

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARISTOTLE P., CHIUCHIU G., AUGUSTINE N.,
YAHARIA R., MICHAEL W., REGINALD R., and
GWENDOLYN B., individually and on behalf of
all other similarly situated individuals, by their next
friend, PATRICK T. MURPHY, Public Guardian
of Cook County,

Plaintiffs,

v.

BRYAN SAMUELS, Director, Illinois Department
of Children and Family Services,

Defendant.

No. 88 C 7919

Judge Charles R. Norgle, Sr.

FILED

FEB 27 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

BUCKETED
MAR 05 2004

NOTICE OF JOINT MOTION

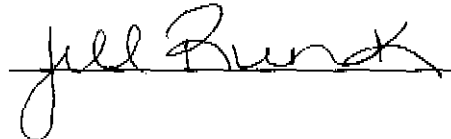
To: Barbara L. Greenspan
Office of the Attorney General
100 West Randolph Street
Suite 4-600
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on March 5, 2004, at 9:30 a.m., I shall appear before the Honorable Charles R. Norgle, Sr. or any judge sitting in his stead, in Courtroom 2341 of the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn, Chicago, Illinois, and present the attached Joint Report to the Court and Joint Motion for Entry of an Agreed Order Regarding the Consent Decree.



CERTIFICATE OF SERVICE

I, Jill Runk, an attorney, certify that I caused a copy of this Notice and Joint Report to be hand-delivered to the party to whom the notice is directed, on February 27, 2004, prior to 4:00 p.m.



PATRICK T. MURPHY
PETER J. SCHMIEDEL
JILL RUNK
OFFICE OF THE COOK COUNTY PUBLIC GUARDIAN - 70500
69 West Washington Street
Suite 1800
Chicago, Illinois 60602
(312) 603-0800

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FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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CLERK, U.S. DISTRICT COURT

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**PARTIES' JOINT REPORT TO THE COURT AND JOINT MOTION FOR
ENTRY OF AN AGREED ORDER REGARDING THE CONSENT DECREE**

The plaintiffs, a class of children in the custody or under the guardianship of the Illinois Department of Children and Family Services ("DCFS" or the "Department"), and the defendant, Bryan Samuels, Director of the Illinois Department of Children and Family Services, hereinafter the parties, through their respective counsel, hereby respectfully submit their joint report to the Court and their joint motion for entry of an agreed order regarding the consent decree.

INTRODUCTION AND PARTIES

1. This action was brought by Patrick T. Murphy, the Cook County Public Guardian, on behalf of a class of children in the custody or under the guardianship of the Department, alleging a Departmental practice and policy of placing them apart from their brothers and sisters and not affording reasonable visitation and other contact with their siblings.

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2. On October 3, 1989, the Honorable Ann Claire Williams certified the following plaintiff class pursuant to Fed. R. Civ. P. 23(c):

Children who are or will be subjects of neglect, dependency or abuse petitions filed in the State of Illinois; who are or will be placed in the custody or under the guardianship of [DCFS] by order of court; who have not been or will not be placed with their siblings in foster homes or residential facilities; and who have been or will be denied regular and reasonable visitation with their siblings.

3. The defendant is the Director of the Illinois Department of Children and Family Services ("DCFS"), sued in his official capacity. Pursuant to Fed. R. Civ. P. 25(d)(1), Bryan Samuels, Director of DCFS, has been automatically substituted as the defendant for Jess McDonald, the former DCFS director.¹

PROCEDURAL BACKGROUND

4. The plaintiffs filed their complaint on September 15, 1988, alleging that the defendant had a practice of placing siblings apart from their brothers and sisters and not affording them reasonable visitation.² Pursuant to 42 U.S.C. § 1983, the plaintiffs alleged that these practices and policies violated their rights to freedom of association under the First Amendment, substantive due process under the Fourteenth Amendment, and their rights under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§ 620-628, 770-779 ("AAA"). The plaintiffs also filed a motion for preliminary injunctive relief. On September 7, 1989, the court denied the defendant's motion to dismiss the First Amendment freedom of association claims and the

¹ The initial complaint also named DCFS's guardianship administrator as a defendant, who was subsequently dismissed by agreement of the parties upon entry of the consent decree on March 11, 1994. See Consent Decree ¶ 1(d).

² The court summarized some of the pertinent factual allegations of the Complaint in its opinion denying defendant's motion to dismiss, 721 F. Supp. at 104-08.

Fourteenth Amendment substantive due process claims, and granted defendant's motion with respect to the AAA claims.³ *Aristotle P. v. Johnson*, 721 F. Supp. 1002 (N.D. Ill. 1989).

5. Subsequent settlement discussions resulted in a consent decree, Exhibit A hereto, which the court approved and entered on March 11, 1994. On February 5, 1997, the court granted the parties' joint motion for entry of an agreed order extending the terms of the consent decree from March 11, 1997 to March 11, 1999. On March 10, 1999, the court granted the parties' joint motion for entry of an agreed order extending the terms of the consent decree to March 11, 2002.

6. On March 7, 2002, this Honorable Court extended the decree with respect to sibling placement to March 11, 2003. That portion of the decree has expired. Also on March 7, 2002, this Court extended the decree with respect to sibling visitation until March 11, 2004. See Agreed Order attached hereto as Exhibit A.

7. Counsel for both parties experienced serious difficulties in 2003. In early 2003, Bryan Samuels replaced Jess McDonald as the director of DCFS. Throughout the next few months, the majority of the Department's *Aristotle P.* team left the agency. One of the attorneys for the plaintiffs died suddenly on July 4, 2003. Counsel for the defendants was on unplanned emergency medical leave for six weeks beginning in September. Shortly after her return, on October 17, 2003, a fire at the Cook County Administration building killed three Public Guardian employees and displaced plaintiff's counsel until the end of the year.

³ Upon the defendant's motion, the court certified its September 7, 1989 order for an immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The Seventh Circuit denied the defendant's request for an interlocutory appeal.

**CONSENT DECREE REQUIREMENTS
AND DEFENDANT'S PROGRESS TO DATE**

8. The requirements of the consent decree address DCFS's rules and regulations, training of case workers and foster parents in relation to placement of siblings together and sibling visitation in circumstances when siblings must be placed apart and notification requirements.⁴ The major requirements of the consent decree regarding sibling visitation are summarized below.

Sibling Visitation

9. The decree requires that, when siblings cannot be placed together for clinical or other defined reasons, they receive, at minimum, two visits per month, for a minimum of two hours per visit. The decree recognizes that, in certain circumstances, it may not be logistically possible to meet these visitation requirements, or it may not be in a child's best interest to have regular visitation with his or her brother(s) or sister(s) or for visits to last two hours.⁵ All visits must be documented in the child's case file. See ¶ 18. Each child's file must also contain a sibling visitation plan specifying, *inter alia*, the frequency, duration and location of visitation. See ¶ 14(c)-(e).

⁴ The decree also contains various provisions for this Court's continuing jurisdiction and enforcement. See, e.g., ¶¶ 28-30. Under ¶ 28 and the court's March 10, 1999 agreed order referenced above, this Court retains continuing jurisdiction over this case to enforce compliance with the sibling visitation portion of the decree until March 11, 2004, at which time the decree will expire unless extended. Under ¶ 29, prior to that time, the children may move to extend the duration of the decree and of this Court's continuing jurisdiction, upon a showing that "DCFS has not substantially complied with the terms of this Decree." Paragraph 30 contains further compliance provisions.

⁵ By way of example, DCFS may afford less visitation (or none at all) if so ordered by a court, or if one sibling poses a specific and documented risk to another sibling, or if siblings are placed more than 150 miles apart. See generally ¶¶ 13-14, 16.

10. The latest statistics that the defendant provided to the plaintiffs are dated October 15, 2002. These statistics show that in Cook County, only 42% of sibling groups had visits in compliance with the decree. Statewide, only 33% of sibling groups had regular visitation. These figures only included purchase of service ("POS") agencies.

11. The most current statistics the defendant provided to the plaintiffs regarding DCFS's compliance with the decree are from January 15, 2002. At that time, DCFS's three Cook County regions averaged 20%, 21% and 27% compliance respectively. DCFS's downstate region provided visitation in compliance with the decree 88% of the time.

Transportation Subsidies

12. One of the obstacles to visitation identified in studies regarding sibling visitation is transportation. In an effort to alleviate this barrier, the Department agreed to provide a transportation subsidy of up to \$150 per month to foster parents who transport children and supervise sibling visitation and an additional \$100 to foster parents who host an overnight sibling visitation.

13. The defendants agreed to secure data as to how many foster parents are (1) aware that transportation subsidies are available and (2) are taking advantage of the transportation subsidies. The plaintiffs have not received this information.

Performance Contracting

14. The Department agreed to implement monetary sanctions against private agencies that the Department finds to be below a certain level of compliance with the sibling visitation requirement of the decree. For example, for fiscal years 2002 and

2003, the threshold for compliance is six visits during a six-month period, or 50% compliance. Although the Department had agreed to increase the threshold for compliance in future years, the plaintiffs' position remains that sanctions should increase annually.

15. As of February 2003, DCFS had sanctioned POS agencies for more than \$600,000. The plaintiffs requested current sanction data from the defendant. They have not received this information.

Foster Parent Training

16. The Department continues to train foster parents on the importance of sibling relationships, the requirements of the *Aristotle P.* consent decree, and the various subsidies and fees implemented to facilitate sibling visitation. The Department continues to make efforts to improve this training.

Notification Requirements to Children and Foster Parents

17. The decree requires DCFS to provide all children (seven years of age and older) with siblings placed apart, as well as the children's foster parents, with the names, birth dates, placements, addresses and telephone numbers of all such siblings placed apart ("sibling contact information"). If a sibling placed apart is moved, DCFS is required to give written notice of the name, address and telephone number of the child's new placement to each sibling and each sibling's foster parent within seven days of the move ("sibling relocation information"). Copies of these notifications are to be documented and contained in the child's case file. See ¶¶ 11, 12.

18. A 1999 amendment to the Child Care Act, 20 ILCS 505/35.3, protects foster parents from disclosure of their addresses and telephone numbers. The parties agreed

that when a case worker places a child in a foster home, the worker will assess whether there are any clinical or safety reasons why siblings should not have that child's address and telephone number as required under the decree. If no such reasons exist, the foster parent will be notified that the Department intends to convey this information to the siblings, and the foster parent can seek a protective order if he or she so chooses. If such a reason does exist, it will be documented as part of the assessment, and DCFS will notify the child's attorney and guardian *ad litem* in writing of the decision not to advise the child's siblings of the child's address and telephone number, along with said documentation.

19. A 1999 statewide survey made a variety of recommendations to increase the Department's compliance with the notification issue, including the utilization of agency performance teams to assist in monitoring the notification requirement.

Notification Requirements to Child's Attorney and Guardian ad Litem

20. Paragraph 26 of the decree requires that, whenever the Department decides to separate siblings who had been placed together, it must notify each child (seven years or older), and the child's attorney and guardian *ad litem*, in writing, not less than ten days prior to the implementation of its decision, unless continued joint placement poses an imminent risk of harm to one or more of the children. In such a case, the attorney and guardian *ad litem* must be notified within ten days of the separation.

21. Counsel for the plaintiffs set up a facsimile number exclusively for case workers to forward notices of changes in placement. Additionally, the defendant promulgated Policy Guide 2002.08, a reminder to all case workers of their obligation to notify the child's attorney and guardian *ad litem* of any change in placement.

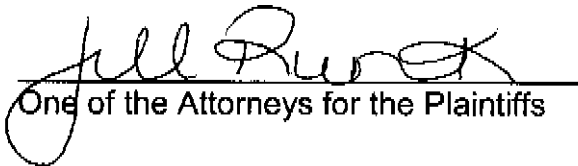
Nonetheless, plaintiff's counsel has received only a few of these notifications by facsimile since this system was set up.

CONCLUSION

22. The parties agree that, although the Department has made and continues to make progress in its implementation of the consent decree regarding sibling visitation, for the reasons stated in the foregoing joint report, the parties agree to a two-year extension of the consent decree regarding sibling visitation, until March 11, 2006.

Date: February 27, 2004

Respectfully Submitted,


One of the Attorneys for the Plaintiffs


One of the Attorneys for the Defendant

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**See Case File
for Exhibits**