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United States District Court, D. Massachusetts.

Robert Simpson RICCI, et al., Plaintiffs,  
v.  
Robert L. OKIN, M.D., et al., Defendants.

Civ. A. Nos. 72-0469-T, 74-2768-T, 75-3910-T,  
75-5023-T and 75-5210-T. | July 21, 1992.

## Opinion

### MEMORANDUM

TAURO, Chief Judge.

\*1 Defendants seek a stay of this court's order dated June 24, 1992 (a copy of which is attached as Appendix), allowing plaintiffs' motion to extend the Office of Quality Assurance ("OQA") to December 31, 1992.

The OQA was established by this court's order dated October 9, 1986 ("October '86 order"). *See Ricci v. Callahan*, 646 F.Supp. 378 (D.Mass.1986). There was no appeal by any party from the October '86 order.

Among the many provisions of the October '86 order was that of assigning to the OQA the oversight function that had been handled for several years by the Court Monitor's Office. As well, the OQA was placed organizationally within the Office of the Governor, rather than as an adjunct of the court.

The duties of the OQA, detailed in the October '86 order, include:

monitor[ing] implementation of all outstanding agreements among the parties, defendant commitments and rulings of the court; ensur[ing] that all state agencies provide class members with services to which they are entitled under the mental retardation consent decrees and under state regulations; ... [and] provid[ing] vigorous advocacy for class members to ensure that their needs are met and their rights are preserved....

646 F.Supp. at 382-83.

A great deal of progress has been made in these cases during the past two decades.<sup>1</sup> Recognizing that progress, this court took a step toward disengagement by issuing its October '86 order, setting forth the tasks remaining to be accomplished so that there could be complete disengagement. Those tasks were not determined by this court. Rather, they were bargained for and agreed to by plaintiffs and defendants. As has already been pointed out, there was no appeal of the October '86 order.

At the time of its issuance, the October '86 order envisioned that the tasks to be performed by defendants would be completed within three years. Provision was made for defendants to report compliance within that period. Instead, the date for reporting compliance has been continued several times at defendants' request, with the acquiescence of plaintiffs. The OQA was necessarily extended as well.

In an effort to bring the issue of compliance to a head, this court on April 2, 1992 set forth a schedule for reporting by the plaintiffs, defendants and OQA. Defendants filed their report on May 26, 1992. Plaintiffs filed on July 16, 1992. The OQA's response is due on August 28, 1992.

These reports are absolutely essential for this court to be able to determine whether defendants have met the obligations to which they agreed, and which were the basis for the October '86 order. The evaluation of the OQA is of particular import, because it will provide the court with an objective overview of plaintiffs' and defendants' respective positions as to compliance.<sup>2</sup>

It is unrealistic to assume that the OQA will be able to perform its function without having an expectation of continued existence during the time within which it is to report, as well as during the time it will take the court to evaluate information presented to it in each of the reports it will receive concerning compliance. Moreover, the credibility of the OQA report would be subject to question if the OQA were to function only on a day to day basis at the will of defendants, as suggested on page 18 in defendants' Motion for Stay Pending Appeal. The OQA must be in a position to provide objective and impartial evaluation.

\*2 No one is more delighted to see a case closed than the United States District Judge to whom it is assigned. That is particularly so when the case has been pending as long as this one has. But, it would be irresponsible to declare a case closed merely because so many years may have passed since its inception. The parties, themselves, agreed to a schedule of tasks that must be accomplished in order that this court may disengage completely. The court is merely waiting for the parties to report as to whether these

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obligations have been met. The OQA is a necessary and vital part of that reporting process.

For all these reasons, defendants' request for a stay is DENIED.<sup>3</sup>

An order will issue.

**ORDER**

For the reasons stated in the accompanying memorandum, defendants' Motion for a Stay Pending Appeal is DENIED.

It is so ordered.

**APPENDIX**

**MEMORANDUM**

**June 24, 1992.**

These consolidated cases were brought in the early 1970's on behalf of mentally retarded residents of Belchertown, Fernald, Monson, Wrentham and Dever State Schools. Defendants are officials having responsibility for these institutions. During their pendency, the court has worked with the parties to fashion various consent decrees designed to remedy the unacceptable conditions that existed at each of the named institutions. Over the years, significant progress has been made, to the point where on October 9, 1986, this court issued a memorandum and order, ("October '86 order) taking a "step of disengagement," from active oversight of compliance with the decrees. *See Ricci v. Okin*, 646 F.Supp. 378, 380 (D.Mass.1986).

Presently at issue is plaintiffs' motion to extend the terms and conditions of the October '86 order. Defendants oppose. A brief review of the procedural history is useful to understanding the context of the dispute.<sup>1</sup>

In taking a step of disengagement, this court noted, in its October '86 order that

[o]f course, these schools are still far from perfect. More work remains to be done. But, given the demonstrated good faith of all concerned, I am confident that I no longer need to actively oversee

compliance with these decrees. I have, therefore, fashioned the attached order that will serve as the agenda for their full implementation, under the supervision of an Office of Quality Assurance, to be established within the Governor's Office by his Executive Order.

*Id.*

The October '86 order detailed the defendants' remaining obligations to the plaintiffs which required completion in order that this court could formally disengage itself from these cases. In addition, that order established the Office of Quality Assurance ("OQA") "to maintain the quality of care provided to class members so as to ensure continuing compliance with the various orders of this court." *Id.*

The October '86 order anticipated it would take approximately three years for defendants to complete the remaining tasks (setting December 29, 1989 as a target date). The order provided for a status conference, to be held by this court 90 days prior to the end of that three year period, for the purpose of establishing the defendants' progress in fully meeting their obligations to the plaintiffs. There was no appeal from the October '86 order.

<sup>\*3</sup> Consistent with the October '86 order, this court, on August 10, 1989 scheduled a reporting conference for October 2, 1989. In response, the parties informed the court that additional time was needed for defendants to complete the remaining tasks. The defendants' reporting date, therefore, was extended to June 30, 1990. The OQA was also extended. Since that extension, the defendants' reporting date and the OQA have been extended eight times by agreement of the parties. The latest of these extensions was on December 30, 1991.

On March 16, 1992, this court issued an order setting a reporting schedule for the defendants, and an opportunity for comment and response by the plaintiffs and by the OQA. That order was supplemented on April 2, 1992 by a more detailed procedural order.

In response to the April 2, 1992 order, defendants submitted affidavits on May 26, 1992.<sup>2</sup> Plaintiffs' response is due on July 16, 1992. The OQA's submission is due on August 15, 1992. The OQA report is to assess defendants' compliance with this court's orders and the consent decrees, as well as to assess whether defendants' responses fully identify matters requiring resolution.

The OQA assessment is essential to this court's evaluation of defendants' compliance with this court's

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October '86 order and the consent decrees. As well, the OQA has the continuing responsibility for monitoring implementation of the various orders controlling these cases. The OQA monitoring responsibility is of particular import for a variety of reasons, including that the Department of Mental Retardation has been faced with budget cutting proposals, announced staff layoffs, an early retirement program, proposed facility consolidations, and unsuccessful efforts by the defendants to change the method of determining staffing needs. Of significance as well, in assessing the continued importance of the OQA to the monitoring process, was the threat, earlier this year, of federal decertification of Dever because of defendants' failure to meet applicable standards. The Dever deficiencies were brought to this court's attention by the OQA.

Having all these factors in mind, this court considers plaintiffs' motion to extend the October '86 order and the OQA, up to and including December 31, 1992, to be a reasonable request. Indeed, the court deems this extension to be necessary for it to meet its obligation to assess defendants' compliance, given the April 2, 1992 reporting timetable.

This court has difficulty understanding the rationale behind defendants' opposition to this motion for extension of the October '86 order, the first such request by the plaintiffs. The defendants had an obligation to complete its work under the October '86 order within three years (December '89)—or, at the least, to be in a position to report as to a revised date for expected

completion. Because of the defendants' failure to complete its tasks, the several extensions already referred to have been granted by this court. Defendants' position appears to be that, because of the passage of time, this court has no authority to extend the time for compliance with its October '86 order, as well as the OQA, which is an integral part of that order. It would be incongruous for defendants to be able to prevail in their opposition because of a passage of time for which they are responsible.

\*4 Plaintiffs' motion is ALLOWED.

An order will issue.

**ORDER**

**June 24, 1992**

For the reasons stated in the accompanying memorandum, Plaintiffs' Motion to Extend October 9, 1986 Order is ALLOWED.

It is so ordered.

Footnotes

<sup>1</sup> For a more complete exposition of the history of these cases, see *Massachusetts Ass'n for Retarded Citizens v. King*, 668 F.2d 602 (1st Cir.1981); *Massachusetts Ass'n for Retarded Citizens v. King*, 643 F.2d 899 (1st Cir.1981); *Ricci v. Okin*, 781 F.Supp. 826 (D. Mass.1992); *Ricci v. Callahan*, 646 F.Supp. 378 (D. Mass.1986); *Ricci v. Callahan*, 576 F.Supp. 415 (D. Mass.1983); *Ricci v. Callahan*, 97 F.R.D. 737 (D. Mass.1983); *Ricci v. Okin*, 537 F.Supp. 817 (D. Mass.1982).

<sup>2</sup> An example of the continued importance of the OQA's oversight function was demonstrated last fall, when the OQA reported to the court, on October 28, 1991, that serious deficiencies existed in the delivery of services to class members residing at Dever. See *Ricci v. Okin*, No. 72-0469-T, slip op. at 1 (D. Mass. Jan. 22, 1992). The Health Care Finance Administration ("HCFA"), a division of the Department of Health and Human Services, subsequently reported to the court that Dever risked losing federal funding if the cited deficiencies were not corrected by February 13, 1992. *Id.* at 1-2. These deficiencies were later remedied.

<sup>3</sup> As always, this court is ready to assist the parties in settling any differences they may have, if either or both feel that court Participation would be of benefit. A request for such a conference may be made by the filing of a motion, together with a suggested agenda.

<sup>1</sup> For a more complete exposition of the history of these cases, see *Massachusetts Ass'n for Retarded Citizens v. King*, 668 F.2d 602 (1st Cir.1981); *Massachusetts Ass'n for Retarded Citizens v. King*, 643 F.2d 899 (1st Cir.1981); *Ricci v. Okin*, 781 F. Supp. 826 (D. Mass.1992); *Ricci v. Callahan*, 646 F.Supp. 378 (D. Mass.1986); *Ricci v. Callahan*, 576 F.Supp. 415 (D. Mass.1983); *Ricci v. Callahan*, 97 F.R.D. 737 (D. Mass.1983); *Ricci v. Okin*, 537 F.Supp. 817 (D. Mass.1982).

<sup>2</sup> The defendants' report was due on April 23, 1992. This court granted defendants' request for an extension.

