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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DAVID C. et al.,
Plaintiffs,

vs.

MICHAEL LEAVITT, Governor, et al.,
Defendants.

CASE NO. 2: 93-CV-206C

STIPULATION TO ENTER
ORDER TO ENFORCE
THE COURT'S 1999 REMEDIAL
ORDER AND SETTLEMENT
AGREEMENT

Honorable Tena Campbell

David C. v. Leavitt



CW-UT-001-001

The Plaintiffs and Defendants jointly submit this Stipulation to Enter Order to Enforce the Court's 1999 Remedial Order and Settlement Agreement. The parties hereby stipulate to entry of an order as follows.

RECITALS

1. At the November 21, 2002 hearing on Plaintiffs' Motion to Enforce, the Monitor identified lack of adequate staffing; insufficient training; and the absence of an implemented flexible fund policy as three of the major impediments for Defendants' compliance with the Milestone Plan.
2. DCFS has experienced a significant loss of caseworker and support positions since the Milestone Plan was first implemented on October 18, 1999.
3. At the November 21, 2002 hearing, the Court received testimony from the Monitor and Richard Anderson, Director of DCFS, establishing that, without adequate staffing resources, DCFS will be unable to comply with the Milestone Plan.
4. The number of caseworkers deemed necessary by the Monitor, the Legislative Audit, and the parties to comply with the Milestone Plan are based on caseload calculations of 15 cases per worker in urban regions for Child Protective Service ("CPS") and in-home cases and 12 cases per worker for foster care cases. In rural regions, the caseload calculations are 13.5 cases per worker for CPS and in-home cases and 10 foster care cases per worker. The calculations of the Monitor and the Defendants also take into account that new caseworkers, those with less than six months of experience, will have caseloads that are significantly lower than the above caseloads. By acknowledging the calculations set forth in this paragraph, neither party concedes that such staffing levels will always be sufficient or necessary at all times in the future to comply with the Milestone Plan.

5. The Monitor has inspected the flexible fund program and determined that Defendants have set aside funds in excess of the additional money required by the Plan for DCFS' flexible fund program. However, the Monitor has concluded that Defendants have yet to adopt and put a policy into effect for ensuring that caseworkers know how to access and use the flexible funds.

6. To inform both parties, the Monitor sent a workable definition of flexible funds to the parties on January 14, 2003. Defendants provided the Monitor with a draft flexible funds policy on January 31, 2003.

7. Defendants have not completed the approval and implementation process of policies incorporating the Practice Model. The Milestone Plan required that policies be approved and implemented by February 2000.

8. In the Utah legislative session that ended March 5, 2003, the legislature amended the Utah Administrative Rulemaking Act by deleting the term "policy" from the definition of a "rule." For this reason, the parties now substitute in this stipulation the nomenclature "Rules and Practice Guidelines" for the word "policy" to comply with the amended statute. This substitution of terminology does not constitute a substantive change.

9. Prior to January 2003, Defendants did not have a comprehensive means for tracking which employees had been fully or partially trained on the Practice Model.

10. As of the latest annual review completed by the Monitor, Defendants' overall scores on both the case process reviews and qualitative case reviews have not yet reached the compliance standards required by the Milestone Plan.

11. A significant portion of DCFS employees still need training on some or all of the Practice Model modules in order to meet the Milestone Plan's compliance standards for training.

12. At the November 21, 2002 hearing on Plaintiffs' Motion to Enforce, the Court took testimony and identified training, staffing, and flexible funding as priority areas in which to achieve compliance with the Milestone Plan. The Court further directed the parties to confer regarding areas of the Milestone Plan that could be trimmed without reducing services provided to children in the class.

13. The Court's order deals only with the topics addressed herein. The Court did not decide whether there were other areas in which Defendants failed to achieve compliance with the Milestone Plan.

14. The Court determined that it has the authority to enter this order to enforce its 1999 Remedial Order.

REMEDIAL MEASURES

I. FLEXIBLE FUNDING

A. Consistent with the Monitor's findings, the parties agree that DCFS designated funds in excess of the flexible funds required by the Milestone Plan.

B. In order to comply fully with the Milestone Plan provisions regarding flexible funding, the parties agree that the Defendants must develop and implement Rules and Practice Guidelines that will provide guidance for all DCFS workers on how to use the flexible funds to meet the needs of Plaintiff children and their families. As part of DCFS' overall development of Rules and Practice Guidelines, Defendants submitted a completed version of DCFS' proposed policy for flexible funding to the Monitor on January 31, 2003.

C. After addressing all concerns raised by the Monitor, Defendants will adopt and put into effect the Practice Guidelines no later than April 29, 2003. The Practice Guidelines will include a definition of flexible funds that is consistent with the definition that the Monitor has provided to the parties. Defendants will adopt and put into effect the Rules on or before May 6, 2003.

D. In addition to implementing Rules and Practice Guidelines for the use of flexible funds, the parties agree that Defendants will, in consultation with the Monitor, develop and implement a plan for training, mentoring, and providing information to DCFS staff on the availability and appropriate use of flexible funds. The parties agree that Defendants will meet with the Monitor no later than March 18, 2003 to develop a training plan for finance staff, Community Service Managers, Regional Directors, supervisors, Milestone Coordinators, Regional Training Managers, dedicated Trainers, and other administrative staff, if any, as deemed necessary by the Defendants and the Monitor, prior to implementation of the training. Further, the parties agree that Defendants in consultation with the Monitor will develop and provide basic training for all caseworkers on the use of flexible funds. Regional Training Managers and the Milestone Coordinators will deliver the basic training in each region. New employees will receive this training as part of the required Practice Model training, in Module 6, as revised to address the flexible fund issue.

E. After development of the training plan for flexible funds, all relevant DCFS staff, as specified in the second sentence of the preceding paragraph, will be trained on the use of flexible funds no later than July 22, 2003.

F. To ensure effective implementation of the new flexible fund Rules and Practice Guidelines and the training plan for flexible funds, the parties agree that the

Monitor will assess and monitor Defendants' use of flexible funds to ensure that Defendants' implementation of the new Practice Guidelines fully complies with the Milestone Plan's objectives regarding flexible funds, as defined in the Problem Statement at page 56 of the Milestone Plan. Given that the second option envisioned in the Milestone Plan for implementing a flexible fund policy was problematic because the Defendants felt it violated state finance and procurement rules, Defendants agree to work with the Monitor to develop viable alternatives to this second option while remaining within authorized state finance and procurement rules. When working with the Monitor on viable alternatives, Defendants agree to address the Monitor's concerns that Defendants develop a more balanced and flexible approach to financing services to minimize their current reliance on categorical contracts to the extent that they impede Defendants' ability to address unique and individualized needs of Plaintiff children and their families. The Monitor will document Defendants' progress in this area in future reports to the Court.

II. DEVELOPMENT AND IMPLEMENTATION OF RULES AND PRACTICE GUIDELINES

A. DCFS has yet to completely develop and fully execute Rules and Practice Guidelines for implementing the Milestone Plan. To ensure that Rules and Practice Guidelines are in place for the new caseworkers and all existing employees as soon as possible, Defendants report that the DCFS Director provided a full version of DCFS's current draft policies to the Monitor for comment on January 31, 2003. The Monitor provided DCFS with his comments on March 13, 2003.

B. After all comments by the Monitor are addressed, Defendants will implement a set of Rules and Practice Guidelines that have been reviewed by the Monitor which

comply with Defendants' obligations to implement the Practice Model as required by the Milestone Plan. Defendants will adopt and put into effect said Practice Guidelines on or before April 29, 2003. Defendants will adopt and put into effect the Rules on or before May 6, 2003. The Monitor will report to the Court regarding the implementation of such Rules and Practice Guidelines at the next status conference.

III. TRAINING

A. DCFS will hire eight new full-time trainers to meet the current and ongoing training needs of its staff. These eight training positions will be in addition to the current DCFS staff designated as trainers. Defendants will be allowed to maintain flexibility regarding the distribution of the trainers. However, based on the needs identified by the Monitor, Defendants will give priority to the Salt Lake Valley, the Northern region, and the State Office when assigning the new training positions.

B. Given the priority the Monitor has placed on the need for additional trainers, DCFS will exercise all reasonable diligence in hiring and employing the eight new trainers to assume their duties as soon as possible, but all eight trainers must be hired and employed by DCFS no later than July 1, 2003. Prior to the next status conference in this Court, Defendants will report to the Monitor the options at their disposal for hiring new trainers, and the measures that Defendants have taken to hire the new trainers, prior to July 1. The Monitor will provide the Court with a summary of Defendants' efforts in this regard at the next status conference.

C. To maintain an accurate system for determining the training needs of the DCFS staff, Defendants agree to implement a computerized tracking system that records all of the Practice Model training sessions that each staff member has attended, including

whether the staff member has attended a full training session for each module of the Milestone Plan's Practice Model. Defendants will provide the Monitor with an opportunity to assess the new tracking system, and the Monitor will report to the Court on the Defendants' implementation of this tracking system at the next status conference.

D. To ensure that all DCFS staff are fully trained on all modules of the Practice Model as expeditiously as possible, by April 22, 2003 Defendants will develop a plan and a full schedule for completing the Practice Model training for DCFS staff, including training and modeling of skills on flexible fund procedure. In developing the plan and schedule, Defendants will meet with the Monitor by March 7, 2003 to discuss the development of the training plan and schedule. The planning effort will not interfere with any ongoing training sessions that Defendants have scheduled for DCFS staff. The Monitor will report on the status of the training plan and schedule at the Court's next status conference.

E. To provide reasonable assurance to the Court and all parties of the quality of the Practice Model training, Defendants will provide the Monitor with a full description of the measures used to ensure quality control. The Monitor will assess the quality and consistency of Defendants' training of the Practice Model. When assessing quality, the Monitor will ensure that the training faithfully follows the Practice Model curriculum and that modeling of the skills is provided during the training sessions. After having observed three (3) training sessions, the Monitor will provide written assessment of the training's quality and consistency, and include any proposal for changes and a plan for future observation of training, if needed. The Monitor will send any such written assessment to counsel for the parties by overnight delivery. If the Monitor determines in the written assessment that there is a need to observe additional training sessions, and Defendants object

thereto, Defendants may file a motion with the Court within ten (10) court days of the receipt of the written assessment. If Defendants do not file such a motion within ten (10) court days, the Monitor will be authorized to proceed with the plans set forth in the written assessment.

IV. NEW STAFF POSITIONS

A. Based on the assessments regarding DCFS' staffing needs completed by the Monitor and the Legislative Audit, the parties agree that DCFS needs fifty-three (53) new Full Time Equivalents ("FTE") positions to have adequate staffing resources to comply with the Milestone Plan. To meet this requirement, DCFS shall hire eight (8) new trainers and forty-five (45) new caseworkers. DCFS will have flexibility in allocating the specific number of new caseworkers to each of its five regions, but DCFS shall assign at least one new worker to each region and shall seek input from the Monitor as to whether its proposed distribution of the forty-five (45) new caseworkers follows a plan that is responsive to regional caseworker staffing needs.

B. Defendants will begin hiring for the new caseworker positions as soon as possible, but Defendants will complete the official hiring and have all new caseworkers hired and employed by the first pay period in July, 2003. To ensure compliance with this deadline, Defendants will begin outreach and recruiting for new DCFS caseworkers no later than April, 2003. The Monitor will monitor DCFS' actions to hire the requisite number of caseworkers and report on DCFS' progress at the Court's next status conference.

C. The parties agree that the Monitor will monitor on a quarterly basis the regional average caseloads of DCFS caseworkers and will report to the Court the extent to which Defendants have or have not delayed hiring of DCFS caseworkers in order to ensure

the delivery to children in the Plaintiff class of services necessary for safety, permanence, and well-being required by the Practice Model. Once DCFS fills all new caseworker positions, the parties agree that DCFS will take all necessary proactive measures within the limits of state law and regulation to minimize the number of caseworker vacancies and to sustain the total number of caseworkers resulting from this agreement. DCFS shall prohibit its Regional Directors from holding caseworker vacancies to fund other expenses, except to ensure the delivery to children in the Plaintiff class of services necessary for safety, permanence, and well-being required by the Practice Model.


V. ADJUSTMENT TO MILESTONE PLAN

A. The parties have initiated discussions pursuant to the Court's instructions to assess the means by which the Milestone Plan requirements may be trimmed without undermining either the effectiveness of Defendants' ability to protect the safety, permanence, and well-being of Plaintiff children as identified in the Milestone Plan, or the Monitor's ability to assess the adequacy of Defendants' actions. The Monitor has participated in these discussions.

B. The parties will continue these discussions, and, if they agree, submit a stipulated proposed order amending the Milestone Plan by October 1, 2003. If the parties are unable to reach an agreement, Defendants will submit a proposed order with a supporting memorandum on or after October 1, 2003, and Plaintiffs will have an opportunity to respond to Defendants' submission.


C. The parties have agreed to continue to discuss any compliance concerns identified by the Monitor, as ordered by the Court pursuant to the Milestone Plan.

Dated this 14th day of March, 2003



DARRYL L. HAMM
NATIONAL CENTER FOR YOUTH LAW
Attorney for Plaintiffs

Dated this 17th day of March, 2003



ALAIN BALMANNO
ASSISTANT ATTORNEY GENERAL
Attorney for Defendants

ORDER

Based upon the Stipulation to Enter Order to Enforce the Court's 1999 Remedial Order and Settlement Agreement ("Stipulation") filed with the Court by the parties, the testimony of witnesses before the Court regarding the Plaintiffs' Motion to Enforce, the documents submitted by counsel for the parties on the Plaintiffs' Motion to Enforce, and good cause appearing,

IT IS HEREBY ORDERED THAT:

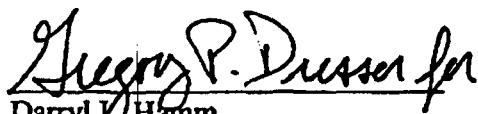
1. The parties comply with the above provisions of the Stipulation.
2. The Court sets this matter for a status conference on _____, 2003 at ____ am/pm for an update on the Defendants' compliance with this Order and on the progress of the discussions set forth in Section V (B) of the Stipulation.

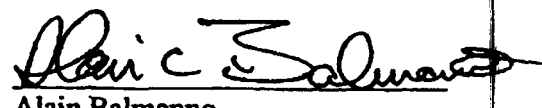
Dated this _____ day of _____, 2003.

BY ORDER OF THE COURT

HON. TENA CAMPBELL

Approved as to form:


Darryl W. Hamm
National Center for Youth Law
Attorneys for Plaintiffs


Alain Balmanno
Assistant Attorney General
Attorneys for Defendants