

KERN REGIONAL CENTER

Supporting Equality, Independence & Opportunity



February 24, 2015

Mr. Santi J. Rogers  
Department of Developmental Services  
1600 9th Street  
P. O. Box 944202  
Sacramento, CA 94244-2020

Dear Director Rogers:

Thank you for your January 30, 2015 letter that provides the Kern Regional Center Board of Directors with an extension for submitting the requested Corrective Action Plan. We take seriously the concerns of the Department of Developmental Services regarding past and present practices at KRC, and this additional time gives us the opportunity to provide the Department with a solid plan to remedy these concerns.

As stated in the letter, the Department welcomed the KRC Board to contact the Department if we had any concerns regarding the extension or the "assessment findings" attached to the January 30, 2015 letter. The KRC Board has now had an opportunity to review the letter, and we feel compelled write to the Department about our concerns regarding the findings.

In consultation with our attorney, there appears to be no legal or factual credibility to these statements in the "assessment findings." It is our understanding that there was no qualified auditor or mechanism involved in the alleged discovery leading to the "findings." We are unaware of any questionnaire or qualitative control tool provided to the KRC staff members who were interviewed, and it appears that there was no attempt made to select a representative cross-section of KRC staff members to interview.

Most troubling is that the Department provided no opportunity to have these extremely serious subjects and allegations discussed with KRC leadership and the KRC Board prior to the Department making the findings public on February 3, 2015 after our regular Board meeting. At the very least, the Department should have allowed the KRC Board to respond to the findings and incorporate the KRC Board's response to the findings before going public. To do otherwise, in the KRC Board's opinion, is a denial of KRC's due process.

For example, related to any audit, KRC has been afforded the opportunity to respond to a draft version from the Department prior to the release of a final audit posted for public review. But this courtesy was not extended to KRC leadership and the KRC Board in this case. This is particularly important for a document that includes criticism based on

qualitative assessments by the Department behind closed doors, from a Department that was not completely transparent as to the reason they came to KRC in the first place, without the opportunity for KRC leadership and KRC Board to understand why the Department has reached these conclusions, and to be given the chance for KRC leadership and the KRC Board to respond to these concerns in context.

The public release of the "assessment findings" was facilitated by the Department just three days after releasing it to the Board President at 5:01 PM on Friday evening of January 30, 2015. This release came after six weeks of delay from the promised delivery by the Department. It is our understanding that the Department felt it necessary to provide a copy to KRC staff in response to what, in our understanding, the Department deemed a Public Records Act request at the Board meeting of February 3, 2015 without even the courtesy of informing the Board of this release or providing KRC the opportunity to contest the allegations. It seems that the procedures under the Public Records Act for requesting the release of the findings and the subsequent release were not followed. KRC was also not afforded the opportunity under the Public Records Act to contest the release of the letter.

While KRC is absolutely committed to transparency, the tenor and scope of these findings are clearly unsubstantiated and KRC leadership and the KRC Board were never allowed an opportunity to respond to these allegations prior to their release. Now, as a result of the Department's actions, these unsubstantiated allegations have been put forth into our organization and the community as findings of fact. While the KRC Board is making every effort to respond to the Special Contract Language and address the concerns referenced broadly through initial correspondence (received on December 11, 2014), our sense of these allegations and their release is an unwarranted "rush to judgment" by the Department.

KRC is committed to move forward in corrective action. KRC leadership and the KRC Board is not "preoccupied" with the past but strongly believes that correcting the past and aligning operations with legal and regulatory guidance is critical to avoid future anomalies in contract and service delivery. The KRC Board is committed to supporting the entitlement to all individuals under the Lanterman Act. KRC is equally committed to assuring the fiduciary trust provided by the people of the State of California as monitored by the Department.

While many of the identified efforts to remedy historic practice have been documented to the Department through audit, correspondence and meetings, KRC leadership remains ready to respond to any factually identified issues that the Department provides. It is worth noting that the 2011 Audit (fiscal years 2008-2009 and 2009-2010) produced nearly \$6 million in findings. Upon review and appeal, KRC leadership provided documentation to reduce those findings to approximately \$650,000 and is collecting repayment from vendors on most all of those findings. The 2013 audit (fiscal years 2010-2011 and 2011-2012) was received 15 months after the exit meeting and contained substantially more information than was described in June 2013. KRC has promptly responded to the findings with additional documentation and remedy to those areas

identified by the Department as areas of concern. It is worth noting that the entire audit cycles for 2011 and 2013 were based on actions of the prior administration, with the exception of March through June 2012 when the new KRC leadership was established by the KRC Board.

Throughout the last three years, KRC leadership has kept the Department informed of any significant anomaly and addressed concerns related to the Developmental Services Support Foundation, service organizations operating under a "doing business as" arrangement, historic contracts that were out of compliance with regulation and law, and the seemingly preferential relationships between the former administration and certain vendors. All of these matters and more were provided to the Department auditors in September through December 2013 when an additional review was conducted by the Department into these historic practices. The auditors at the time indicated to KRC that a "special report" would be issued and posted on the Department website and that current KRC leadership was not involved in this additional audit scrutiny. Since their departure, the Department has not released any findings from this additional audit. The "special report" inexplicably has been downgraded to a so-called "management letter," which continues to be in Department review (now 15 months after the four-month additional audit process in 2013). KRC leadership appreciates the Department's efforts to identify and support our commitment to correct historic practices. It would be most helpful to have this "management letter" to clarify for the public where these historic practices inform current KRC remedies. Perhaps then some of the volatile behavior and perceptions will begin to abate.

The KRC Board has enclosed additional information in support of our position. In the event that you have any concerns with this letter and the enclosure, please contact Susan Lara, KRC Board President. Thank you for your time. In knowing the past, we can we seek to remedy the present and improve for the future.

Sincerely,

Susan Lara  
KRC Board President  
Enclosure

cc: KRC Board Members  
Duane Law, KRC CEO  
John Doyle, DDS  
Nancy Bargmann, DDS  
Brian Winfield, DDS

## Kern Regional Center Response to DDS Assessment Findings

Acknowledging the receipt of the document entitled KRC Assessment Findings, the KRC Board of Directors and Administration respond to the department's "assessment findings" with the following observations:

### Regarding the assertion that the Board does not demonstrate proper oversight of the regional center:

- The KRC Board of Directors has participated in six training modules over the past 24 months to provide initial orientation to their duties of proper oversight and governance. These include:
  - February 3, 2015 Board Training: **Governance & Board Responsibilities; Fiduciary Duty; Duties of Confidentiality, Loyalty & Care; Meetings and Transparency**, Prepared and presented by Gary Ray, Attorney of Ottone Leach & Ray LLP.
  - September 27, 2014 Board Training: **KRC Operations, Overview and Pathways; and Cultural and Linguistic Competency**, presented by Duane Law, CEO of KRC. Vendor Tour of a CPP home for all Board members.
  - May 10, 2014 Board Training: **Non-Profit Board Governance - Be A Strong Board Member & Build A Strong Board**. Prepared, customized for KRC and presented by Steve Sanders of KCSOS.
  - September 28, 2013 Board Training: **KRC Operations, Overview and Pathways**, presented by Duane Law, CEO of KRC.
  - April 6th, 2013 Board Training: **Non-Profit Board Governance - Be A Strong Board Member & Build A Strong Board**, prepared by Steve Sanders and delivered by Board President Susan Lara.
- The KRC Board of Directors has been comprehensively informed of historic practices as a context to understand and resolve issues in the present and future. This is not seen as a preoccupation by the Board or those who are informed of the historic practices, culture and deficiencies within the organization under prior leadership. KRC believes we need to resolve these historic practices because they inform the present concerns and mitigate future issues.
- As a board member of 11 years being involved with both the former and current Administration, the Board President reports that our current CEO has provided reports, information and updates to the Board of Directors and substantially more operational awareness than the prior administration. The CEO provides documents and presentations to the Board of Directors relative to current services, legal proceedings, and operational issues in both open and closed session and in committee meetings. Additionally, the CEO keeps the Executive Committee apprised of operational issues via email and telephone communications. To the

Board's knowledge, this reporting process has been the historic practice at KRC but if there is additional information needed or requested, the CEO is always responsive to requests and provides the information timely to the Board of Directors or as requested by a committee. The DDS Consultants have recommended adoption of the ACRC "Dashboard" report and the CEO is making inquiries with that agency.

- The Policy Review Task Force is reviewing the historic Whistleblower Complaint policy (approved in 2010) for compliance and contrasting its policy against other Regional Centers and DDS' policy to assure full compliance for KRC. The Board of Directors has already established a direct and confidential email address whereby any member of the community can communicate without obstruction with the Board of Directors any concerns for review and remedy. The Link to the email address is posted on the KRC Website that took effect February 3, 2015.
- The Board of Directors, through KRC Administration, has acquired additional translation headsets (summer, 2014) and is ordering an additional transmitter for concurrent Spanish language translation of meetings and discussions. Additionally, KRC has entered into a contract relationship with a certified translator to facilitate services at Board meetings and other public meetings (Family Forum, Performance Contract, POS distribution reports etc.). This translator has participated in Family Forums previously but is now under contract with KRC to provide this service.
- The Board of Directors has been open to additional insight toward methodologies and procedures to assure proper and effectively managed Board Meetings. The Board of Directors has engaged General Counsel who has attended the February 3, 2015 meeting and will attend future meetings to move this process effectively forward. The General Counsel provided training: **Governance & Board Responsibilities; Fiduciary Duty; Duties of Confidentiality, Loyalty & Care; Meetings and Transparency** to define the legal parameters of KRC Board of Directors meeting obligations during this recent Board of Directors meeting (the first since December (2), 2014). Board packets, agendas and materials are accessible on the KRC website and are made available in print copy at the Board meetings.

### **KRC needs to strengthen and stabilize its executive management functions:**

- KRC's former CEO and CFO resigned and retired on the same day in **January 2012**. The KRC Board of Directors hired the current CEO (**starting February 27, 2012**) and the CEO hired/promoted the interim CFO in **April 2012**. Three senior management staff members were terminated in **June 2013** (with prior notification to the Department and with Board of Directors review and assent). The CEO appointed interim Directors of Community and Client Services in **June and July 2013**. HR functions were supported through a contract service by WorkLogic HR until a new Human Resources Manager could be recruited and hired in **January 2014**. The Director of Client services resigned/retired in **September 2014** and interviews for prospective candidates took place on

November 5, 2014. The interview panel determined to reopen the position and interviews were held on February 19, 2015. KRC Administration had an interim appointment plan prepared to implement but was advised to place that plan 'on-hold' by the DDS Consultants in December 2014.

- The CFO provides fiscal reports to the Union Management, Board Audit/Finance Committee, Management team and meets multiple times with the CEO on matters both fiscal and operational. Issues of “numerous reports of significant strife within the accounting department” are being addressed as personnel issues. The internal controls in Accounting have triggered multiple investigations into conduct and lead to several personnel actions indicating that the systems are in place to assure integrity of the department. This acknowledged, the administration has received guidance from the organization’s CPA about the need to enhance the accounting level staff in the department and the CEO and CFO are examining budget availability to potentially rehire a controller position, **(which has been consolidated with the Accounting Manager position since 2003)**. KRC operations have consistently monitored expenditures and have not exceeded the budget since 2011. The Purchase of Service budget is also closely monitored, and shows modest growth in expenditures over the past three years
- The role currently monitored by the Director of Community Services has historically been overseen by the Director of Administrative Services and more recently by the former Associate Director. **The Community Services Director position was vacant for 10 + years.** The Community Services, Assessment and Waiver departments were assigned to the Associate Director in 2012. The recent vacancy of a Director of Client Services position has prompted the Community Services Director to also perform other reports and duties (as divided between CEO and Director). The performance contracts have historically been facilitated by the Associate Director (who oversaw this workload) along with the Fair Hearings procedures. Budget allowing, these responsibilities will be distributed to even out the workload.
- By all indications, the former Human Resources Manager submitted her resignation based on recruitment from a local hospital. KRC administration recognizes the need to assure access to a Human Resources leader and reengaged WorkLogic HR to provide consultation until a new Human Resources Manager could be hired. **The new HRM started in the role on February 17, 2015** and has received high marks from the staff and DDS Consultants

**The internal culture and staff morale of the regional center is of utmost concern to DDS:**

- Staff Morale (by accounts of long-term staff) has been extremely low for years prior to the current administration. Like all Regional Centers throughout the State of California, KRC staff has extremely high caseloads based on budget restrictions and the absence of any Cost of Living Adjustments from the state in eight years. KRC administration does recognize the need to address morale issues and seeks to support

the staff through additional "Rejuvenation Days", staff unit lunches, tail-gate Super Bowl events, etc. at the expense of the organization. KRC administration has restored all 2011 concessions (furlough days, wage freeze, mileage reimbursement reductions, education leave, and tuition reimbursement). On January 13, 2015 the Board President and CEO encouraged staff that the organization is open to any suggestions or recommendations staff has to help improve morale. KRC staff is compensated and have benefits at the highest levels of Regional Centers throughout the state. Staff receive 8 annual step increases of 5% and then longevity increases of 2.5% every three years for the duration of their employment. KRC also pays 100% of all insurance for all employees, spouses/partners and dependents. KRC administration has worked to enhance ergonomic assessments and equipment, new virtual server and thin client technology, accessible and secure Wi-Fi access and new phone systems to support the staff. KRC administration has initiated several workload reduction initiatives (money management, SSI and Medical application, etc.) and has been meeting weekly with Program Managers to potentially identify other workload reductions where caseload reduction may not be feasible (based on state budget). Regarding Staff Safety and facilities issues, see below. We are open to additional information from staff relative to how KRC can increase morale, but the organization must also live within budgetary restrictions.

- By accounts from multiple long term employees, KRC staff have apparently had this feeling and expressed absence of trust for years prior to the new administration. Prior to and upon the current CEO's arrival, the Board was informed of significant trust issues and the CEO was informed of substantial allegations of distrust throughout the transition. Current KRC administration is absolutely committed to exploring ways of addressing trust issues and willing to make every effort to assure this development of trust so the organization can move forward effectively to support clients and families.
- The current administration knows of no example of a stated retaliation or any action, statement or behavior that has not been investigated and, when appropriate, addressed as a personnel matter. KRC administration has responded respectfully and consistently to all staff concerns and perspectives brought to our attention regardless of the nature of those allegations. While holding a different perspective on a number of these concerns, KRC administration has provided substantial volumes of information relative to requests from staff through SEIU and to management members and has always sought to do so timely, respectfully and transparently. While there are some documents that fall under attorney/client privilege, KRC administration has been open to multiple engagements with staff on a wide variety of concerns without any retaliation or hostile response. ***If there are examples where retaliatory action is alleged to have been taken, it is vital that the Administration or Board of Directors hear about those complaints so that they may be investigated and appropriate action taken.*** Multiple investigations have been initiated throughout the last three years leading to personnel actions. Whenever an allegation of hostile work environment has been brought forth, KRC has responded with immediate engagement, investigation and action.
- The Administration is open to exploring how the staff can feel valued in a climate

where their caseloads are 30% above the standard. We recognize the challenge and seek to remedy through appeals to DDS, the legislature and review of the historically created business model of KRC. We are open to additional staff suggestions as evidenced by responses to requests for additional *Rejuvenation Days, staff unit luncheons, tailgate parties, and covering costs for these events*. KRC administration meets regularly with SEIU management and the management team. Where issues are identified, KRC administration seeks to find a remedy or respond with additional information. KRC administration understood the concerns of staff safety and secured the North Lobby, provided a staff survey to acquire feedback, held active shooter training, obtained an independent security company walk-through and recommendations report with implementation and is establishing a 'management of aggressive behavior' training for all staff tentatively scheduled for April, 2015. KRC administration has reached out to SEIU leadership on multiple occasions to discuss pension concerns and has been denied several times with cease and desist letters provided and four NLRB unfair labor practice claims but we continue to provide documentation requested and seek communicative engagement because we value the staff and their informed input.

- KRC administration has renovated or established new locations for nearly all branch offices. KRC administration (after 20 years) moved the Shafter staff into a new office location. New refrigerators, furnishings, computer hardware and phone systems, copiers and renovations to most all offices have been provided at the staff member's request. KRC administration has visited each office (some multiple times) and invests a great deal of time seeking to address the geographic challenges in the more remote office locations both through staffing ratio and discussions with vendors and with the Department. It is a strong commitment of administration to assure consistent presence by KRC leadership, including HRM to the branch offices.
- New staff receives a schedule of meetings where training is conducted. It includes orientation to KRC employee benefits, personnel manual, retirement, Sandis software, Purchase of Service, and exposure to Community Services and Accounting. KRC has reached out to Alta Regional Center to acquire their Regional Center 101 training manual to assure proper orientation and training is fully provided by KRC to all new employees relative to their duties and responsibilities as facilitators of service. The new Human Resource Manager will take up oversight to this 'on-boarding' process and we anticipate significant enhancement going forward.
- Historically, KRC management team typically met weekly but that meeting has been moved to **once per month (by mutual consent)** in 2013. Some may view the information provided by the KRC CEO to be extraneous but he seeks only to be informative. The rare occasions where the meeting has exceeded 2 hours in length involved significant operational and management concerns and the following meetings returned to the typical length of 90 minutes to 120 minutes. Considering the reduction in frequency of the meetings, it was understood that some meetings would exceed the typical timeframe.
  - It is our sense that the CEO always seeks to keep people informed but as he does not know which emails contain "questionable communications", he is unable to address the concern. Clearly, email is a form of communication that can be misinterpreted or poorly crafted and the CEO



- is willing to examine those communications and make changes as appropriate.
- **The CEO has no intention to misrepresent information to the staff or Board.** The CEO is open to hear any examples of information that have alleged to be 'intentionally misrepresented' so that they may be addressed.
  - There likely have been changes in the timelines and some facts (where CEO corrected or updated information) in meetings. It is the **CEO's contention that he has never communicated that the employees are 'at will' in any meeting and to do so would be inappropriate.** While the term has been used by others, the CEO does not recall ever using the term in private or group discussions. It is never the intention to threaten or create the appearance of threat under the concept of "at-will" employment. To the Board's knowledge no one at KRC during the last three years has been terminated merely under the "at-will" relationship. Prior administration did require all non-union members to sign a document attesting to their understanding of an "at-will" employment for personnel files. This is consistent with California law and good practices and is a usual and customary practice throughout California
  - The CEO seeks to address historic patterns that have permeated current practices and procedures at KRC. Historic patterns and practices must be seen and resolved in the context of current and future decisions and procedures. Currently, KRC is working toward re-alignment with the Regional Center system of service and seeking to address any of the historic practices that exceed the entitlement and mission of Regional Centers relative to service or payments. KRC leadership is committed to working with staff to clarify these historic patterns only to inform current and future practice

**KRC's relationship with its community appears to be suffering as a result of some of the issues noted above, as well as the regional center's lack of responsiveness and action to foster positive relationships with external parties. In all fairness, the team only spoke to individuals from two outlying offices and did not target its outreach to external parties. As a result, the assessment below is based on partial information**

- Current Administration has initiated and held **Family Forums in Kern, Mono and Inyo Counties.** In the current fiscal climate, the concept of holding Board meetings in these remote areas would seem imprudent. If the Board of Directors wishes to do so, their decision would be fully supported. The KRC Board of Directors has never requested nor have they (by accounts) held meetings in Inyo or Mono County.
- The CEO meets with multiple vendors routinely and attends the Vendor Advisory Committee regularly. If there is a broad distrust of KRC administration, it would be of great value to sit down with any vendor willing to discuss this or to hear of

- the concerns. Some vendor contracts have been examined based on DDS Audit findings or KRC Community Services review. These contracts have been restructured to meet current law and regulation. Where anomalies exist, there have been corrective discussions and actions taken.
- One vendor discontinued services and individuals were placed in suitable alternative residential services (February 2013). One vendor has discontinued an afterschool program (March 2014) which has been put out in RFP and awarded to two vendors. The resource was not replaceable in the current array of services offered by the Regional Center. Several contracts have not been renewed under the historic format and were reactivated when the vendor provided KRC the proper and requested documentation necessary to enter into a legally compliant contract.
  - KRC administration is extremely concerned about statements by families relative to the provision of services. The CEO has met with multiple families over the years and provided Family Forums in an effort to resolve individual concerns, identify systemic issues and the Director of Client Services has similarly invested substantial effort and time to address perceived concerns.

From the information above and the substantial volume of information provided to the Department from the KRC Board of Directors and Administration, it seems clear to our leadership that KRC is seeking to move forward in corrective action. It is abundantly clear that KRC leadership is not 'preoccupied' with the past, but strongly believes that correcting the past and aligning operations with legal and regulatory guidance is critical to avoid future anomalies in contract and service delivery. KRC is committed to supporting the entitlement to all individuals under the Lanterman Act. KRC is equally committed to assuring the fiduciary trust provided by the people of the State of California as monitored by the Department of Developmental Services.

While many of the identified efforts to remedy historic practice have been documented to the Department through audit, correspondence and meetings, KRC leadership remains ready to respond to any factually identified issues that the Department provides. It is worth noting again that the **2011 Audit (fiscal years 2008-2009 & 2009-2010)** produced nearly **\$6 million in findings**. Upon review and appeal, KRC leadership provided documentation to reduce those findings to approximately \$650,000 and is collecting repayment from vendors on most all of those findings. **The 2013 audit (fiscal years 2010-2011 & 2011-2012)** was received 15 months after the exit meeting and contained substantially more information than was described in June 2013. KRC has promptly responded to the findings with additional documentation and remedy to those areas identified by the Department as areas of concern. *It is worth noting that the entire audit cycles for 2011 and 2013 was based on actions of the prior administration with the exception of March-June 2012 when the new administration was established by the Board of Directors.*