

**ACCESS AGREEMENT BETWEEN
WASHINGTON PROTECTION AND ADVOCACY SYSTEM, INC.,
AND
THE DIVISION OF DEVELOPMENTAL DISABILITIES,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES.**

This agreement is entered into by the Washington Protection and Advocacy System, Inc. (hereinafter WPAS), the protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. sec. 6000, et seq., to investigate alleged incidents of abuse, neglect, and rights violations of persons with developmental disabilities, and the Division of Developmental Disabilities (hereinafter DDD) of the Department of Social and Health Services, for the purpose of clarifying the rights and responsibilities of WPAS with respect to its access to individuals with developmental disabilities, clients, programs, and records.

The Department of Social and Health Services, specifically DDD, is responsible for providing services to individuals with developmental disabilities, to the extent funding is available. In providing those services, DDD must protect the confidentiality of records and information regarding those individuals pursuant to the state and federal confidentiality laws.

WPAS is charged by federal law to protect the legal and human rights of individuals with developmental disabilities. WPAS provides legal and related advocacy services to meet that obligation. WPAS is also required to maintain the confidentiality of records and information regarding individuals with developmental disabilities consistent with 42 U.S.C. § 6000, et seq.

This agreement governs the access of Washington Protection and Advocacy System to DDD employees who do not work in Residential Habilitation Centers (RHCs) and records maintained by DDD which are associated with individuals with developmental disabilities living outside of RHCs.

Federal laws and regulations also provide WPAS with access to community programs and individuals with developmental disabilities served by DDD contracted providers. DDD will work with community providers and WPAS to arrive at an agreement governing access to DDD contracted programs and the people served by them.

I. General.

A. That all terms used in this agreement which are defined in the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6000, et seq., will have the meaning given to them in the Act, unless otherwise stated in this agreement.

B. This agreement is intended to carry out the provisions of the Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6000, et. seq., and therefore, if this agreement is or becomes inconsistent with the Act or the implementing regulations promulgated thereto, the terms of the Act and its implementing regulations will control.

C. If any provision of the agreement is held invalid, the parties intend that the remainder of the agreement not be affected.

II. Definitions.

- A. Actively Aggressive: means that the individual with developmental disabilities is assaulting others or is threatening to do so, or the individual with developmental disabilities is actively harming him or her self.
- B. Client Services: means legal representation. The term does not include monitoring and observation.
- C. Complaint: as defined in 45 CFR 1386, or hereinafter amended, includes, but is not limited to, any report or communication, whether formal or informal, written or oral, received by WPAS including media accounts, newspaper articles, telephone calls (including anonymous calls), from any source alleging abuse or neglect of an individual with a developmental disability.
- D. DDD Consumer: means an individual with a developmental disability receiving support from a program funded by DDD. The term includes DDD consumers who have died or whose whereabouts are unknown. See 45 CFR 1386.22(a)(2).
- E. DDD Employees: includes those individuals who are employed by DDD or who volunteer for DDD to provide services to individuals with developmental disabilities.
- F. Emergencies: means actions, omissions, or conditions that immediately threaten an individual with a developmental disability's health, life or well being.
- G. Individual with a Developmental Disability: means individuals with developmental disabilities in the process of applying for or who have been found eligible for services from DDD.
- H. Monitoring: means unaccompanied access to all residents of a program at reasonable times, which at a minimum shall include normal working and visiting hours to ensure program compliance with respect to the rights and safety of DDD consumers. See 45 C.F.R. §1386.22(g).
- I. Probable Cause: as defined in 45 CFR 1386, or hereinafter amended, means a reasonable ground for belief that an individual with developmental disabilities has been, or may be, subject to abuse or neglect. The individual making such determination may base the decision on reasonable inferences drawn from his or her experience or training regarding similar incidents, conditions or problems that are usually associated with abuse and neglect.
- J. Program: consistent with the definition of "facility" in 45 CFR 1386.19 includes any setting that provides care, treatment services and habilitation, even if only "as needed" or under a contractual arrangement. Programs include, but are not limited to, community living arrangements (e.g., group homes, adult family homes, congregate care facilities, boarding homes, individual residences and apartments), day programs, juvenile detention centers, nursing homes, homeless shelters, jails and prisons.
- K. Provider: means those individuals/corporations with whom DDD contracts to provide services to DDD consumers, including but not limited to behavioral management services, family support services, vocational support services, sheltered employment, tenant support, intensive tenant support, alternative living, supported living, group home, adult family home, and congregate care facilities, chore services, medicaid personal care and other personal assistance services.

L. Provider Employee: includes those individuals who are employed by a provider or who volunteer for a provider to provide services to individuals with developmental disabilities.

M. Records: as defined in 42 U.S.C. § 6042 and 45 CFR 1386(22)(b), or hereinafter amended, reports prepared by any state staff or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, injury, or death that describe incidents of abuse, neglect, injury, or death occurring at a facility, investigative documents and discharge planning records. The term records also includes DDD consumer abuse and neglect committee reports but does not include peer review death reports, attorney work product, and records which are otherwise privileged under state or federal law.

N. Regular Program Activity: includes work assignments, education programs, therapy, health services, and daily living activities.

O. SOLA: means the DDD consumer support program, State Operated Living Alternative.

P. WPAS Client(s):

(1) Individuals with developmental disabilities who do not have a guardian or legal representative and who indicate either orally or in writing to a WPAS employee that they want WPAS to represent them.

(2) Individuals with developmental disabilities without guardians who are unable to communicate their wishes regarding protection and advocacy services when WPAS has received a complaint of abuse and/or neglect about the individual with a disability, or WPAS determines that there is probable cause to believe that the individual with a developmental disability has been abused or neglected.

(3) Individuals with developmental disabilities who have a guardian or legal representative where the guardian or legal representative has consented to the representation in writing.

(4) Individuals with developmental disabilities whose guardian or legal representative fails or refuses to act on behalf of the individual with a developmental disability, despite being contacted by WPAS, after a court has determined that the guardian has failed or refuses to act.

(5) A WPAS client does not include those instances where WPAS represents the guardian. WPAS shall notify the DDD Regional Administrator or designee in writing that it represents the individual with developmental disabilities and forward a copy of that notice to either the guardian or the individual with developmental disabilities.

Q. WPAS Employees: includes paid employees and volunteer employees as identified by WPAS. Each employee shall carry WPAS identification.

III. Access to Programs.

A. DDD will not obstruct WPAS access to programs when consistent with the law and will ensure that SOLA and other programs staffed by DDD employees will comply with this agreement. For programs which contract with DDD to provide services, DDD will not

obstruct WPAS access to programs when consistent with the law, but WPAS will assume primary responsibility for enforcing its access rights. WPAS will attempt to resolve access issues at the lowest level possible. In cases where there is danger of imminent or continuing harm to an individual with developmental disabilities WPAS will report the occurrence to DDD, consistent with the Washington State Bar Association Rules of Professional Responsibility and other applicable state law. In those cases and where there is a pattern of failure to provide access for WPAS to a program or DDD consumers, WPAS will report this failure to DDD, and DDD will respond by investigating the allegation of failure to provide access and will take appropriate actions.

B. WPAS staff will identify themselves to any staff present when they arrive at a program by showing a WPAS photo identification badge. WPAS shall provide the DDD director with a list of employees and their pictures by July 1, 1997, and WPAS shall update this list as necessary.

C. WPAS shall have access to SOLAs and other programs staffed by DDD employees as specified in this section. This agreement does not affect the right of an individual with a developmental disability served by such a program who owns or rents his or her own home to deny access to WPAS to his or her home. However, DDD employees do not have the right to deny WPAS access to programs or the residences of individuals who are served by programs.

D. WPAS staff shall have access to all programs when WPAS has received a complaint or has probable cause to believe that an incident of abuse, neglect, or other rights violation has occurred;

E. WPAS staff shall have access to all living areas of SOLAs and other programs staffed by DDD employees during regular business hours for the purpose of providing information on legal rights and self advocacy to the individuals with disabilities who participate in the program. During the course of such access, WPAS staff shall be allowed to engage in informal discussions with the individuals with disabilities, out of the presence of DDD employees or others, in an area that affords privacy.

F. WPAS staff may visit any location where residents are served by DDD employees, where the purpose is observation or monitoring compliance with respect to the rights and safety of service recipients (CFR 1386.22(g)(2)). Such observation and monitoring activities need not be limited to clients of WPAS, and WPAS staff shall not be required to schedule or give prior notice of such visits to DDD employees, provided that WPAS has the permission of a DDD consumer. WPAS staff shall be permitted to monitor the program without an accompanying DDD employee. WPAS staff shall conduct all monitoring activities in a manner which is respectful of the privacy of the individuals with disabilities who reside in the monitored program.

IV. Access to Individuals with Developmental Disabilities.

A. WPAS staff will be provided access to their clients in the same manner as such access is provided to privately retained and/or court appointed attorneys. DDD shall assist and support the professional relationship between WPAS and its clients. Written consent for such access is not required.

B. WPAS recognizes that all individuals with developmental disabilities have the right to refuse to talk with WPAS, to have a third party present during the interview, or to reschedule the appointment for a more convenient time. WPAS shall advise their clients and other individuals with developmental disabilities with whom they have contact of these

rights before each meeting. A person who does not wish to talk with WPAS staff shall be allowed to communicate this directly and privately to WPAS staff unless he or she overtly manifests fear of being alone with the WPAS staff. When the individual with a developmental disability overtly manifests such fear by words or behavior, WPAS shall respect that person's desires and not meet alone with that person.

C. WPAS will encourage its clients and other individuals with developmental disabilities to notify DDD and/or providers of complaints regarding DDD services and to resolve those complaints through any existing dispute resolution process.

D. WPAS staff shall comply with all safety and security requirements of DDD. DDD will communicate these requirements to WPAS staff.

E. DDD employees shall not interfere with WPAS staff in obtaining a private space for meetings between WPAS staff and individuals with developmental disabilities. Private space does not mean a corner of a common area room or other location which would afford other residents and DDD employees open access to WPAS employees in living areas or on the grounds. DDD employees shall respect the confidentiality needs of the individual with a developmental disability and WPAS. Where an individual with a developmental disability indicates that he or she does not want to meet in a private space, WPAS staff will respect this request.

F. WPAS staff will not be required to schedule visits with DDD employees in advance of their visits. However, WPAS staff may contact DDD employees to do so if access to a WPAS client or other individual with a developmental disability will be facilitated due to the individual's daily activities.

G. WPAS staff shall have the right to unaccompanied access to any SOLA or program staffed by DDD employees, and access to any individual WPAS client or DD consumer they are authorized to serve, subject to the following limitations:

(1) While WPAS need not notify the DDD employees prior to meeting with its client or DDD consumer, WPAS agrees not to disturb a client or DDD consumer if the WPAS employee arrives at the residence or other building in which the client or DDD consumer is served and the client or DDD consumer is engaged in regularly scheduled program activity. In such case, WPAS staff will be permitted to observe or otherwise verify the programming without disturbing it. If WPAS staff presence disturbs or is objected to by the WPAS client or any other DDD consumer who is present, WPAS staff shall make arrangements to meet with the WPAS client or DDD consumer at a later time. Where consulted prior to making an appointment, DDD employees will cooperate with WPAS staff in making scheduling arrangements. The WPAS employee shall not disturb nor interrupt the activity. If the activity is confidential, WPAS shall obtain the client or DDD consumer's permission to observe the activity or shall respect the client or DDD consumer's right to privacy. WPAS staff will then either wait until the activity is completed or reschedule the visit at a time that is mutually agreeable to WPAS staff and its individual client or DDD consumer, no later than 48 hours later.

(2) If the WPAS employee arrives for a meeting with a client or DDD consumer and the individual is actively aggressive, in programming to address this behavior, or receiving "one-to-one" supervision, in such a situation, WPAS staff will be permitted to observe the individual from a safe distance or otherwise verify that the individual is actively aggressive. WPAS staff will then either:

(a) wait until the individual's aggressive behavior has stopped and be permitted to meet with the individual privately while DDD employees remain in viewing distance; unless such distance would place the individual with developmental disabilities at serious risk of harm based on that individual's documented behavioral issues; if the individual would be at serious risk of harm, WPAS and DDD shall work cooperatively to address WPAS need for confidentiality with the individual's need for safety; provided that any such interview does not interfere with the individual's Behavior Support Program, Individual Program Plan, Individual Service Plan, or other program plan, nor interfere with staffing needs for other individuals with developmental disabilities; or

(b) reschedule the visit at a time mutually agreeable to WPAS and DDD employees, but no later than forty-eight (48) hours;

(c) if the WPAS staff is notified that an individual is either actively aggressive or receiving one-to-one supervision and if knowing this the staff chooses to meet with the individual, WPAS agrees to release, indemnify, and hold DDD, DSHS, the State and its employees, agents, officers, and servants harmless for any injuries that occur from any claims or cause of action asserted by any WPAS employee or agent who is injured as a result of any act committed by an individual with developmental disabilities except that those circumstances where DDD employees' willful misconduct is the proximate cause of the injury to WPAS' employee or agent. WPAS agrees that its staff shall sign a statement to this effect prior to requesting to meet with any such individual. If the WPAS staff refuses to sign such an agreement, DDD employees may deny the WPAS staff access to the individual until such time as DDD employees determine that safety to the WPAS staff is no longer an issue. When a WPAS staff member elects to meet with an individual who is actively aggressive, it is neither negligent nor willful misconduct for a state employee to allow the meeting to take place.

H. All individuals with developmental disabilities who wish to contact WPAS staff shall be provided uncensored access to writing materials, WPAS' address and toll-free telephone number, a stamped envelope, and/or access to a telephone for private conversations without monitoring by or permission from DDD employees.

I. SOLAs and programs staffed by DDD employees shall permit individuals with developmental disabilities to set appointments with WPAS staff at times agreeable to both the individual with a developmental disability and WPAS staff. If the DDD employees know that a meeting with a DDD consumer will be disruptive of the DDD consumer's regular program activity, WPAS staff shall be informed of this and allowed to reschedule the appointment in order to meet with the DDD consumer so that the appointment does not disrupt his or her regular activity.

V. Access to Records of Individuals with Developmental Disabilities.

A. WPAS has access to records as provided in 42 U.S.C. § 6042, *et. seq.* WPAS has legal authority to review an individual with developmental disabilities' records only when there is consent or, if a DDD consumer is unable to consent, there is a complaint or probable cause to believe a DDD consumer has suffered abuse or neglect. WPAS has no general right to review records except in these circumstances.

B. Upon receiving a valid, written consent, DDD will have 48 hours in which to schedule an appointment with WPAS so that it may come to the record location to review specified records. DDD will verify that WPAS has received consent to view such records, or if the DDD consumer is unable to consent and there is no guardian to consent, that there is a complaint or probable cause to believe the DDD consumer has suffered abuse or neglect. DDD shall make the requested records within its possession available within five working days from the date the request is made.

C. WPAS may access records of:

(1) any DDD consumer if he or she consents, or if he or she has a legal guardian with the power to consent for the DDD consumer and that guardian consents;

a) the DDD consumer or guardian shall give written authorization for access on a form approved by WPAS and DDD jointly.

(2) any DDD consumer:

a) who by reason of his or her mental or physical condition is unable to authorize WPAS to have access to their records;

b) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the state; and

c) with respect to whom a complaint has been received by WPAS or with respect to whom, as a result of monitoring or other activities there is probable cause to believe that such individual has been subject to abuse or neglect.

d) If records are requested pursuant to this section, the request shall be in writing and will state that the resident, by reason of his or her mental or physical condition is unable to authorize WPAS to have access to his or her records, does not have a legal representative, and that a complaint has been received by WPAS with respect to the DDD consumer or that there is probable cause to believe the resident has been subjected to abuse or neglect. The DDD case manager will make a determination regarding whether a DDD consumer is able to consent to access within 3 working days, except in case of an emergency.

(3) In the case of a resident who has a legal guardian, and upon request by WPAS, DDD will provide WPAS with the name, address and telephone number of the legal guardian by 5 p.m. the next business day so that WPAS can contact such representative and offer its assistance. If the guardian has been contacted by WPAS and failed or refused to act on behalf of the individual WPAS has received a complaint sufficiently that sufficiently identifies the individual or WPAS has probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy, WPAS shall obtain court approval for such access.

a) If a guardian refuses to consent to allow WPAS access to records, and WPAS still wants access, WPAS will file a lawsuit to access the records and allow a court to determine whether the guardian has failed or refused to act on behalf of the DDD consumer. WPAS agrees to provide legal notice to DDD of any such proceeding. If the guardian refuses to provide written

consent for WPAS to access the records, DDD shall not make the records available absent a court order.

b) WPAS shall attempt to contact the guardian to obtain consent. Unless an emergency exists, then WPAS shall contact the standby guardian if one has been designated. If no standby guardian is appointed and the guardian is unavailable, and WPAS determines that the DDD consumer is at risk of serious injury or death, DDD shall make the records available to WPAS to review.

D. WPAS staff may review the requested records within normal business hours in the building or room in which such records are provided. A DDD employee may remain in the room while the records are viewed. Under no circumstances may WPAS staff remove the original records, or any part thereof, from the room where they are viewed.

E. WPAS agrees to reimburse DDD for the costs of copies at the same rate charged for public disclosure requests, currently \$.15 per page. When feasible, copies will be provided on the day the copies are requested. If that is not possible, DDD will make the copies available within 10 days of the request.

F. WPAS shall request guardian information or access to DDD consumer records of the DDD Regional Administrator of the region in which the DDD consumer resides. Thereafter, their contact regarding that DDD consumer shall be the regional administrator, or his or her designee. DDD shall provide WPAS a list with contact information for purposes of access to records. DDD agrees to update that list at least annually.

G. In order to access DDD records, WPAS will send a written request directly to the DDD Regional Administrator or designee in custody of the records. In the request, WPAS will identify the individual whose records it seeks. WPAS need not identify the individual by name, but must sufficiently identify the individual so that the person reviewing the request can determine whose records are being sought. WPAS will specify which records it wants and for which time periods. WPAS will also indicate that it has received a complaint concerning the individual so that it has probable cause to believe the individual has suffered abuse or neglect. WPAS need not further specify the nature of the complaint nor who made the complaint.

H. In the event DDD denies access to records pursuant to a request, WPAS staff may request that the denial be in writing and include the reason for the denial.

I. WPAS will limit its request to records it considers necessary to accomplish its investigation. DDD may request that WPAS specifically identify the records that it is seeking if the request is too broad or voluminous.

VI. Outreach.

A. All individuals with developmental disabilities shall have access to WPAS staff for the purpose of obtaining information about their legal rights and self-advocacy. WPAS staff shall be allowed to engage in informal discussions with DDD consumers who wish to speak to them out of the presence of DDD employees in an area that affords privacy.

B. WPAS may have regularly scheduled information/training sessions for DDD consumers and parents/guardians/family members regarding WPAS' services and individual rights. DDD employees may attend outreach and scheduled information sessions only with advance written permission of WPAS staff.

C. DDD agrees to give WPAS a list of all current DDD consumers and their addresses. DDD will provide WPAS an updated list annually.

D. DDD agrees to provide DDD consumers with notice of WPAS services at the time of application for DDD services. WPAS will provide DDD with copies of their brochure and/or any other information they want DDD to distribute at that time.

E. DDD agrees to require contractors to comply with 42 U.S.C. §6000 *et. seq.* and 45 C.F.R. Parts 1385-86 by including the requirement in contracts. Current contracts will be amended to include this requirement when they are renewed.

VII. Authority to Investigate Allegations of Abuse and Neglect.

A. WPAS shall have unaccompanied reasonable access to DDD consumers and facilities when necessary to conduct a full investigation of an incident of abuse or neglect. This access shall include the opportunity to interview any individual with a developmental disability, any DDD or provider employee, or any other person who might be reasonably believed by WPAS to have knowledge of the incident under investigation; and to review what WPAS is entitled to review pursuant to this agreement. WPAS shall be permitted to do its own investigation of allegations of abuse or neglect regardless of any pending action or investigation by the State or any other individual or entity.

B. WPAS' investigations shall not interfere with any other ongoing investigation. WPAS employees shall not visit areas at times that would violate any person's right to privacy.

C. DDD shall allow and encourage all employees and providers to talk openly with WPAS employees. WPAS will not ask staff to disrupt their work schedules or responsibilities to talk with WPAS. Except in cases of emergency, WPAS will schedule appointments with staff in advance.

D. While DDD and provider employees shall be encouraged to cooperate with WPAS, employees have the right to refuse to talk with WPAS. WPAS shall notify employees of that right prior to any attempt to interview them.

E. Any complaint concerning WPAS staff shall be immediately brought to the attention of the WPAS Executive Director or his or her designee. Upon receipt of a complaint, the WPAS Executive Director or his or her designee shall conduct an investigation and submit a written response to the State within fourteen (14) days in an effort to resolve any complaints as expediently as possible. DDD reserves the right to file formal charges if the behavior places a DDD consumer's health or safety at risk.

F. WPAS shall inform DDD and providers, in writing, of its findings and concerns upon completion of any investigation activity undertaken pursuant to its authority under 42 U.S.C. § 6000 *et. seq.*, and the access rights granted to WPAS in this agreement, in an effort to resolve DDD consumer complaints or concerns prior to commencing litigation, unless WPAS believe that such delay would result in serious injury or harm to the DDD consumer.

VIII. Implementation of the Agreement.

A. The DDD Director shall ensure that each supervisor will conduct an annual meeting with his or her staff to provide information regarding the parties' rights and responsibilities under this agreement. The DDD director shall ensure that each employee of DDD has read

and signed a copy of a form indicating that they have read this agreement at the time of hire and at the time of his/her annual evaluation. DDD and WPAS shall develop a mutually agreed to summary of this agreement for use in informing DDD employees of the parties' rights and responsibilities. When DDD and WPAS develop and agree regarding the content of this summary, DDD employees shall be required to read the summary, rather than reading this agreement, and acknowledge that they read and understood the summary with a signature.

B. The agreement is effective as of the date it is signed.

C. DDD agrees that having an agreement in place that would govern WPAS and DDD provider relationships is appropriate. This agreement will affect contractual relationships, so it will be negotiated with providers prior to implementation. This negotiation will take place during the 1997-1998 provider contract negotiations. DDD will request WPAS review the proposed contract language prior to contract signing by DDD. The goal of this negotiation process will be to arrive at an agreement which implements the federal statutory and regulatory requirements in a manner consistent with the provision of quality, individualized services and supports to people with developmental disabilities living in the community.

D. The DDD director will make changes as necessary to implement this agreement by September 1, 1997, and prior to implementing changes will confer with WPAS.

E. WPAS and DDD agree to work together to assist providers in becoming familiar with WPAS access to programs. DDD agrees to host a forum in each region to familiarize providers with the access provisions. WPAS agrees to make staff available as presenters at regional forums, and otherwise as mutually agreed to with providers. DDD will distribute to providers a summary of the access provisions. This summary will be prepared by WPAS, and will be subject to the review and approval of DDD prior to distribution.

IX. Miscellaneous.

A. WPAS agrees that its staff shall not give medical advice and shall not engage in the practice of medicine. It is WPAS' intent and purpose to give legal advice. For example, WPAS will not tell DDD consumers not to take medication or that medications are wrong for them. WPAS will not discourage individuals with developmental disabilities from participating in programs or activities. WPAS may explain DDD consumer legal rights including the right to informed consent, their right to be told of the risks and benefits of medication or medical procedures, their right to refuse to take medications and the procedure to follow if the DDD consumer does not wish to take medications, and their right to refuse to participate in experimental programs or research, all as guaranteed under state and federal law.

B. WPAS agrees that there are some DDD consumers who are identified as medically fragile or to have behavioral concerns that require constant monitoring. If WPAS requests a meeting with such a DDD consumer and DDD determines that the DDD consumer cannot be left unsupervised with a WPAS employee, a DDD or provider employee shall be present during any meetings. If DDD consumers are hospitalized due to medical conditions, DDD or provider employees may remain within viewing distance if necessary for the DDD consumer's health and safety. The employees will not interfere with the meeting except for medical reasons and will respect the DDD consumer's privacy to the extent possible given his or her medical needs.

C. This agreement delineates the usual process by which WPAS and DDD will work together. In some situations, it may be necessary to amend these procedures. WPAS and DDD may agree to modify these procedures as necessary for any particular situation.

X. Dispute Resolution.

A. WPAS and DDD agree that informal resolution of disputes is preferred. If WPAS staff and the DDD Regional Administrator or designee are unable to agree about an issue regarding interpretation or application of this agreement, they will request the WPAS Executive Director and the DDD Director review the situation and attempt to resolve the disagreement.

B. The Directors Meeting and Mediation process are mandatory for both parties. The only exception to this term of the agreement is where WPAS, in good faith, has probable cause to believe that there are exigent circumstances warranting immediate access. Such circumstances are defined as "emergencies" as defined in the access agreements. In such cases, the WPAS Executive Director or his or her designee shall contact the Director of the Division of Developmental Disabilities or his or her designee; and/or Office of the Attorney General to attempt to resolve the dispute. If the exigent access dispute is not resolved by the end of the following business day, WPAS may immediately take any necessary legal action, including seeking a temporary restraining order and preliminary injunction or an order to show cause in order to secure the necessary access without going through the ADR process discussed herein. When WPAS does take such action, it shall give the Office of the Attorney General advance notice of such action by telephone and facsimile.

C. In the event that there is an access dispute regarding any aspect of the Access Agreements between WPAS and DDD (Community), the aggrieved party shall send written notice to the director of the other party (e.g. WPAS Executive Director, the Director of DDD, or their designees) of the dispute and the desire to meet to attempt to resolve the dispute. The DDD director (or his/her designee) shall meet with the WPAS Executive Director (or his/her designee) within **ten days** after receiving written notice from the aggrieved party. The date of receipt of notice shall be in accordance with Civil Rule 6 of the Washington Court Rules. The meeting may take place in person or telephonically. The parties have the right to bring their counsel to the directors meeting, however it is the preference of the parties not to have their counsel present. In the event a party intends to have his or her counsel present, that party will advise the other party of this intent in advance of the meeting. However, when either director (or his or her designee) is an attorney, it will be understood and expected that the other director may have his or her attorney present without prior notice.

D. In the event that the access issues are not resolved by a meeting between the Director/CEO and Executive Director of WPAS or their designees, the parties agree to attempt to resolve the dispute through mediation absent exigent circumstances as described in paragraph 1. An available mediator from the mutually agreed upon Mediator Panel list as described below will be used to conduct the mediation.

Mediation will be scheduled to occur as soon as possible following the directors meeting, but will occur no later than **30 days** from the time mediation is agreed upon by the parties, absent written agreement by both parties to extend this timeline. The mediation may take place telephonically or in any manner the mediator believes will be efficient and conducive to a productive mediation. If, at any time during the mediation, either party declares an impasse, the mediation will end. The parties are then encouraged, but not

required, to arbitrate the dispute. The costs of mediation shall be borne equally by the parties. If no litigation results within 90 days of the completion of mediation, WPAS shall withdraw its access request. Nothing, however, prevents WPAS from renewing its request in the future should that become necessary. In such event WPAS renews the request, and that request is denied by the State, the ADR process will begin again.

E. Within **90 days** of the execution of this agreement, the parties shall select a panel of at least 4 mutually agreeable mediators. There will be two separate lists: one for WPAS and DDD and one for WPAS and the MHD. The parties agree that any one of the selected panel members will mediate all disputes related to the Access Agreement. However, the parties will rotate the order of contacting the panel members for each mediation in a nonstrategical manner.

In order to select this panel, within **60 days** of execution of this agreement, the parties will each propose at least 4 mediators. The parties will exchange, via fax, their list of proposed mediators and the mediators' curriculum vitae and any other necessary facts such as cost, mediation rules, etc. If the parties cannot agree upon at least 4 mediators from the first exchange of lists, the parties will exchange additional lists of mediators until an agreement can be reached. However, a final agreement must be reached no later than **90 days** from the date of the settlement agreement of this case absent written agreement for an extension of a specific amount of time.

Any party may strike a mediator from the list except that a party may not strike a mediator from the panel once the mediation process has been initiated to resolve a dispute. If a party strikes a mediator from the panel, that mediator will be replaced by another mediator using the same mediator selection process as described above.

F. In the event that the access issues are not resolved through mediation, the parties may agree to attempt to resolve the dispute through arbitration. Written agreement to proceed to arbitration must be made within **five working days** of the completion of mediation described in Section B. An available arbitrator from the mutually agreed upon Arbitrator Panel list, as described below, will be used to conduct the arbitration of the dispute. Arbitration will be scheduled to occur as soon as possible, but will occur no later than **45 days** from the time arbitration is agreed upon by the parties, absent written agreement by both parties to extend this timeline. Prior to the time of final agreement to arbitrate the dispute, the parties shall agree in writing whether the arbitration decision will be binding or advisory, and if advisory, whether that opinion is admissible in court. If no litigation results within 90 days of the completion of this arbitration, WPAS shall withdraw its access request. Nothing, however, prevents WPAS from renewing its request in the future should that become necessary. In such event that WPAS renews its request, and that request is denied by the State, the ADR process will begin again.

G. Within **120 days** of the execution of this agreement, the parties shall select a panel of at least 4 mutually agreeable arbitrators. The parties agree that any one of the selected panel members will arbitrate all disputes related to the Access Agreement. However, the parties will rotate the order of contacting the panel members for each arbitration in a nonstrategical manner.

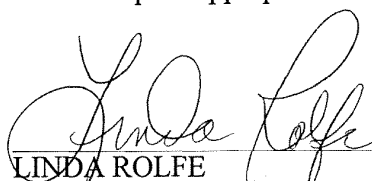
In order to select this panel, within **60 days** of the execution of this agreement, the parties will each propose at least 4 arbitrators. The parties will exchange, via fax, their list of proposed arbitrators and the arbitrators' curriculum vitae and any other necessary facts such as cost, etc. If the parties cannot agree upon at least 4 arbitrators from the first exchange of lists, the parties will exchange additional lists of arbitrators until an agreement can be reached. However, a final agreement must be reached no later than **120 days** from

the date of the settlement agreement of this case absent written agreement for an extension of a specific amount of time.

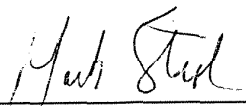
Any party may strike an arbitrator from the list except that a party may not strike an arbitrator from the panel once the arbitration process has been initiated to resolve a dispute. If a party strikes an arbitrator from the panel, that arbitrator will be replaced by another arbitrator using the same arbitrator selection process as described above.

H. The timeframes for dispute resolution shall be as detailed above. Any timeframes not described in this proposal will be those set out in the current relevant access agreements. Any timeframe may be extended by written agreement of the parties.

I. The parties agree they will abide by the timeframes contained in the Access Agreement and this settlement agreement. The parties may mutually agree to extend any timeframe. If a party fails to act or respond within the allotted time, the other party may request appropriate sanctions be imposed as provided by law or civil rule.

 11/17/00

LINDA ROLFE Date
Acting Director
Division of Developmental Disabilities

 1-4-00 01 MBS 1-18-01

MARK STROH Date
Executive Director
Washington Protection & Advocacy System