

1992 WL 163215

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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. | June 24, 1992.

Attorneys and Law Firms

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Opinion

MEMORANDUM

TAURO, Chief Judge.

*1 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.¹

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.

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.

*2 In response to the April 2, 1992 order, defendants submitted affidavits on May 26, 1992.² 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

Ricci v. Okin, Not Reported in F.Supp. (1992)

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 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.

Plaintiffs' motion is ALLOWED.

An order will issue.

Footnotes

¹ 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).

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