



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

ERNEST D. PREATE, Jr.
ATTORNEY GENERAL

Reply To:

June 29, 1992

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Robert Meek, Esquire
Disabilities Law Project
801 Arch Street, Suite 610
Philadelphia, PA 19107

Re: Ruth L. v. White
Civil Action No. 90-5562

Dear Mr. Meek:

This letter reflects the good will and spirit of compromise of the Department of Public Welfare ("Department") to effect appropriate placement of that class of persons with a primary or exclusive diagnosis of mental retardation who are institutionalized in state hospitals for persons with mental illness.

There is a presumption that the treatment and habilitation needs of each class member can be met in a community-based program of mental retardation services. The defendants' representatives have individually reviewed each person known to defendants presently residing in a state hospital for the mentally ill who could reasonably meet the class definition. The names of persons whom defendants believe to be class members as of the date of this letter are listed in Attachment I, which is incorporated by reference but is to be maintained in the offices of plaintiffs' counsel and defendants' counsel to preserve the confidentiality of plaintiff class members' identities. Defendants will communicate to the counties the names of class members identified to be from that county.

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Plaintiffs' counsel may identify persons who reasonably fit the class definition and communicate that information to defendants' counsel during the pendency of this matter on the court's civil suspense list.

If a dispute arises between plaintiffs and defendants as to whether an individual is a member of the class or whether the services identified are appropriate, the conflict shall be resolved by a neutral expert selected by defendants and acceptable to plaintiffs.

Regarding disputes between defendants and the counties as to whether an individual is a member of the class, the counties have previously been advised to retain an independent expert to examine the individual and report the findings to the Department. If the Department disputes these findings, defendants will so notify plaintiffs' counsel and will arrange for a neutral expert to examine the individual and resolve the dispute in the same manner as that set out for resolution of disputes between plaintiffs and defendants.

If a class member indicates a desire to remain in a state hospital rather than secure an appropriate community-based placement pursuant to the agreement of the parties, Commonwealth defendants' counsel shall advise plaintiffs' counsel of the name and location of each such class member. To ensure informed choice of such class members, defendants shall provide a qualified mental retardation professional, who may be an employee of DPW, with expertise in the community placement of persons who have been long-term residents of large congregate-care state facilities, to interview and counsel each such class member regarding the relative benefits of community-based services. Plaintiffs' counsel and Kevin Casey, the next friend, or his designee, are to be provided notice and an opportunity to participate in such interviews.

Plaintiffs are also concerned that some counties may not place class members in appropriate community settings, as envisioned in our agreement. Please be assured that defendants will make their best efforts to resist and prevent such actions on the counties' part.

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The defendants have identified funding available during the current fiscal year (FY 1991-92) sufficient to allocate funds to the counties to place 100 class members in appropriate community settings. By June 30, 1992, the defendants intend to allocate to the counties the funding necessary to place 100 class members in appropriate community settings with support services. The counties and not defendants are responsible for developing appropriate community placements for class members.

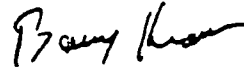
All class members who have been transferred from Woodville State Hospital to Mayview State Hospital because of Woodville's closing, as well as plaintiffs John H., Peter C. and Ruth L., are considered part of this group of 100 class members. Other than those three named plaintiffs and the Woodville transferees, defendants have exclusive discretion to determine which class members are included in this group of 100 persons. Defendants will continue to make their best efforts to identify funding and to allocate by June 30, 1994 such funding to the counties to place the estimated 101 remaining class members in appropriate community placements.

This letter and the attached Stipulation are not nor are to be construed as a Consent Decree and do not operate as an adjudication upon the merits of the litigation. Any actions taken or to be taken by Commonwealth defendants hereunder are not admissions of liability on the part of Commonwealth defendants but are undertaken in the spirit of compromise. The defendants' undertakings in this agreement are not enforceable in any way in this or any other forum. In the event that plaintiffs believe that Commonwealth defendants are failing to adequately discharge their obligations hereunder, plaintiffs shall give written notice of such failure to Commonwealth defendants' counsel, specifying the grounds relied upon demonstrating such failure. Commonwealth defendants shall have sixty days from the receipt of such notice in order to cure the alleged failure. If plaintiffs believe that defendants have not made good faith efforts to cure the failure within the sixty day period, plaintiffs' exclusive remedy is to reopen this litigation at any time in plaintiffs' sole discretion. Plaintiffs may not enforce defendants' undertaking described in this letter or the attached Stipulation by civil contempt, specific performance or any other remedy at law or in equity. Plaintiffs have not waived any legal rights as to any prior wrongdoing.

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The parties agree that this matter shall remain on the court's civil suspense list until June 30, 1994. At the end of this period, the case shall be dismissed without prejudice.

Very truly yours,



Barry N. Kramer
Deputy Attorney General

BNK:rjb