

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

R.C. by his next friend, the ALABAMA)
DISABILITIES ADVOCACY,)
PROGRAM, on behalf of himself and)
those similarly situated,)

Plaintiffs,)

v.)

CIVIL ACTION 2:88cv1170-D

PAGE WALLEY, as Commissioner)
of the Alabama Department of)
Human Resources,)

Defendant.)

ORDER

On December 9, 2004, a status conference was held in chambers at which time counsel for Plaintiffs and Defendant and the Commissioner of the Alabama Department of Human Resources (“DHR”) articulated their positions as to whether DHR has attained the goal of substantial compliance with the principles of the consent decree so that federal oversight can end.¹ At the status conference, the court also had the benefit of written materials, previously submitted by the parties and the court monitor. These materials included the court monitor’s November 2004 report (introduced in evidence as Court

¹ The court was honored to have in attendance at the status conference Governor Bob Riley. The court applauds the Governor’s commitment to the State of Alabama’s child welfare system.

Monitor's Exhibit 1), Plaintiffs' response to the court monitor's report (Doc. No. 717), Defendant's motion for an order terminating the consent decree and memorandum in support thereof (Doc. Nos. 714-15), DHR's child welfare strategic plan (Doc. No. 717, attachment) and attestations from Plaintiffs' expert (Doc. No. 117, attachment). The court also has reviewed the cases cited by Defendant which expound upon the meaning of substantial compliance in relation to the fulfillment of consent decrees. (See Doc. No. 715 at 3-4, 6-10); see, e.g., Joseph A. by Wolfe v. New Mexico Dep't of Human Servs., 69 F.3d 1081, 1085-86 (10th Cir. 1995) (recognizing that substantial compliance is not exact compliance); Wyatt v. Rodgers, 985 F. Supp. 1356, 1388 (M.D. Ala. 1997) (“[I]t would be impractical, and thus unreasonable, to expect 100% compliance 100% of the time” with respect to the complex requirements of a consent decree.).

Monumental strides have been made in this case, and great success has been achieved. To DHR's accomplishment, all sixty-seven counties in Alabama have asserted compliance with the consent decree, and all but two counties have been declared in substantial compliance with the decree. The court does not minimize the significance of this achievement by DHR. To quote the court monitor: “The conversion of counties to practice consistent with the R.C. principles is nearly complete. The parties have all agreed that major progress has been made and that implementation of many aspects of the Consent Decree and court orders have been completed.” (Ct. Monitor Ex. 1, at 1.)

The court, though, finds that further negotiations are needed concerning alleged deficiencies outlined in the court monitor's report concerning DHR's ability to demonstrate that it will "remain in substantial compliance after termination of the injunction in this case."² (Consent Decree, June 11, 1991, ¶ 93, as amended by ¶ 10 of Consent Order Extending Time for Compliance and Granting Other Relief, Feb. 11, 1999.) At the status conference, the court outlined the following four alleged "problem areas":

(1) DHR has not implemented into sanctioned DHR policy the 1998 court-ordered staffing standards. (See Ct. Monitor Ex. 1, at 55 (recommending that "DHR maintain the 1998 Court Order of Caseloads and Staffing by implementing policy measures to ensure current staff-to-caseload ratios are continued").)

(2) DHR never has complied with the court's November 4, 2003 Order which directed DHR to establish a mechanism to provide regular "report cards" describing the status of each county's performance with respect to the consent decree. (See Nov. 4, 2003 Order which provides: "In connection with DHR's sustainability reviews of converted counties, the Defendant will develop and implement a report card or similar mechanism for publicly asserting and rating the quality of each county's practice.").

² See generally Ct. Monitor Ex. 1 at 32-39, "System Performance Ratings for Sustainability Reviews"; see also Ct. Monitor Ex. 1 at 11 ("[T]here continues to be quantitative and qualitative data that show that the significant improvement of practice made through the conversion process has not been consistently maintained in all of the counties that have been declared converted.").

(3) Despite significant progress, Jefferson County which has five regions and the largest percentage of children in DHR's care manifests certain weaknesses which impede its ability to sustain substantial compliance. (See, e.g., Doc. No. 717 at 11-13.)

(4) The court monitor has not yet declared Baldwin County in substantial compliance with the principles of the consent decree.

The parties agreed to meet and confer jointly with the court monitor to address the alleged problems areas. It is, therefore, CONSIDERED and ORDERED that, on or before January 21, 2005,³ counsel for Defendant, counsel for Plaintiffs, and the court monitor jointly confer and formulate a detailed written plan focused on strategies to rectify the alleged deficiencies outlined herein and file a joint statement as to these matters. Specifically, the joint statement shall include particulars regarding the following: (1) the inclusion of the 1998 court-ordered staffing standards in official DHR policy; (2) a mutually agreed-upon report card or similar mechanism for publicly asserting and rating the quality of each county's practice⁴; (3) the particular compliance problems with and the unique needs of Jefferson County and the specific methods DHR

³ At the status conference, the court directed the parties to file their joint statement within thirty days. The court has enlarged the deadline in light of the holiday season.

⁴ Based on DHR's eagerness to comply with the court's November 4, 2003 Order and to demonstrate within a more condensed time frame the counties' ability to sustain performance, the court has not, as it suggested at the status conference, ordered a definitive time line for the release of the "report cards." The court envisions that the parties will be able to reach an agreement regarding a time frame, if any, for the court's review of these "report cards."

will implement to ensure adequate performance in the future in Jefferson County; and
(4) a report as to the status of Baldwin County.

All other pending matters not specifically addressed herein are RESERVED.

DONE this 13th day of December, 2004.

/s/ Ira DeMent
SENIOR UNITED STATES DISTRICT JUDGE