

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE ARC OF DELAWARE,
HOMES FOR LIFE FOUNDATION, et.al.

Plaintiffs,

v.

VINCENT MECONI, Secretary, Delaware
Department of Health & Social Services, in
his official capacity, et. al.

Defendants.

NO. 02-CV-255-KAJ

CLASS ACTION

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
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**STIPULATION AND ORDER APPROVING SETTLEMENT
AND DISMISSING PLAINTIFFS' CLAIMS**

GENERAL PROVISIONS

The parties, by and through their undersigned counsel, submit this Stipulation to resolve the claims raised in *The Arc of Delaware v. Vincent Meconi, et al.*, Civil Action No. 02-255 (D. Del.), brought by **The Arc of Delaware; Homes for Life Foundation; Delaware People First; Kirk Van Alstine**, by his parents and next friends Robert and Rose Van Alstine; **Gwen Van Alstine**, by her parents and next friends, Robert and Rose Van Alstine; **Terry Hagan**, by his mother and legal guardian, Norma Hagan; **Kenneth F. Schroeder**, by his father and legal guardian, Kenneth H. Schroeder; **Jane Doe; Garry Pryor; Diana Roe**, by her parents and next friends, John and Martha Roe; **Brenda Simms**, by her brother and legal guardian Morris Simms; **Julie Desmond**, by her mother and legal guardian Marcy Desmond (collectively "Plaintiffs") against **Vincent Meconi**, Secretary, Delaware Department of Health & Social Services, in his official capacity; **Marianne**

Smith, Director, Division of Developmental Disabilities Services, in her official capacity; **Delaware Department of Health and Social Services, Division of Developmental Disability Services (“DDDS”)**; and **Delaware Department of Health and Social Services** (collectively “Defendants”).

Plaintiffs agree to release the Defendants from and dismiss all claims that are set forth in the Complaint in this action, with the Court retaining jurisdiction for the limited purpose and the limited time set forth herein. Plaintiffs also agree that they will not raise any matter raised in the Complaint (or that could have been raised in the Complaint) during the term of this agreement except that if a class member believes that his/her rights are being violated, he or she may apply for relief from this Court to the extent provided herein.

THE MEMORANDUM OF UNDERSTANDING

A Memorandum of Understanding (“MOU”) was negotiated in the summer and early fall of 2003 as a result of discussions among the Arc of Delaware (“Arc”), Homes for Life Foundation (“HFL”), Delaware People First (“People First”) and the State of Delaware (“State”), acting through its Department of Health and Social Services (“DHSS”) and the Division of Developmental Disabilities Services (“DDDS”). The parties now accept the provisions of the MOU, as supplemented by the provisions of this Stipulation, as the basis of the settlement of this lawsuit. A copy of the MOU is attached hereto as Exhibit “A,” and it is incorporated herein by reference.

DEFINITIONS

The following definitions shall apply to the terms used in this Stipulation and the attached MOU, which this Stipulation incorporates:

- A. “**Client Registry**” is a database of individuals eligible for DDDS services. Each

individual in the database has a profile completed by a case manager. The profile is used to prioritize the client's need for a community residential placement (e.g., placement with support services in a group home, apartment setting or foster home setting).

- B. **“Essential Lifestyles Plan”** is a person-centered planning process used by DDDS to determine the support services needed by an individual eligible for services.
- C. **“Home and Community-Based Waiver”** is the authorization from the Secretary of the United States Department of Health and Human Services to provide certain specified community-based services financed within the Medicaid program for individuals eligible for ICF-MR (i.e., “intermediate care facility for the mentally retarded”) services. The waiver is a component of the Delaware State Medicaid plan which details the services to be provided and the criteria to be used to determine who will be eligible to receive services. See 42 U.S.C. §1396n(c)(3).
- D. **“Medicaid Program”** is a cooperative federal-state program authorized by 42 U.S.C. §1396 et seq. that offers federal financial participation in the costs a state pays to furnish necessary medical and rehabilitative services to eligible persons whose income and resources are insufficient to meet the costs. Delaware participates in the Medicaid program and receives a federal contribution of about 50% of the costs of covered services.
- E. **“Memorandum of Understanding”** or **“MOU”** is Exhibit “A” hereto. It was negotiated in the summer and early fall of 2003 as a result of discussions among the Arc, HFL, People First and the State, acting through DHSS and DDDS, and serves as the impetus to dismiss this civil action.
- F. **“Person-Centered Planning”** is a service planning process designed to identify supports needed to achieve a self-defined quality of life. The plan includes elements that someone needs for a reasonable quality of life and, as much as possible, a life of individual choice. The plan defines a quality of life based on the individual's support needs and his/her desires, as much as possible. The planning process includes the individual, family and friends of the individual, and professionals who support the individual. Elements of the plan include health, safety, housing, employment, income, recreation and social activities. (This definition is drawn from the DDDS Olmstead Comprehensive Planning Process: Initial Assessment document, dated July-November, 2000).
- G. **“Residential Placement”** is the admission of an eligible person into a community residential setting. **“New residential placements”** means that the capacity of the program will increase by each placement.

- H. “Service Delivery Infrastructure” is the structure in place to provide for the delivery of quality services, including provider agencies, the case management system, the quality assurance and service monitoring system and protocols, the health support and health assurance system, and the administrative structure (contract process, policies, financial structure, etc.).
- I. “Stakeholders” are the consumers of DDDS’s services and their families.

APPROVAL OF THE SETTLEMENT

The settlement memorialized in the attached MOU (Exhibit “A” hereto), as supplemented by the provisions of this Stipulation, is approved as fair, reasonable and adequate. The MOU contains the provisions that the parties drafting the document jointly agreed would be implemented by the appropriate State agencies.

The parties agree that Term Two of the MOU, providing for independent risk assessments of certain of the individual plaintiffs, will be completed within 30 days of the Court’s approval of this Stipulation. The parties also agree that pursuant to Term Three, Section (e) of the MOU, the timeline for developing the separate assessment process and the timeline for using the process to assess all current DDDS clients will be established within 90 days of the Court’s approval of this Stipulation. The parties also agree that pursuant to Term Four, Section (b) of the MOU, the State will submit a Medicaid waiver for the support of natural families not later than June 30, 2004. The review and clarification of the Client Registry that is described in Term Three, Section (d) of the MOU will be completed no later than six (6) months after the Court’s approval of this Stipulation.

The steps agreed to in Term Three, Section (a) of the MOU and in Term Four, Section (d) of the MOU (with respect to amending the existing Medicaid home and community-based waiver to assure that sufficient federal financial participation is available for the 79 new residential placements for

State Fiscal Year 2005) will be completed on or before June 30, 2005.

Pursuant to Term Three, Section (d) of the MOU, the State will improve and make clearer the purposes and effect of the Client Registry, including developing more precise criteria for inclusion in the different categories on the registry. Any such improvement or clarification in the criteria or categories shall be applied to the individual plaintiffs.

Pursuant to Term Three, Section (e) of the MOU, the State will work with plaintiff Arc of Delaware ("Arc") to develop an independent assessment to determine the supports needed by DDDS clients to be successful in the community. That assessment process shall be conducted for each individual plaintiff and DDDS client and completed no later than 120 days after the timeline for the assessment process has been established.

DISMISSAL OF PLAINTIFFS' CLAIMS

Plaintiffs' claims in this action are hereby dismissed with prejudice. This dismissal does not affect any obligations of the parties under the MOU or this Stipulation which, by their terms, survive the dismissal of the lawsuit.

TERMINATION AND ENFORCEMENT

The Court will retain jurisdiction for purposes of enforcement of this Stipulation and the MOU until June 30, 2005. The parties agree that this Court's retention of jurisdiction for enforcement purposes shall not be dispositive on the issue of whether the plaintiffs are "prevailing parties" for purposes of determining their eligibility for a statutorily authorized award of attorneys fees.

A. DDDS Survey.

Within thirty days of the completion of the review and clarification of the Client Registry that is described in Term Three, Section (d) of the MOU, the defendants will conduct the same type of survey (in the same manner and format and directed to the same categories of DDDS clients) as the survey which DDDS's case managers conducted of persons on the Client Registry in March 2002. Upon completion of the survey, defendants will provide plaintiffs' undersigned counsel with a redacted copy of each survey response. The responses provided to plaintiffs' counsel shall be redacted to conceal only the name, address, any Social Security number and any other DDDS-client-identifying information. Each redacted survey response shall, however, be numbered to permit reference to be made, as necessary, to a particular response.

The terms and restrictions of the Stipulation and Order Regarding Confidentiality entered by the Court on April 4, 2003 ("Confidentiality Order") shall apply to the redacted survey responses provided to plaintiffs' undersigned counsel.

B. Enforcement and Order Modification.

1. Defendants shall bear all reasonable costs related to copying or otherwise supplying the parties with any documents required under the MOU and this Stipulation. The identities of individuals shall be kept confidential, and neither the names nor likenesses of individual DDDS clients or their families (except the names of the individual plaintiffs and their family representatives, as stated in the caption of the Complaint in this case) shall be publicized without their permission except that the parties may refer to an individual by the individual's initials. As noted above, however, the survey responses provided to plaintiffs' counsel shall use consecutive numbers, not

initials.

2. The parties intend this stipulation to be a binding contract. The parties will attempt to resolve any claim of non-compliance with this Stipulation and the MOU or any other disputes concerning implementation of the settlement through negotiations. An attempt at informal resolution, including a written statement describing with particularity the basis for any assertion of non-compliance and a period of thirty days during which the parties will attempt to resolve the matter, is a prerequisite to either party's request for relief from the Court for any claim of non-compliance with or any other disputes concerning implementation of this Stipulation and the accompanying MOU. The parties agree that, if the dispute-resolution process has been commenced in good faith by the sending of a written statement describing with particularity the basis of any assertion of non-compliance before June 30, 2005, the Court shall retain jurisdiction beyond June 30, 2005 solely for the purpose of resolving the asserted non-compliance that is described in the pre-June 30, 2005 written statement. If the Court's jurisdiction is extended beyond June 30, 2005 for this limited purpose, the extension of jurisdiction shall end upon the (a) filing of a decision by the Court resolving the assertion of non-compliance or (b) the filing by the parties of a stipulation declaring that the matter has been resolved by the parties and that the Court's jurisdiction may therefore end.

3. The termination of this Court's jurisdiction does not affect any obligations of the parties under the MOU or this Stipulation which, by their terms, survive the termination of the Court's jurisdiction.

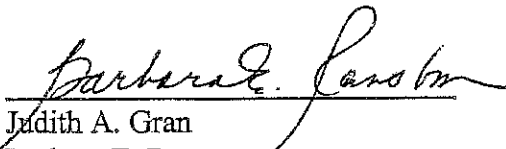
4. The terms and restrictions of the Confidentiality Order shall continue in effect after the dismissal of plaintiffs' claims and after the termination of the Court's jurisdiction.

5. This stipulation is intended to bar separate proceedings by any of the individual plaintiffs or class members raising any of the claims asserted (or that could have been asserted) in the Complaint in this action during the term of this agreement. However, in the event that a class member believes that, during the term of this agreement, his/her rights are being violated by the defendants, he or she may apply for relief from the Court. Any requested modification of this Stipulation and Order must be consistent with Federal law, the intent of the parties (as expressed in the MOU and this Stipulation), and the applicable standards for modification of such an agreement.

6. The parties agree that the references in this Stipulation of Dismissal to "class members" do not constitute an agreement or acknowledgement by the defendants (and shall not be construed, interpreted or asserted as an agreement or acknowledgement by the defendants) that any Rule 23 class was appropriate for the litigation of the claims that were asserted in the Complaint in this lawsuit.

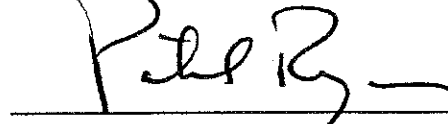
THIS SETTLEMENT IS HEREBY AGREED TO:

FOR THE PLAINTIFFS:



Judith A. Gran
Barbara E. Ransom
Public Interest Law Center
of Philadelphia
125 S. 9th Street, 7th Floor
Philadelphia, PA 19107

FOR THE DEFENDANTS:



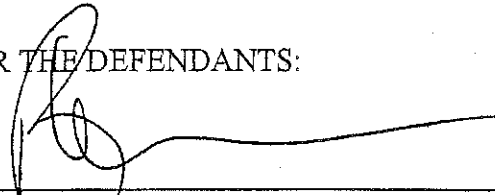
Patrick T. Ryan
Michael D. Epstein
Jeffrey S. Feldman
Montgomery, McCracken,
Walker & Rhoads, LLP
123 S. Broad Street, 24th Floor
Philadelphia, PA 19109

FOR THE PLAINTIFFS:



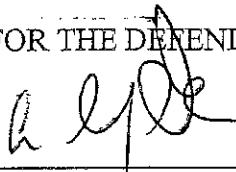
Daniel G. Atkins (DE #2970)
MaryBeth Musumeci (DE #4128)
Brian Hartman (DE #117)
Community Legal Aid Society Inc.,
Disabilities Law Program
Community Service Building
100 West 10th Street, Suite 801
Wilmington, DE 19801

FOR THE DEFENDANTS:



Richard M. Donaldson (DE #4367)
Montgomery, McCracken,
Walker & Rhoads, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801

FOR THE DEFENDANTS:

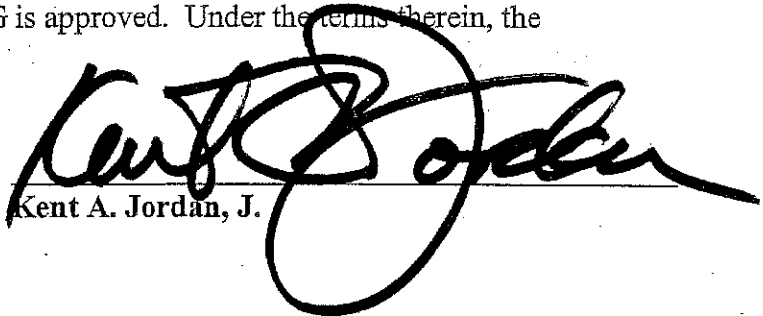


A. Ann Woolfolk (DE #2642)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801

Dated this _____ day of _____, 2004.

By ORDER of the COURT, this STIPULATION OF DISMISSAL with its supporting MEMORANDUM OF UNDERSTANDING is approved. Under the terms therein, the Complaint is dismissed with prejudice.

This 26th day of
August, 2004



Kent A. Jordan, J.

MEMORANDUM OF UNDERSTANDING
BY AND AMONG
THE ARC OF DELAWARE, HOMES FOR LIFE FOUNDATION,
DELAWARE PEOPLE FIRST, KIRK VAN ALSTINE, GWEN VAN ALSTINE,
TERRY HAGAN, KENNETH F. SCHROEDER, JANE DOE, GARRY PRYOR,
DIANA ROE, BRENDA SIMMS, JULIE DESMOND
AND THE STATE OF DELAWARE

THIS MEMORANDUM OF UNDERSTANDING is made the ____ day of _____, 2004, by and among THE ARC OF DELAWARE ("Arc"), HOMES FOR LIFE FOUNDATION ("HFL"), DELAWARE PEOPLE FIRST ("People First"), and THE STATE OF DELAWARE (the "State"), acting through its DEPARTMENT OF HEALTH AND SOCIAL SERVICES ("DHSS"), and the DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES ("DDDS"),

RECITALS

WHEREAS, there is a civil action pending in the United States District Court for the District of Delaware, captioned *The Arc of Delaware et al. v. Vincent Meconi, et al.*, Civil Action No. 02-255 (the "Litigation"), brought by Arc, HFL, People First, and Kirk Van Alstine, Gwen Van Alstine, Terry Hagan, Kenneth F. Schroeder, Jane Doe, Garry Pryor, Diana Roe, Brenda Simms, and Julie Desmond (collectively, the "Plaintiffs") against DHSS, DDDS, and certain state officials (the "Defendants"); and

WHEREAS, the State and the Defendants named in the Litigation have denied liability for the claims asserted in the Litigation; and

WHEREAS, in an effort to re-establish a positive, non-adversarial relationship intended to better advance the interests of persons with disabilities, representatives of the State, Arc and HFL formed a working group in July of 2003, to discuss areas of agreement and disagreement, and develop a shared vision for serving persons with cognitive and developmental disabilities; and

WHEREAS, as a result of discussions among representatives of the State, Arc, and HFL, the parties have reached a series of agreements and understandings, and this Memorandum of Understanding is an effort to document such agreements and understandings,

NOW THEREFORE, IT IS JOINTLY AGREED AND UNDERSTOOD BY AND AMONG THE UNDERSIGNED AS FOLLOWS:

EXHIBIT "A"

1. Dismissal of Litigation

Subject to the other terms hereof, the undersigned representatives of Arc and HFL, on behalf of Arc, HFL, People First, and the undersigned representatives of the individual plaintiffs, agree that, with the cooperation of the Defendants, they will undertake such action as is necessary to assure the dismissal of the Litigation, including the submission of an appropriate stipulation to the Court that embodies the terms of this Memorandum of Understanding and the solicitation of Court approval of the dismissal, to the extent required.

2. Independent Assessment of Certain of the Individual Plaintiffs

The undersigned have jointly reviewed the current status of the nine individual plaintiffs to the Litigation. It appears that the circumstances of certain individual plaintiffs have changed since the filing of the Litigation, and that some plaintiffs either have received a residential placement, do not desire or need a residential placement, and/or have been included in the Priority 1 category for services based on a reassessment of the need for services. With respect to the remaining individual plaintiffs, the undersigned agree as follows: A representative of DDDS and a representative of Arc will meet with each of the individual plaintiffs who has not yet received a residential placement or is satisfied with his or her current living arrangement, their families, their DDDS case managers, and an independent third-party facilitator, to complete new risk assessments for each such individual plaintiff. The third-party facilitator will be jointly chosen by Arc and DDDS. The assessments will be completed within thirty days of the date of this Memorandum of Understanding.

3. Residential Placements

(a) DDDS will make 79 new residential placements for persons with developmental disabilities for State Fiscal Year 2005. Placements shall be made according to priority, with higher priority accorded to placements deemed urgent, or high risk. The new residential placements referred to herein include 24 placements from the Stockley Center ("Stockley").

(b) DDDS and the State currently intend and expect to maintain a comparable or higher rate of residential placements for years beyond State Fiscal Year 2005 both from the registry and from Stockley. However, nothing in this Memorandum of Understanding is intended to legally obligate the State to make residential placements at a specific rate beyond Fiscal Year 2005.

(c) The State will continue to place individuals currently residing at Stockley. DDDS intends that all individuals currently living at the Stockley campus, who can benefit from community living and be reasonably accommodated in the community, and who do not oppose community placement, will be placed in the community, subject to reasonable recommendations of the State's treatment team. The State agrees not to limit

community placement opportunities for Stockley residents based solely on the severity of residents' disabilities or because they have disabilities other than mental retardation.

(d) DDDS and the State will improve and make clearer the purposes and effect of the client registry for community-based services, including developing more precise terms for categories on the registry, and educating families about prioritization of clients on the registry. The State agrees to include Arc in a review of the client registry to assess the adequacy of the criteria used to determine risk and the adequacy of a due process procedure for families to follow if there is disagreement regarding the outcome of a given family's assessment and placement on the registry.

(e) The State will work with Arc to develop an independent assessment process to be used to determine supports needed to be successful in the community. This assessment process will be separate from the process used to determine placement on the client registry. A schedule will be developed by the State and Arc within 90 days of signing of this Memorandum of Understanding which will include a timeline for developing this assessment process and a timeline for using the process to assess all current DDDS clients, including those at Stockley and on the registry.

4. Other DDDS Services

(a) DDDS will continue to use and refine a person-centered planning process for persons with disabilities (such as the Essential Lifestyles Plans used by DDDS) in order to better assess the needs of the community that DDDS serves. All future placements will be based on this person-centered planning process.

(b) The State will submit a Medicaid waiver for the support of natural families to the federal Center for Medicare and Medicaid Services not later than the spring of 2004. Prior to submitting the Medicaid waiver, DDDS will collaborate with Arc, HFL and other stakeholders and interested parties.

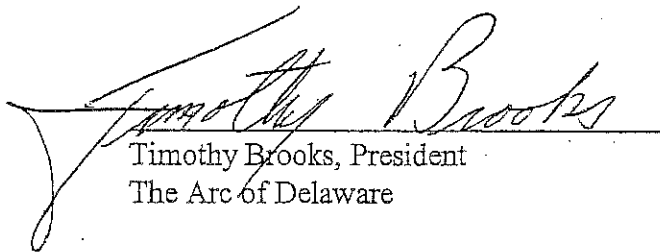
(c) DDDS will work to improve and stabilize its service delivery infrastructure. DDDS commits to work collaboratively with Arc and HFL to improve protocols for quality assurance, to involve Arc in monitoring group homes, and to work toward other goals identified in the DDDS Strategic Plan. After the placement of 24 Stockley residents into community programs that will be completed by June 30, 2005, the State will dedicate all future savings from continued reduction in the population still living at Stockley to increases for service provider contracts as one component of improving the services delivery infrastructure.

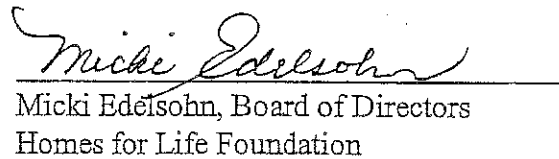
(d) DDDS will amend its existing home and community-based waiver to assure that sufficient federal financial participation is available for the additional persons who will receive services into the future under the terms of this agreement.

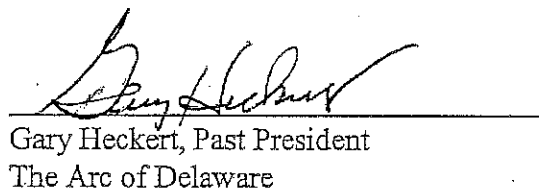
5. Continued Cooperation

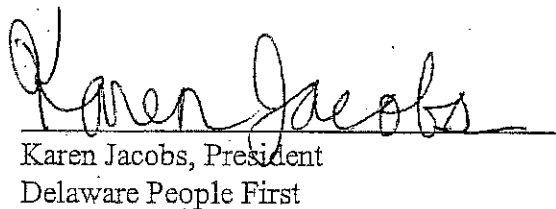
(a) DDDS will work cooperatively with Arc, HFL, and other stakeholders and interested parties to develop and encourage innovative financing structures, such as those that maximize available federal resources, and plans to allow some cost-sharing by persons receiving service or their families, in order to expand the availability of services. Without limiting the foregoing, DDDS intends to increase the Medicaid waiver capacity as the capacity of the DDDS community program grows in order to ensure continued federal funding of services.

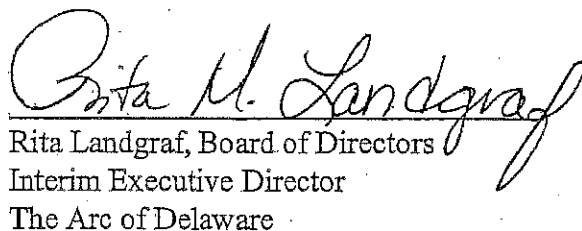
(b) DDDS commits to continue its efforts relating to the refinement and implementation of the DDDS Strategic Plan, and to consult with Arc, HFL and other stakeholders concerning the Strategic Plan and its implementation.


Timothy Brooks, President
The Arc of Delaware


Micki Edelson, Board of Directors
Homes for Life Foundation


Gary Heckert, Past President
The Arc of Delaware


Karen Jacobs, President
Delaware People First


Rita Landgraf, Board of Directors
Interim Executive Director
The Arc of Delaware

Robert Van Alstine

Kirk Van Alstine
By his parents and next friends,
Robert and Rose Van Alstine

Robert Van Alstine

Gwen Van Alstine
By her parents and next friends,
Robert and Rose Van Alstine

Norma Hagan

Terry Hagan,
By his mother and legal guardian,
Norma Hagan

K H Schroeder, Father/Guardian

Kenneth F. Schroeder
By his father and legal guardian,
Kenneth H. Schroeder

~~Jane Doe~~

(Jane Doe's signature witnessed by Daniel Harris on July 14, 2004)

Garry Pryor

Garry Pryor,
By his brother and sister-in-law
and next friends, Barry and
Connie Pryor

Brenda Simms

Brenda Simms
By her brother and legal guardian,
Morris Simms

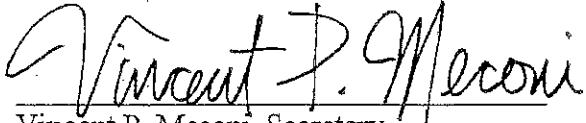
Marcy Desmond

Julie Desmond,
By her mother and legal guardian,
Marcy Desmond

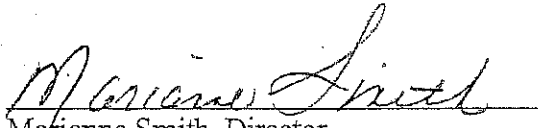
Diana Roe

Diana Roe
By her parents and next friends,
John and Martha Roe

STATE OF DELAWARE



Vincent P. Meconi, Secretary
Department of Health and Social Services



Marianne Smith, Director
Division of Developmental Disabilities Services

