, and interest in, their discharge to the community, and that if discharge is determined to be feasible, and the resident expresses an interest in returning to the community, the nursing home must make a referral to a designated local agency, as set forth in the letter, within ten business days; and

WHEREAS, on April 12, 2011, DOH issued two revised PASRR forms, the New York State Level II Adult Mental Health Evaluation and the New York State Level II Adult Mental Health Evaluation Report, both of which include, among other elements, an independent assessment of whether the total needs of individuals with a serious mental illnesses who are proposed for nursing home admission are such that they can be met in appropriate community settings; and

WHEREAS, DOH has completed an instruction manual for PASRR evaluators who will utilize the revised PASRR forms; and

WHEREAS, on August 2, 2011, DOH issued a "Dear Administrator" letter (1) advising all New York State nursing home administrators that all nursing home residents previously identified through the PASRR process as having mental illness or mental retardation and who have experienced a significant change in status require a new Level II PASRR evaluation; and (2) providing to those administrators the new PASRR New York State Level II Adult Mental Health Evaluation Report; and

WHEREAS, on August 4, 2011, DOH issued a "Dear Hospital CEO" letter advising the Chief Executive Officers of all New York State hospitals of the importance of accurate completion of the SCREEN form and the Hospital and Community Patient Review Instrument when considering nursing home placement in discharge planning; and

WHEREAS, in 2006, OMH directed State psychiatric hospitals in the New York City area to obtain approval from OMH's Central Office for all proposed discharges to nursing homes, and in 2011 directed State psychiatric hospitals and OMH-operated residences in the rest of the state to similarly require such approval, and such directives will remain in effect until the implementation of the Revised PASRR Level II Process; and

WHEREAS, DOH, in consultation with OMH, has agreed to issue one or more Requests for Proposals ("RFPs") for an Assessment Contractor(s) to perform assessments of certain individuals with a serious mental illness who reside in nursing homes in order to determine whether their total needs can be met in appropriate community settings; and

WHEREAS, OMH has agreed, subject to approval by the Office of the State Comptroller, to develop 200 supported housing units to expand community housing capacity for Remedy Members, as defined below, and has agreed to create this additional capacity as quickly as possible by amending existing housing contracts on an as needed basis for up to 50 of the 200 units with the remaining 150 units to be developed by the issuance of an RFP; and

WHEREAS, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court; and

WHEREAS, in order to resolve all issues pending between these parties without the expense, risks, delays, and uncertainties of a trial and any appeals that might follow such a trial, the Plaintiffs and Defendants agree to the terms of this Stipulation and Order of Settlement ("Stipulation") as stated below; and

WHEREAS, all parties acknowledge that the Court has subject-matter jurisdiction over this case, and authority to enter this Stipulation and to enforce its terms; and Defendants acknowledge they are subject to personal jurisdiction of the Court, and that venue is proper in this Court;

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned that this action is settled and dismissed, without prejudice subject to the approval of the Court, on the following terms and conditions:

I. JURISDICTION

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as a case arising under the laws of the United States and 28 U.S.C. § 1343(a) for actions under laws providing for the protection of civil rights.

II. DEFINITIONS

A. "ADL" means activities of daily living.

B. "IADL" means instrumental activities of daily living.

C. "Serious Mental Illness" is as defined at 42 C.F.R. § 483.102.

D. "Psychiatric Hospital" means: (1) a psychiatric hospital operated by OMH; or (2) a private hospital in New York State with an inpatient

psychiatric unit operating pursuant to New York Mental Hygiene Law § 31.02(a)(2).

E. "PASRR" means the Preadmission Screen and Resident Review process required by the Nursing Home Reform Act, 42 U.S.C. § 1396r, and its implementing regulations.

F. "PASRR Evaluator" means the independent evaluator that conducts the Level II PASRR assessments pursuant to the Nursing Home Reform Act.

G. "Assessment Contractor(s)" shall mean the independent entity or entities that conduct the assessments required by Section V below.

H. "Named Plaintiffs" means plaintiffs Joseph S. and Steven W.

I. "Remedy Members" means persons entitled to a remedy under this Stipulation who are NH Remedy Members or PH Remedy Members.

J. "NH Remedy Members" means New Yorkers with Serious Mental Illness who are residents of nursing homes on the date that this Stipulation is executed by the parties, whose nursing home care is paid for by the New York State Medicaid program and who immediately prior to their current residence in nursing homes resided in Psychiatric Hospitals.

K. "PH Remedy Members" means persons with Serious Mental Illness who are residents of Psychiatric Hospitals on the date that this Stipulation is executed by the parties who have received a PASRR Level I Screen and have been referred to the PASRR Evaluator for a Level II PASRR Evaluation but have not yet been evaluated using the Revised PASRR Level II Process for discharge to a nursing home, unless they are discharged from the Psychiatric Hospital to a placement other than a nursing home.

L. "Community Services" means services and supports provided in New York State that assist individuals with Serious Mental Illness to live in the community. Such services and supports include, but are not limited to, Assertive Community Treatment ("ACT"), Intensive Case Management ("ICM"), Case Management, Personalized Recovery Oriented Services ("PROS"), Continuing Day Treatment ("CDT"), Medicaid benefits for which the Remedy Member is eligible, including home and community based services ("HCBS") waivers, clinic services, certified home health care, personal care assistance, nursing and rehabilitative services.

M. "Community Housing" means the most integrated setting appropriate to the needs of a person with Serious Mental Illness, where the setting is designed to promote independence in daily living, economic self-

sufficiency and the ability to interact with non-disabled persons to the fullest extent possible. Community Housing includes, but is not limited to: (1) Supportive Housing, including Community Residence Single Room Occupancy ("CR/SRO"), Supported Single Room Occupancy ("SP/SRO"), Apartment Treatment, and Family Care; (2) Supported Housing, including Scattered Site Apartment and Single Site Apartments; (3) independent housing with the person's family or friends; (4) independent housing not owned or operated by a social service entity; (5) Senior Housing; and (6) such other housing alternatives as are clinically appropriate for the particular Remedy Members. No adult home in New York City and no impacted adult home outside of New York City shall be considered to be Community Housing. For purposes of this paragraph, an impacted adult home is an adult home in which at least 25 percent of the resident population or 25 residents, whichever is less, are persons with mental disabilities who have been released or discharged from facilities operated or certified by an Office of the Department of Mental Hygiene. Notwithstanding any other provision of this paragraph, an individual may make an informed choice to live in housing that is not Community Housing.

N. "Community Transition List" means one or more lists maintained for the purpose of facilitating discharge efforts into community housing at a reasonable pace.

III. REVISED PASRR LEVEL II PROCESS

A. Within thirty (30) days of approval of this Stipulation by the Court, no person with a Serious Mental Illness may be placed in a nursing home until he or she first receives a PASRR Level I evaluation and a Level II evaluation that is consistent with procedures set forth in section III(B) ("Revised PASRR Level II Process").

B. The Revised PASRR Level II Process shall utilize the revised PASRR forms developed by DOH, annexed hereto as Exhibit A, which include an assessment by a PASRR Evaluator of whether an individual's total needs are such that they can be met in an appropriate community setting.

1. In assessing whether community placement is appropriate for an individual, the PASRR Evaluator shall meet face-to-face with the individual and:

a. Perform a medical, psychiatric and psychosocial evaluation of the individual; and

b. Perform a functional assessment of the individual's abilities to engage in ADLs and IADLs necessary to live safely in a community setting.

2. In addition, the PASRR Evaluator shall consider:

a. The range of Community Housing in New York State where the individual prefers to reside;

b. The Community Services required by the individual to live in the most integrated setting appropriate to his or her needs where the individual will reside;

c. The individual's eligibility for Medicaid waiver programs; and

d. Whether the individual has been provided with information about Community Housing and Community Services, appropriate to the needs of that individual, in a manner calculated to allow the person to make an informed choice regarding such Community Housing and Community Services.

3. A finding that an individual meets the minimum requirements for skilled nursing facility level of care pursuant to 10 NYCRR § 400.12 shall not be interpreted to mean that the individual "requires" skilled nursing facility care.

4. If the PASRR Evaluator determines that the individual's total needs are such that placement into Community Housing is appropriate, but it is determined that Community Housing is not available at such time, and the NH is appropriate and desired, then the individual may be temporarily admitted to a NH. That individual shall also be included on a Community Transition List. A Community Transition List will facilitate the discharge of such individuals to Community Housing with Community Services at a reasonable pace; provided, however, that "reasonable pace" shall be interpreted in a manner that recognizes the Defendants' obligations to Remedy Members under this Stipulation.

5. Upon completion of the PASRR Level II Review, the PASRR Evaluator shall provide to the individuals and entities listed in 42 C.F.R. § 483.128(1) an Evaluation Report that shall contain the information required by 42 C.F.R. § 483.128(i).

6. Simultaneous with the issuance of the Evaluation Report, the PASRR Evaluator shall provide to the evaluated individual, and to the individuals and entities listed in 42 C.F.R. § 483.130(k), a written notice of the PASRR determination. The notice shall contain all of the information required by applicable statute and regulation, including 42 C.F.R. § 483.130(l) and 42 C.F.R. § 431.206(b).

C. Within thirty (30) days of approval of this Stipulation by the Court, the PASRR Evaluators shall be trained to conduct the Revised PASRR Level II Process using revised PASRR forms. PASRR Evaluators hired after the initial training shall be trained thereafter as necessary. Training of PASRR Evaluators shall include information on all types of Community Housing, Community Services, and waiver programs.

D. Within thirty (30) days of approval of this Stipulation by the Court, DOH shall issue a directive to all nursing homes explaining the circumstances in which the nursing home must request a PASRR Level II Resident Review by the PASRR Evaluator. The directive shall:

1. Advise nursing homes that, consistent with the MDS 3.0 definition, a Significant Change in Status is a decline or improvement in a resident's status that: will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions; is not "self-limiting" (for declines only); impacts more than one area of the resident's health status; and requires interdisciplinary review and/or revision of the health care plan.

2. Advise nursing homes that they must contact the PASRR Evaluator for a Level II Resident Review when there is evidence that a resident has experienced a Significant Change in Status; and

3. Advise nursing homes that when a resident or his or her legal guardian expresses a desire to leave the nursing home, in every instance, the nursing home must evaluate the resident for discharge to the community pursuant to 10 N.Y.C.R.R. § 415.3(h)(1).

E. When the PASRR Evaluator determines that a nursing home resident can live in the community:

1. The PASRR Evaluator shall report its determination to the Defendants and the nursing home where the resident resides, and the nursing home resident and his or her legal representative;

2. The nursing home shall initiate discharge planning for the safe and orderly discharge of the resident from the nursing home to the most integrated appropriate Community Housing with appropriate Community Services and prepare and orient the resident for such discharge; and

3. Defendants shall include the individual on a Community Transition List.

F. Within sixty (60) days of approval of this Stipulation by the Court, DOH will send a "Dear Administrator Letter" to nursing homes reminding them of their discharge planning obligations, including those described in Section III(E)(2), and the potential penalties that may be imposed for lack of compliance. A copy shall be provided to Plaintiffs' counsel.

IV. PH REMEDY MEMBERS

A. Within forty-five (45) days of approval of this Stipulation by the Court, Defendants shall identify all PH Remedy Members.

B. Within ninety (90) days of approval of this Stipulation by the Court, Defendants shall complete the Revised PASRR Level II Process for all PH Remedy Members.

C. PH Remedy Members who are evaluated using the Revised PASRR Level II Process while in a Psychiatric Hospital and are determined to have total needs such that placement in a home and community based waiver program was considered, but for whom placement was determined not to be feasible at the time of that evaluation, shall be referred to the Assessment Contractor(s) (see section V(E) below).

D. Defendants shall provide written materials to Psychiatric Hospitals for their information and for distribution to PH Remedy Members, PH Remedy Members' guardians and community guardians. These materials shall discuss Community Housing, Community Services and waiver program options available to PH Remedy Members. Defendants shall provide draft written materials to Plaintiffs' counsel within 90 days of approval of this Stipulation by the Court, with an opportunity to provide comments within seven (7) work days; provided, however, that Defendants shall take such comments under consideration in good faith but shall not be bound to accept them.

V. NH REMEDY MEMBERS

A. Within ninety (90) days of approval of this Stipulation by the Court, Defendants shall identify all NH Remedy Members, subject to verification by the Assessment Contractor(s).

B. Within forty-five (45) days of approval of this Stipulation by the Court, Defendants shall provide Plaintiffs' counsel with one or more draft RFPs to secure one or more contractors ("Assessment Contractor(s)") that will use trained professionals to assess all NH Remedy Members to identify needed Community Housing and Community Services.

1. The RFP or RFPs will specify that the Assessment Contractor(s) shall be persons or entities that employ and use trained professional staff with experience working with people with mental illness and the ability to successfully perform the functions outlined in Section V(C).

2. Plaintiffs' counsel shall have eleven (11) work days to comment on such RFP or RFPs prior to the official issuance thereof; provided, however that, while Defendants shall take any such comments received from Plaintiffs under consideration in good faith, this paragraph shall not be interpreted to require the State to incorporate any such comments, or to otherwise limit the State's authority to establish the terms of the RFP or select the organization(s) to be awarded the contract; and provided, further, that defendants may require plaintiffs' counsel to sign a stipulation of confidentiality prior to receipt of such RFP or RFPs.

3. After Defendants have received comments from Plaintiffs, defendants shall issue the RFP or RFPs in a reasonably prompt manner, and the selection of the Assessment Contractor(s) shall proceed as expeditiously as possible under applicable State law. All contract awards are subject to approval by the Office of the State Comptroller.

C. Within twenty-four (24) months of approval by the Office of the State Comptroller of the contract or contracts with the Assessment Contractor(s) (see Section V(B) above), Defendants shall complete assessments for all NH Remedy Members.

1. The purpose of the assessments is to:

a. determine whether the total needs of each NH Remedy Member are such that they can be met in an appropriate community setting; and

b. identify for those NH Remedy Members capable of and desiring to live in the community, the specific types of Community Housing and Community Services necessary to maintain them safely in the community, if that is their preference. Such assessments shall be consistent with the Revised PASRR Level II Process and this Stipulation.

2. Neither such assessment nor any other activity undertaken by the Assessment Contractor(s) pursuant to this Stipulation shall relieve any nursing home of its discharge planning obligations with respect to any NH Remedy Member; provided, however that the nursing homes' duties in respect to discharge planning do not relieve Defendants of their obligations under this Stipulation

3. In assessing whether community placement is appropriate for an individual NH Remedy Member, the Assessment Contractor(s) shall meet with the individual face-to-face and:

a. Perform a medical, psychiatric and psychosocial evaluation of the individual; and

b. Perform a functional assessment of the individual's abilities to engage in ADLs and IADLs necessary to safely live in a community setting.

4. In addition, the Assessment Contractor(s) shall consider:

a. The range of Community Housing in New York State where the individual prefers to reside;

b. The Community Services required by the Remedy Member to successfully live in the most integrated setting appropriate to his or her needs where he or she will reside;

c. The NH Remedy Member's eligibility for Medicaid waiver programs; and

d. Whether the individual has been provided with information about Community Housing and Community Services, appropriate to the needs of that individual, in a manner calculated to allow the person to make an informed choice regarding such Community Housing and Community Services.

5. Assessment Contractor(s) engaged in the assessment of individual NH Remedy Members shall:

   a. Explain the benefits, responsibilities and financial aspects of Community Housing and Community Services for the NH Remedy Member and make reasonable efforts to explore and address concerns for the NH Remedy Member;

   b. Facilitate NH Remedy Member visits to Community Housing when appropriate; and

   c. Provide to nursing home staff responsible for discharge planning information regarding the Community Housing and Community Services available where the NH Remedy Member prefers to reside, the individual's eligibility for Medicaid waiver programs, and the individual's discharge preferences.

6. An assessment determination shall include that information required to be contained in the PASRR New York State Level II Adult Mental Health Evaluation Report. Such determination shall be appealable to the extent permitted by state or federal law.

7. When the Assessment Contractor(s) determines that an NH Remedy Member can live in the community, defendants shall include the individual on a Community Transition List. NH Remedy Members shall be a "priority population" for those who otherwise meet the eligibility criteria for OMH Community Housing programs.

D. Defendants shall provide written materials to nursing homes for their information and for distribution to NH Remedy Members' and Members' guardians and community guardians. These materials will discuss Community Housing, Community Services and Medicaid waiver program options available to NH Remedy Members. Defendants shall provide draft written materials to Plaintiffs' counsel within 90 days of approval of this Stipulation by the Court, with an opportunity to provide comments within seven (7) work days; provided, however, that Defendants shall take such comments under consideration in good faith but shall not be bound to accept them.

E. Any NH Remedy Member discharged to Community Housing prior to the date on which the contract or contract(s) with the Assessment Contractor(s) is approved by the Office of the State Comptroller shall be referred to the Assessment Contractor(s); provided, however, that for such NH Remedy Members, the Assessment Contractor(s) shall confirm that

pre-discharge assessment and discharge planning activities were consistent with this Stipulation, and carry out assessments and discharge planning activities for those NH Remedy Members for whom those activities were not consistent with this Stipulation.

F. PH Remedy Members referenced in Section IV(C) shall be referred to the Assessment Contractor(s) and the provisions of this Section shall apply to them to the same extent as to NH Remedy Members; provided, however, that the Assessment Contractor(s) shall not be required to duplicate the evaluation that was already conducted under the Revised PASRR Level II Process or discharge planning activities already undertaken as to such PH Remedy Members, but shall use best efforts to reasonably further the purposes of this Section with respect to such individuals.

G. The parties' counsel may freely communicate ex parte with the Assessment Contractor(s); provided, however that such communication may not interfere with the work of the Assessment Contractors(s); and provided, further, that nothing in this paragraph shall obligate the Assessment Contractor(s) to provide any information beyond that required under the contract(s).

VI. COMMUNITY HOUSING

A. Within sixty (60) days of the approval by the Office of the State Comptroller of the contract(s) with the Assessment Contractor(s), the Named Plaintiffs shall be assessed and offered Community Housing and Community Services consistent with their clinical and other needs, capabilities and preferences.

B. Within three (3) years of the approval by the Office of the State Comptroller of the contract with the Assessment Contractor(s) (see Section V(B) above), all NH Remedy Members who are capable of and willing to live in the community, as determined by the Assessment Contractor, will be provided with, or otherwise obtain, Community Housing and Community Services consistent with their needs and preferences.

C. Defendants shall use reasonable efforts to obtain Community Housing for Remedy Members in neighborhoods with access to public transportation, community services and wheelchair accessible housing appropriate to their needs.

D. Defendants shall ensure that the housing of any Remedy Member who is hospitalized or placed in a treatment facility after obtaining Community Housing remains available to them for sixty (60) days or for such other period of time as may be provided in statute or regulation or OMH model.

to the extent they have jurisdiction to do so, unless there is no prospect of the Remedy Member returning.

E. Upon the approval of this Stipulation by the Court, the Defendants shall initiate an ongoing assessment of the existing Community Housing, taking into account the results of the assessment process required in Section V(C) of this Stipulation and assessments by the PASRR Evaluator, to determine what Community Housing is reasonably required to serve Remedy Members capable of living in the community.

VII. COMMUNITY SERVICES

A. Upon the approval of this Stipulation by the Court, the Defendants shall initiate an ongoing assessment of the existing Community Services, guided by the results of the assessment process required in Section V(C) of this Stipulation and assessments by the PASRR Evaluator, to determine what services are reasonably required to serve Remedy Members capable of living in the community.

B. All Remedy Members determined by the Assessment Contractor and PASRR Evaluator as able to move to Community Housing, and who do move to Community Housing, will have reasonable access to the array and intensity of Community Services consistent with their clinical needs that are necessary to transition to and live in Community Housing.

C. Defendants shall consider development of federal Medicaid waivers to facilitate meeting the goals of this Stipulation.

D. Defendants shall designate or retain one or more persons, in accordance with applicable provisions of law, who will serve as Community Transition Coordinator(s), for the purpose of facilitating the discharge of Remedy Members to the community, as appropriate. Such Community Transition Coordinator(s) shall have experience directly relevant to facilitating discharges to or among community settings.

VIII. ENFORCEMENT

A. The Court shall retain jurisdiction to assure compliance with this Stipulation but not for more than four years from the date this Stipulation is approved by the Court, at which time this Stipulation shall expire. Plaintiffs may move to extend the Court's jurisdiction, which motion shall be granted if the Plaintiffs show by a preponderance of the evidence that significant actions required by this agreement have not yet been completed.

B. During the four (4) years after this Stipulation is approved by the Court, Defendants shall provide to Plaintiffs' counsel:

1. A copy of the PASRR Evaluator's monthly program report;

2. A copy of the Assessment Contractor(s)'s monthly report, which shall include:

   a. A listing of nursing home residents (name and location where the assessment was completed) assessed by the Assessment Contractor and the dates on which the assessment were completed;

   b. The identification of the assessed nursing home resident's housing preference, if any;

   c. A determination as to whether or not the individual has the functional capabilities to live safely in the community; and

   d. The range of community services necessary for the safe and appropriate transition of the assessed nursing home resident.

3. The Evaluation Reports completed by the Assessment Contractor(s) for those NH Remedy Members for whom community placement was found not appropriate.

4. A quarterly report completed by the Community Transition Coordinator, which shall include the discharge locations for each assessed nursing home resident.

5. A copy of that portion of any Community Transition List applicable to any person on such a list as a result of this Stipulation, updated quarterly.

6. Any requests by the Plaintiffs' counsel for relevant information in addition to the information set forth in this section shall not be unreasonably denied. The parties shall negotiate in good faith any areas of disagreement as to whether such information shall be made available.

7. Defendants shall provide information to Plaintiffs' counsel regarding the development of Community Housing at the quarterly meeting described in paragraph VIII(C) below.

C. The parties will meet on a quarterly basis, together with representatives of the Assessment Contractor(s) and the Community Transition Coordinator, to discuss progress and reporting issues.

D. Dispute Resolution

1. In the event of any reported non-compliance by Defendants with a material provision of this Stipulation, counsel to the parties shall meet and confer in an effort to resolve the reported non-compliance within 30 days of receipt of written notice by Defendants' counsel.

2. In the event of a claimed pattern of non-compliance with a material provision of this Stipulation and a failure to achieve a resolution of the issue within 60 days of the meet and confer, either side may seek non-binding mediation by the Court, provided that the Court may decline to provide or conduct such mediation.

3. If such mediation fails to achieve a resolution, Plaintiffs may bring a motion for enforcement of this Stipulation and the Court shall determine a reasonable schedule for the hearing and determination of such motion. In the event of such a motion, Defendants will be considered to be in "compliance" unless Plaintiffs establish that Defendants' failures or omissions to meet the terms of this Stipulation were not minimal or isolated but were substantial and sufficiently frequent or widespread to be systemic.

4. For purposes of such a motion addressing systemic non-compliance, non-systemic individual and isolated violations of this Stipulation shall not form a basis for a finding that Defendants are not in compliance with this Stipulation nor shall they serve as the basis for a finding of contempt under this Stipulation. This paragraph shall not be construed to interfere with any right of Plaintiffs to seek a remedy of contempt based on an alleged violation by the Defendants of a written order of the court (if any) that was itself the result of a prior successful application of the Plaintiffs to enforce one or more specific provisions of this Stipulation.

IX. ATTORNEYS' FEES AND COSTS

A. In full settlement of all attorneys' fees and other costs that have been or will be incurred in connection with the litigation, Defendants shall pay to Plaintiffs' counsel $2.5 million; provided, however, that additional fees or costs arising from a motion for enforcement pursuant to Section VIII(D) above may be payable as approved by the court.

B. Payment of the $2.5 million amount referenced in paragraph A will be made as follows:

1. Within 30 days of the enactment of the New York State budget for fiscal year 2012-13, Defendants shall provide to Plaintiffs' counsel a check for one million dollars.

2. Within 30 days of the enactment of the New York State budget for fiscal year 2013-14, Defendants shall provide to Plaintiffs' counsel a check for one million dollars.

3. Within 30 days of the enactment of the New York State budget for fiscal year 2014-15, Defendants shall provide to Plaintiffs' counsel a check for $500,000 dollars.

C. Payment of each of the amounts referred to in this Section is subject to the approval of all appropriate New York State officials in accordance with the provisions of Section 17 of the New York Public Officers Law and, for each fiscal year, shall be subject to appropriation. Defendants will use their best efforts to secure such approvals and appropriations.

X. MISCELLANEOUS

A. Approval of this Stipulation shall be deemed to occur on the date the Court "So Orders" the Stipulation and the Stipulation shall be deemed effective on that date.

B. Nothing contained herein shall be deemed to be an admission by the Defendants that they have in any manner or way violated the Named Plaintiffs' or any Remedy Member's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the State of New York.

C. This Stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except in an action or proceeding by the Plaintiffs to enforce the terms of this Stipulation.

D. The parties and their counsel shall, during the period that this Stipulation is in effect, continue to be bound by all Protective Orders entered in this litigation. This obligation shall encompass information obtained pursuant to this Stipulation.

E. Nothing in this Stipulation shall be interpreted to require a fundamental alteration of the State's services.

F. Nothing contained herein shall be deemed to constitute a policy or practice of the Defendants or the State of New York.

G. This Stipulation contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

H. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.

I. If any of the dates or periods of time described in this Stipulation fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day.

J. All correspondence concerning this Stipulation should be sent to the following (or to such other address as the recipient named below shall specify by notice in writing hereunder):

To Defendants:

John Gasior, Assistant Attorney General
Office of the Attorney General
120 Broadway 24th floor
New York, New York 10271
Tel: 212-416-8570
e-mail: john.gasior@ag.ny.gov

To Plaintiffs:

Amy E. Lowenstein, Esq.
Disability Advocates, Inc.
5 Clinton Square, 3rd Floor
Albany New York 12210
Tel. 518-432-7861
e-mail: AL@DisabilityAdvocates.org

Veronica S. Jung, Esq.
New York Lawyers for the Public Interest, Inc.
vjung@nylpi.org

K. This Stipulation may not be modified without the express written agreement of counsel for the parties. Absent such agreement, the parties

may seek a modification of this Stipulation only for good cause shown, with the Court's approval, upon thirty (30) days' written notice to counsel for the other parties.

L. This Stipulation may be executed in counterparts, and each counterpart, when executed shall have the full efficacy of a signed original. Photocopies of such signed counterparts may be used in lieu of the originals for any purpose.

M. Signatories

1. The undersigned representative of the Defendants to this litigation and the Attorney General of the State of New York certifies that he is authorized to enter into the terms and conditions of this Stipulation and to execute and bind legally such Defendants to this document.

2. Each undersigned representative of Plaintiffs certifies that he or she is authorized to enter into the terms and conditions of the Stipulation and to bind legally the Plaintiffs to this document.

For Plaintiffs JOSEPH S.; STEVEN W.; and DISABILITY ADVOCATES, INC.:

Dated: 9/6/2011 By: _____
Cliff Zucker
Timothy A. Clune
Nina Loewenstein
Amy E. Lowenstein
DISABILITY ADVOCATES, INC.
5 Clinton Square, 3rd Floor
Albany, New York 12207
(518) 432-7861

Dated: 9/6/11 By: _____
Beth D. Jacob
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SO ORDERED
Dated: Brooklyn, New York
September 6, 2011

S/ BMC
BRIAN M. COGAN
United States District Judge