



**Idaho Council on Developmental Disabilities**  
**SPECIAL INTERIM COUNCIL MEETING**  
**Zoom Video Conference**  
**October 29, 2019 DRAFT Meeting Minutes**

**Tuesday - October 29, 2019**

Council Members:		
Art Evans - absent	Emily Petersen	Deedra Hunt
Carly Saxe - absent	La Donna Tuinstra	Adrienne Seamans
Charlie Silva - absent	Ian Bott	Kristie Oakes - absent
Claudia Suastegui - absent	Jacob Head	Nanna Hanchett - absent
Colleen Sisk	Jacqueline Watson	Natali Pellens
Dina Flores-Brewer - absent	James Steed, CHAIR	Valerie Hurst
Alan Hansen	Julie Fodor	Michael Sandvig
Danielle Terry Reff (DR), VICE CHAIR		
Staff Members:		
Christine Pisani	Melissa Morales	Tracy Warren
Laurie Lowe	Marieke Edwards	Trisha Hammond
Guests:		
<b>Presenters:</b> Cynthia Yee Wallace Molly Kafka James Petroski	Amy Cunningham, DRI for Dina Flores-Brewer Richelle Tierney 208-206-2468 208-340-1615 208-351-4119 208-395-0286 208-420-3593	Jen Magelky-Seiler Larkin Seiler Jessilyn Matthews Toni Brinegar Lori Wixom Suzette Brown Mark Azman Heather --

**Welcome:** Christine Pisani, Council Director - Ground Rules, Review of Agenda Council member roll call.

**Cynthia Yee Wallace, Office of the Attorney General, Attorney for Division of Medicaid** Provided background information on the original KW Lawsuit.

**Questions:**

**Q:** When will the Department have to respond?

**A:** Four months after the date the court enters an order.

**Q:** Is there a reason why it would take another four years to complete the Community NOW project?

**A:** Yes, Cynthia will present that in her portion later in the agenda.

## **Molly Kafka, American Civil Liberties Union Idaho**

Provided the reason for the original lawsuit – budget tool transparency. Description of original settlement agreement.

## **James Petroski, Plaintiff Attorney** (Plaintiffs are 14 Individuals representing Class)

Discussion of development of budget tool and action items of settlement and timeline. Talked about important lawsuit issues: budget tool, form of notices, appeal process, dispute resolution process.

In 2018, IDHW asked for more time to implement more program changes to services beyond the budget tool. Plaintiff attorneys did not agree because the extension continued to violate individual's constitutional rights while an illegal budget tool continues to be used. Asked original 14 individuals who make up the class (plaintiffs). They said they didn't want to go another 3-4 years. Compromise proposal was to: have a 90-day turnaround on appeals, if budget doesn't provide enough money for skilled workers it is a health and safety issue... (see handout). IDHW said they could not do the proposed compromise, but they could complete the budget tool by 2023. That is why motion came forward to enforce settlement agreement to complete the budget tool as soon as possible. Also asked court to provide more safeguards – people in the program would be protected in meantime: budget appeal ruled within 90 days or person wins, allow argument in appeals that the inability to hire skilled direct support staff is a health and safety issue.

### **Questions:**

**Q:** What is IDHW willing to do if they are not able to finish the budget tool in the time allowed by the court? Concern what will happen when it comes time.

**A:** The judge will be the one to decide what has to happen. The Council can weigh in favor of the motion if they want the tool finished sooner.

**Q:** What about people who may not be able to qualify with the new tool? Don't know if I will qualify for DD services and may not be able to get the help I need. My concern is for myself and others.

**A:** The main focus of this settlement is the budget tool – not eligibility tool.

**A2:** The SIB-R (old assessment tool) is going away. IDHW has piloted a couple of different tools, one of them with over 800 individuals.

**Q:** What is the issue about the 90-day appeal turn-around - if that is already in federal law why are they refusing to do that?

A: I don't know. I feel the appeal process is taking too long and don't know why we can't reach agreement on that.

### **Cynthia Yee Wallace – Idaho Dept. of Health and Welfare (IDHW) Response to Motion**

IDHW could have just moved forward to do a new budget tool but decided to make an investment in changing the services in the program according to what individuals said they wanted through CNOW. It has devoted its administrators, staff, attorneys in getting input from individuals about how things could be improved. But this will take until 2023 to implement changes to the services and DD program.

There are 12 major components of the settlement agreement and a lot of progress has been made on those. Can't do CNOW work and complete work in 4 months, can't even get CNOW input on a budget tool in 4 months.

Progress made in making changes through CNOW:

- Improving the planning process and developing a person-centered model.
- Unbundling Residential Habilitation (Res Hab) services so individuals have more choice in how they spend their day. Choice of more than one provider.
  - IDHW could just work on the tool and unbundling Res Hab services without doing any other CNOW work, but this work probably not able to be completed in 4 months.
- People didn't want a service where they always have to be working on a skill. IDHW is working to create a service for people who just want support. But this work probably won't occur if we just do the tool.
- People also wanted to be able to get DD Waiver service to be able to do job exploration and work towards getting a job. But again, we won't have time to do that if we just complete a budget tool. This work takes time and need until 2023.

Motion to Enforce: The court has ruled that the budget tool is problematic and the Department is in agreement and have put a lot of safeguards in place to make sure rights were not violated and individuals received injunction budgets until the Department fixed their notices, but even once fixed they still are providing injunction budgets. There is also a safeguard for people coming into the program new.

If the Department has to divert its resources to the requirements of the motion, they will likely not be able to continue the work of CNOW.

There are exceptions allowed to the 90-day appeal process – if the parties want to discuss more, etc.

Parties (in lawsuit settlement) agreed to a definition of health and safety, people can ask for an exception review for more budget to address health and safety.

Disappointing that the plaintiff attorney is asking for a different health and safety definition now which gives relief for people on self-direction – more money to pay support staff higher wages but needs to apply to the entire class.

Only one person has been denied request for additional dollars in budget.

IDHW has done everything they said they would do up to this point and want to have the time to improve the program for everyone.

### Questions

**Q:** I am living in a Certified Family Home right now, if there has been a concern about that, why hasn't it been addressed by the class? If you have concern about increased funds for self-direction – why haven't I heard about this from the Department?

**A:** The plaintiffs brought that concern. The Department has agreed to provide more money if you can show that you need it for health and safety – since we have that, which applies to everyone, we don't need something special for self-direction.

**Q:** My (budget) number for Res Hab services was a lot higher than what I get now in self-direction. I am worried that the budget may be inaccurate if you go from Res Hab to self-direction.

**A:** IDHW has to take into consideration the reimbursement rates for providers who provide Res Hab services (like Supported Living) when figuring budget needs.

**Q:** When would the new services being developed be rolled out?

**A:** IDHW anticipates getting the new services rolled out in 2023. It makes sense to do the budget tool considering the new services so you don't have to do things twice.

**Q:** Is the software tool you are developing fixed in services and reimbursement rates or did I get this wrong?

**A:** the old tool was a spreadsheet with calculations that spit a number out. The new tool is a framework that uses a new more positive, respectful assessment. An individual is put into one of 5 tiers depending on their support needs. Each tier gets a certain amount of money and you can use it on the services you want.

**Q:** What is the purpose of tool, if an individual will be put into a leveled tier based on your score on the SIS?

A: There technically would not be a budget tool or formula – it will be the new tier framework. It is called a resource allocation model.

**Comment:** Concern that if we go with the ACLU (supporting the motion), the 120 days would not allow IDHW to go out and get individual's input on the tool. Also concern that you would not have all the participants at the table, not just the class (plaintiffs) of the lawsuit.

**Comment:** Unfortunate that we would move to this (motion) now with all the recommendations that have been made under CNOW and progress on those recommendations. Not sure why we would now have this motion. Concerned that putting the budget tool above everything else impacts positive changes in the system for all people. Could create a huge barrier to continuing the work and a barrier to adults getting the services they want.

**Molly response Comments:** IDHW has been working on this for three years and they would have 120 days to complete the tool. This is not a new lawsuit, it is the KW and IDHW has been working on this. We are excited about the work of CNOW and we believe the Department is invested in the work and we applaud that. We need to make sure that the rights of our clients (plaintiffs) are protected and the settlement enforced. Attorneys are being diligent in defending our clients.

**Q:** If the judge decides to go with the motion, is there a chance that my disability work will be for nothing?

No response.

**Q:** Why does the current health and safety definition not work for people on self-direction?

**Answer (James P.)** If we continue to rely on the old budget tool for another 3 or 4 or 5 years, your budget is stuck in time. People are having a harder time hiring the people they need. It impacts people in self-direction first because they are trying to hire workers and are stuck with budgets and low wage rates as determined by Department. We also proposed changes that would affect everyone equally.

**Q:** Why do you (Cynthia) think people on self-direction would be treated differently?

**Answer (Cynthia)** If your injunction budget is not enough, anyone can request an exception for more money in your budget to address health and safety. The plaintiff attorneys want to add another piece that is a carve out just for people on self-direction.

**Q:** Why the four years? What are the issues or elements that are causing it to be an additional four years? Concern about the increase in cost of living and need for community support workers.

**A:** An example of CNOW work in 2019, we are working on the person-centered planning process and we have subgroups that work on issues related to the process and system needs to do the process. We have talked with hundreds of individuals and providers about any recommendations coming out of CNOW work so we can get input from many more stakeholders. It is quite a process to get input from people in local areas and travel the state. Plus, IDHW has to meet its other obligations under the settlement – training and piloting the tools, working with consultants and experts, etc.... The Department could move faster without getting input from people with developmental disabilities, but we want to get that voice heard. It takes more time and it's been worth it.

**Q:** We're just gonna have to come to an agreement, compromise somehow and nobody likes compromise. You are asking ACLU to compromise with you so that you can get a better product – is that right?

**A:** I feel that is a correct statement.

**Q:** Would the work of CNOW be lost or just on hold for 120 days?

**A:** The Department would have to focus on litigation and turn our resources to court rather than the work on improving services. I feel that we would end up back in court and fighting instead of moving forward on CNOW.

**Q:** When motion was filed, was CNOW consulted or informed?

**Answer (James P.)** This is a class action and 14 individuals are the clients in the case that represent the class. We follow the class as represented by our clients (14 people) appointed by the court – they were consulted.

**Answer (Cynthia)** The Department is not saying it is not important to get the budget tool out, but you can't just throw money at a problem to solve issues, we want to work with CNOW and take steps to solve issues.

## **Council Discussion**

Christine: There has been a request from the Department to write a letter in support of the Department's response to the motion – continuing to ask for more time to respond with the budget tool and improved services. The consideration is that the Department

could spend their resources on the Resource Allocation Model and litigation (in court) or continuing the work on improving services and the system with CNOW and also the Resource Allocation Model.

DR: I wish we could have more time to think about this before making a decision. Alan agreed. He doesn't understand why it would be necessary to pull this out of CNOW so quickly.

Christine: this meeting is just for the Council. CNOW will have an opportunity to get this information soon.

Alan – I agree with the state on what's happening.

The question to Council members is if they want more time to think through this?

Jacob – I need more time. I don't think we are in a position right now to make a fair recommendation.

Adrienne – when are they hoping for an answer or letter from us?

Christine: CNOW members will meet on this on Nov 12<sup>th</sup>. But we don't want to spend too much time between learning about this today and making a decision. By the end of November at the latest, before the holidays hit.

Julie – getting back together for a vote in a few days would be better than waiting.

Christine – We could propose more time on Thursday or Friday?

**Q:** Why would going to the new budget tool in 120 days put off all the work of CNOW?

Christine: Department would need a lot longer than 120 days with lots of work to complete the budget tool. IDHW does not have enough resources to do the budget tool and continue to be at the table for CNOW work. HSRI (consultants) have said that the Department must unbundle rates for supported living (Res Hab) before the budget tool can be implemented and this takes their time and resources too. We would not have the Department at the table if we moved forward with CNOW and it would be difficult to make progress.

Mike – With my son, it has been services he received that were the problem not the money. So, working with the Department is more important than getting the budget tool ready.

Through Chat: My audio is not working - this is La Donna. I just want to say that ACLU really did a great thing in rallying the troops and initiating change. This is a great thing. However, it sounds like maybe the representatives in the lawsuit (14 named

individuals?) may not be aware of the progress and steps being made with Community Now. I know I hear only negatives about H& W out in public . . . maybe the individuals in the lawsuit are NOT involved in CN (why not????). Do we just need to do better publicity about the progress being made - maybe we are all really headed the same direction and we don't know it?

Christine: Some members of the class have been involved in CNOW and have always been invited. Many attended listening sessions around the state and the education tour earlier this year and have opportunities to learn about CNOW work.

La Donna: Thank you - I am surprised that all 14 wanted to initiate this next step (the motion) - unanimous decisions are rare.

Christine will send an email tonight to see if folks have time to meet on either Thursday or Friday morning. The group could take an hour to review and vote.

Adjourned at 6:15pm