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July 23, 2018

**VIA EMAIL ONLY**

The Honorable Karen Molzen  
United States Magistrate Judge  
Pete V. Domenici United States Courthouse  
Albuquerque, NM 87102  
[molzenchambers@nmcourt.fed.us](mailto:molzenchambers@nmcourt.fed.us)

**Re: *Jackson, et al. v. Los Lunas Center for Persons with Developmental Disabilities, et al., No. CIV 87-0839 JAP/KBM***

Dear Judge Molzen,

I am writing on behalf of counsel for the plaintiff class to briefly reply to Defendants' July 20, 2018 letter that opposed Plaintiffs' July 13, 2018 letter regarding why Plaintiffs' counsel need to obtain information about participants in the State developmental disabilities system who are not Jackson class members and why we need the information that will enable us to compare what happens to Jackson class members with what happens to other people in the State developmental disabilities system, both those who have severe disabilities and those who do not have severe disabilities.

Firstly, contrary to their assertion, there is no undue burden associated with providing existing data sets. However, there is a burden to Defendants associated with redacting from their databases and spreadsheets the data that is already there regarding both class members and non-class members. It would save Defendants work to provide the existing information in its usual format.

Second, Defendants' letter argues, without citation to applicable authority, that the principles governing discovery in the employment discrimination cases we cited because they explicitly addressed discovery when disparate impact claims are litigated, do not provide the Court with helpful guidance with respect to discovery in disability discrimination cases. For discovery purposes, the type of discrimination does not matter. The issue is whether non-party information may lead to the discovery of admissible evidence; the law is clear that such non-party data is discoverable.

Moreover, the data we seek is directly relevant to any claim of denial of "meaningful access." It also is central to a disparate impact claim under the ADA or the Rehabilitation Act.

Honorable Karen B. Molzen

July 23, 2018

Page 2

Public entities are prohibited from "providing a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others, 28 C.F.R. § 35.130(b)(1)(iii), or from "providing different or separate aids, benefits, or services to individuals with disabilities . . . than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others," 28 C.F.R. § 35.130(b)(1)(iv).

*Gregory v. Admin. Office of the Courts of N.J.*, 168 F. Supp. 2d 319, 330

Without the data we seek, Plaintiffs cannot prove that Defendants are providing Plaintiffs "with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others."

Accordingly, we ask Your Honor to direct Defendants to provide the materials we seek.

Please let us know if there is anything further we can do to assist Your Honor in resolving these disputes.

Respectfully submitted,

*Peter Cubra*

Peter Cubra

cc via email: Jerry Walz  
James Grubel  
Gabrielle Sanchez-Sandoval  
Maureen Sanders  
Plaintiffs' co-counsel