

Memorandum



AEP:MHN:PC:MM:cmw
DJ 168-3-37

Subject

Settlement Agreement in United States
v. Pennsylvania, Civil No. 93-CV-2094

Date

SEP 13 1994

To

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

From

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Arthur E. Peabody, Jr.
Chief
Special Litigation Section

I recommend approval of the attached settlement agreement in United States v. Pennsylvania, Civil No. 93-CV-2094 a CRIPA suit concerning conditions of confinement at the Embreeville Center, a facility housing approximately 180 persons with mental retardation located near Philadelphia, Pennsylvania. The Court has ordered that the parties present the signed agreement by September 21, 1994.

This suit was brought in April 1993 and was scheduled for trial on September 14, 1994. After suit was filed a group of parents and guardians intervened. In January 1994, a separate class action suit against Embreeville, Nelson v. Snider, was filed by ARC-Pennsylvania, and by Pennsylvania Protection and Advocacy, Inc., and was subsequently consolidated with our CRIPA suit.

The case has been actively litigated since its inception, including document production of over 100,000 documents, 20 depositions, numerous examinations of the facility by seven different experts retained by the United States, and the filing of and response to numerous motions both procedural and substantive. We scored several significant preliminary victories which may have helped us achieve the settlement described below, including the first explicit ruling under CRIPA that the standard of proof which applies at trial to the United States is the same standard as applies to any other plaintiff suing over similar conditions, and a ruling that the defendants were precluded from relitigating certain adverse findings of fact made by another federal district court in Pennsylvania concerning former residents of the Pennhurst State Hospital and Training School, some of whom are living at Embreeville. The findings to which defendants were bound include descriptions of the harm caused by

institutionalization and the benefits of community placement on the well being of those once institutionalized.

The settlement agreement described below was the product of many months of negotiations among the many parties to this litigation and among the many different defendants. If approved by the Court, the agreement would dramatically improve the lives of those living at Embreeville. The following is an outline of some of the major provisions of the agreement.

Closure. Defendants will permanently close the facility by October 1997. Fifty-seven of the 180 residents will be placed in community living arrangements by June 30, 1995. Defendants plan to place the remaining residents in the community over the next two years. If defendants fail to implement their plan, plaintiffs have the right to request that the Court order the remaining placements.

Monitor and Expert Panel. To monitor defendants' compliance with the terms of the agreement, and to fulfill certain other duties, the parties will select a Monitor and panel of experts. Defendants have agreed to spend up to \$110,000 annually for the Monitor's and panel's fees and expenses.

Process of Community Placement. The specific means by which residents are to move to the community is covered in some detail by the agreement, including the provision of persons whose sole job is to coordinate and facilitate placement, and the provision of detailed plans, developed according to resident preferences, to guide the placement process. The Monitor must approve all placements.

Limitations on Placement. Defendants agreed not to place any resident into a community living arrangement of greater than three persons with developmental disabilities unless the Monitor approves. Defendants may not place residents in boarding or nursing homes without Monitor approval.

Services in the Community. Defendants agree to provide all necessary services to ensure successful placements. The Monitor can alter or switch a person's placement if it is unsuccessful.

Quality Assurance. In addition to the Monitor and expert panel, defendants will fund teams of parents, guardians, and advocates who will also Monitor the quality of care and services provided residents in the community.

Grievance System. The parties will establish a grievance system in which any person unsatisfied with the quality of care and services in the community may be heard by an independent arbitrator. Defendants must comply with the arbitrator's decision.

Implementation Plan and Monthly Compliance Meetings.

Defendants will provide the Monitor and plaintiffs with a plan of implementation of their obligations under this agreement within 90 days. Thereafter, monthly meetings will be held to assess defendants' progress towards their obligations.

Increased Services to Residents. Defendants will provide Embreeville residents with increased psychological, psychiatric, medical, and physical therapy services. The defendants' obligations in these areas are spelled out in detail in the agreement. As part of those increased services, defendants will retain independent experts to provide expertise for all residents. Defendants are obligated to create a new data collection system for tracking the progress or deterioration of each resident.

Increased Staff. Defendants will hire additional staff so that the staff to resident ratio is no less than 1:4. Staff who are assigned 1:1 supervision with certain residents will not be included in the 1:4 calculation. Defendants will hire a Ph.D. psychologist with experience in behavior management, and will hire an additional occupational therapist.

Termination of the Agreement. The agreement extends until at least 12 months after the last person has been placed in the community. At that time the Court will hold a hearing to determine whether the agreement will be terminated. The Court will receive the recommendations of the Monitor and Panel as to defendants' compliance with the agreement, which shall be presumptively correct, absent rebuttal by any party. The Monitor's recommendations shall be based on a review of the care and treatment of 20 percent of the former Embreeville residents. If the Court concludes that defendants have substantially complied with the agreement, it shall be terminated.

Matching Funds. The agreement contains a commitment that for each dollar given to Pennsylvania counties to provide services for Embreeville residents moved to the community, the defendants will give a like amount to the counties for services for persons needing services but who did not reside at Embreeville.

I recommend that you approve the attached settlement agreement.

Attachments

Approved: 

Disapproved: _____

Comments: