

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff, and)	
)	
PEOPLE FIRST OF TENNESSEE, et al.,)	
)	
Plaintiffs-Intervenors,)	
)	
v.)	Civil Action:
)	No. 92-2062 M/P
STATE OF TENNESSEE, et al.,)	
)	
Defendants, and)	
)	
PARENT-GUARDIAN ASSOCIATIONS)	
OF ARLINGTON DEVELOPMENTAL)	
CENTER,)	
)	
Defendant-Intervenors.)	

AGREED ORDER

Pursuant to the Court's Order filed September 4, 2012 (ECF No. 2901), Plaintiff, the United States; Plaintiffs-Intervenors, People First of Tennessee, et al.; and Defendants, the State of Tennessee, et al. ("State")¹ have agreed upon "objective and measurable exit criteria for the dismissal of this action," (ECF No. 2901 at 38 (quoting 2006 Settlement Agreement at 13)), in mediation conducted with Magistrate Judge Diane K. Vescovo.

¹ Intervenor West Tennessee Parent Guardian Association did not participate in the mediation process and takes no position on the other Parties' proposed resolution of this case.

These criteria are set forth in the Exit Plan. (ECF No. 2941.)
Based on the resolution of the mediation and the presentation of these Parties,

IT IS, ORDERED, ADJUDGED AND DECREED that:

Exit Plan (ECF No. 2941)

1. The State has agreed to undertake the obligations set forth in the Exit Plan in exchange for the dismissal of the case and the vacatur of all outstanding injunctive relief as provided in Paragraphs 2, 7, 8, 12, and/or 14 below. The objective of the Exit Plan is to resolve the above-captioned action by completing all material provisions of the Exit Plan by December 31, 2013.

2. If the State completes all material provisions of the Exit Plan by December 31, 2013, or earlier, the Court shall vacate all outstanding injunctive relief and dismiss this case with prejudice.

Compliance Conferences

3. During the performance of the Exit Plan, Plaintiffs shall have reasonable access to requested information and documents regarding compliance with the Exit Plan without the necessity of formal discovery.

4. Beginning in February 2013, Counsel for the Parties will meet monthly, unless the Parties agree to meet telephonically or to forego a monthly meeting, with Magistrate

Judge Vescovo to conduct Compliance Conferences. The Parties will seek to resolve any issues of compliance with the Exit Plan, if any, during these conferences.

5. This Order shall serve as a standing Order of Reference permitting Magistrate Judge Vescovo to address issues of compliance with the Exit Plan as provided herein. During implementation of the Exit Plan, except by operation of Paragraph 15(a) below and any motions for attorneys' fees, no Party shall seek a finding of contempt or file a motion seeking any other relief from the Court, *except that*, any Party may seek relief if the Party believes in good faith that there exists an imminent risk of serious harm to a class member that is not being addressed appropriately.

6. During implementation of the Exit Plan, at the request of a Party or on the Court's own motion, Magistrate Judge Vescovo may issue Reports and Recommendations to the District Court pursuant to Federal Rule of Civil Procedure ("Rule") 72 finding that the State has completed any or all material provisions of the Exit Plan. Pursuant to Rule 72, if any Party objects to the Report and Recommendation, that Party must file an objection to the Report and Recommendation within 14 days of issuance of the Report and Recommendation. If no such objection is filed, the findings in the Report and Recommendation shall be final and binding on all Parties, and no Party may raise any

further issues with respect to the material provision(s) with which the Report and Recommendation found the State to be in material compliance. Pursuant to Rule 72, the District Court shall review de novo any filed objection. The Party which filed the objection shall have the burden of proof on all factual issues implicated by the objection, and the Federal Rules of Evidence shall govern any hearing conducted on the objection.

Compliance

7. If (i) the Parties agree that the State has completed all material provisions of the Exit Plan, or (ii) Magistrate Judge Vescovo has issued Report(s) and Recommendation(s) finding that the State has complied with all material provisions of the Exit Plan, and no Party has timely objected, the Parties shall submit to the Court a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter.

8. If Magistrate Judge Vescovo has issued Report(s) and Recommendation(s) finding that the State has complied with all material provisions of the Exit Plan, and any timely objection has been overruled by the District Court, the State shall submit to the Court a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter.

9. If the State determines that it has not completed or will not complete one or more material provisions of the Exit Plan by December 31, 2013, the State shall be entitled to extension(s) of the term of the Exit Plan of no more than six months for any single extension, not to exceed one year without the consent of the Parties, to permit the State to complete the remaining material provisions of the Exit Plan.

10. If the Parties agree that the State has not completed all remaining material provisions of the Exit Plan by December 31, 2013, the Parties may, but are not required to, agree to a proposed Order of conditional dismissal pursuant to Rule 41(a)(2).

11. If the Parties disagree on whether the State has completed all remaining material provisions of the Exit Plan by the end of the term of the Exit Plan, and that disagreement cannot be resolved by mediation with Magistrate Judge Vescovo, the State shall present to Magistrate Judge Vescovo its basis for its position that the State has completed all remaining material provisions of the Exit Plan. Magistrate Judge Vescovo may consider this information along with the record of information discussed throughout monthly Compliance Conferences. Magistrate Judge Vescovo will then issue a Report and Recommendation, subject to Rule 72, with findings as to whether the State has completed the remaining material provisions.

12. Except as provided in Paragraph 13, if any Party objects to the Report and Recommendation issued pursuant to Paragraph 11, that Party must file an objection to the Report and Recommendation with 14 days of issuance of the Report and Recommendation. If no such objection is filed, the findings in the Report and Recommendation shall be final and binding on all Parties, no Party may raise any further issues with respect to the material provision(s) with which the Report and Recommendation found the State to be in material compliance, and the Parties shall submit to the Court a consent motion and a proposed Order vacating all outstanding injunctive relief and dismissing the case with prejudice, which the Court shall enter. Pursuant to Rule 72, the District Court shall review any filed objection de novo. The Party which filed the objection shall have the burden of proof on all factual issues implicated by the objection, and the Federal Rules of Evidence shall govern any hearing conducted on the objection.

13. If Magistrate Judge Vescovo issues a Report and Recommendation pursuant to Paragraph 11 finding that the State has not completed one or more material provisions of the Exit Plan, the State shall be entitled, at its option and in lieu of an objection to the Report and Recommendation, to extension(s) of the term of the Exit Plan of no more than six months for any single extension, not to exceed one year without the consent of

the Parties, to permit the State to complete the material provision(s) of the Exit Plan that Magistrate Judge Vescovo has found not to be completed. If the State elects to extend the Exit Plan pursuant to this Paragraph, the procedures set forth in Paragraphs 7-11 shall govern after the State informs the Parties that it believes that it has completed the material provision(s) of the Exit Plan that Magistrate Judge Vescovo had previously found not to be completed.

14. If a Party has objected to a Report and Recommendation issued pursuant to Paragraph 11, and this Court, after its review, finds that the State has completed the material provision(s) of the Exit Plan identified in the objection, then this Court shall vacate all outstanding injunctive relief and dismiss the case with prejudice.

15. If a Party has objected to a Report and Recommendation issued pursuant to Paragraph 11, and this Court, after its review, finds that the State has not completed one or more material provisions of the Exit Plan, then the Court may:

a. make findings regarding the State's compliance or non-compliance with the material provisions of the Exit Plan identified in the objection and enter an Order granting an extensions of the term of the Exit Plan of no more than six months for any single extension, and directing the State to

complete the material provision(s) of the Exit Plan the Court has found that the State has not completed; and/or

b. enter an Order of conditional dismissal pursuant to Rule 41(a)(2).

16. If the State informs the Court and the Parties that it cannot perform its obligations under the Exit Plan, the Court may vacate this Order.

Monitoring

17. In lieu of the duties and responsibilities for monitoring set forth in the Remedial Order and subsequent orders of the Court, hereinafter the Court Monitor's duties and responsibilities for monitoring are only those specifically set forth herein, which are as follows:

a. Conducting, with the assistance of reasonable and necessary consultants, annual on-site reviews of the RHA ICFs-IID, Mid-South Area Residential Services, and Behavior Services of Tennessee, and issuing Community Status Reviews for those providers based on the on-site review;

b. In regard to any communication the Court Monitor receives from a class member, class member's family, provider, advocate, or any other person regarding the litigation or services provided by DIDD, aside from communications relative to her community status reviews, the Court Monitor's sole responsibility shall be to direct the person to call DIDD (the

State shall provide the specific position and number of the person to be contacted), and to report the call to Plaintiff's counsel in those instances she believes it is appropriate to do so;

c. Be available to speak to counsel for the parties and/or the Court;

d. Undertake reviews, issue other reports, and/or engage in other activities only in the event she is directed to do so by a specific Order of this Court entered subsequent to the entry of the instant Order;

e. Transition activities associated with the winding down of active monitoring;

f. Attending any District Court hearings;

g. The Court Monitor's annual budget for providing the services set forth and described herein shall in no event exceed \$55,000 plus fees associated with any District Court hearings and travel expenses in connection with the provider reviews and any Court hearings absent further, specific order of this Court. The Court Monitor shall not submit to the State, and the State shall not be required to pay, any invoice to the extent it seeks payment in excess of the annual budget.

18. In light of the recent resignation of the current Court Monitor, effective January 15, 2012, the Parties have agreed to make their best efforts to present the Court, by the

date of the first Compliance Conference, with an agreed upon nominee for the Court's consideration to serve as the new Court Monitor. Notwithstanding the budgetary limitation imposed by paragraph 17(g), upon appointment of a new Court Monitor, the new Court Monitor may submit to the Court for its approval a one-time budget not to exceed \$15,000 for reasonable and necessary expenses required to permit an effective transition of monitoring duties and information from the prior Court Monitor.

Other Issues

19. No costs ordered paid by the Defendants in previous Orders shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal.

20. No sanctions ordered paid by the Defendants in previous Orders shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal.

21. No fine monies held by the Court or due to be repaid to the Court shall be refunded to the Defendants by operation of this Order, or an Order of final dismissal. Nothing in this Order modifies the Court's orders of June 6, 2011 (ECF No. 2711; ECF No. 2712); and in accordance with ECF No. 2711, any funds repaid to the Court by WTFS Association, Inc., shall be disbursed to the Housing Foundation.

22. Notice of the hearing to approve this Order was published on January 11, 2013, in the Memphis Commercial Appeal, and on or before that date on the DIDD website.

IT IS SO ORDERED this 17th day of January, 2013.

/s/ Jon P. McCalla
CHIEF U.S. DISTRICT JUDGE