

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

FEB 19 1992

ANNA MARIA WESTON, by her )  
guardian Barbra Weston, et al., )  
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Plaintiffs, )  
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vs. ) Civil Action No. C90-0004  
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 )  
WYOMING STATE TRAINING SCHOOL, )  
et al., )  
 )  
Defendants. )

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FINDINGS AND DIRECTIVES OF THE COMPLIANCE ADVISORY BOARD (CAB)  
REGARDING THE FOUR-YEAR PLAN DISPUTE

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I. BACKGROUND

On January 28, 1992, the Wyoming Protection and Advocacy System, Inc. (P&A) filed a Request for Review by the Compliance Advisory Board (CAB) of Four-Year Plan Dispute, pursuant to section 8.07 of the Consent Decree.

Section 5.15(c) of the Consent Decree requires that "By December 31, 1991 and December 31, 1993, WSTS shall prepare updated four (4) year plans and submit them to P&A for the review process."

Section 2.05(a) of the Consent Decree sets forth the "review process" whereby "any proposed rule, regulation, plan, policy, procedure, program ... shall not be adopted by the State unless the State submits the same to P&A for review and comment." Subsection (b) of this section states that "The parties shall exchange information to ensure that a coordinated, cooperative effort is undertaken which will benefit the class as a whole."

In their Request for Review, Plaintiffs sought the following remedies:

- (1) that the CAB cite the State for procedural non-compliance;
- (2) that the CAB issue a directive that recommends solutions to the problem of procedural non-compliance; and
- (3) that the State be instructed to reconcile the proposed State Biennium budget with the four-year plan.

The State served an Answer to Request for Review By CAB of the Four-Year Plan Dispute on February 5, 1992. In its answer, the State urged that the CAB deny Plaintiffs' request in all respects and affirmatively requested that the CAB provide meaningful assistance to the parties to resolve the issues. The State also appears to have raised an issue of non-compliance by P&A, pursuant to section 8.01(b) of the Consent Decree.

On February 10, 1992, P&A served a Response to State's Answer to Review of Four-Year Plan Dispute. P&A reiterated the need for interpretative guidance on the issues from the CAB.

Because the issues have received a full and fair airing, the CAB has not deemed it necessary for the present matter to be resolved with the further assistance of a settlement conference, pursuant to its authority under section 8.07(d) of the Consent Decree.

## II. FINDINGS REGARDING PROCEDURAL NON-COMPLIANCE

For the reasons stated below, the CAB denies Plaintiffs' request to cite the State for procedural non-compliance. The CAB also denies the State's request to cite the P&A for non-compliance with the Consent Decree.

The CAB herein grants Plaintiffs' request to issue directives to the parties that set forth guidelines for reconciling the proposed budget with the four-year plan and that resolve other issues of dispute between the parties. The CAB also grants the State's request that it provide meaningful assistance to the parties to resolve the issues raised herein.

Plaintiffs do not dispute that the four-year plan was submitted to P&A by the State on December 31, 1991, pursuant to section 5.15(c) of the Consent Decree. The State's Answer and attached affidavit of Dr. Jon Fortune corroborate this conclusion.

The Consent Decree does not require that the State submit its proposed biennium budget to P&A, pursuant to the review process. There is no evidence to support a finding that State is in procedural non-compliance with the review process regarding the submission of the four-year plan. This is because the proposed budget has neither been formally adopted by the State nor is it controlling in this matter.

There is no evidence to support a finding that the P&A is in procedural non-compliance for failure to follow the informal dispute resolution procedures set forth in section 8.01(b) of the Decree.

In their Request, Plaintiffs do not contest the substantive issues with respect to the merits of the four-year plan. Plaintiffs propose instead that substantive discussions with respect to the merits of the plan proceed under section 8.06 of the Decree. However, in light of the parties' request for guidance on these matters, several of the substantive issues with regard to the four-year plan are discussed herein, Part III.

Before addressing the substantive issues with regard to the four-year plan, the CAB affirms that it will continue to monitor closely the letter and spirit of the review process. Specifically:

a. any violations by the parties of the review process will constitute grounds for procedural non-compliance, with appropriate sanctions and costs;

b. the CAB reserves the right to remedy such violations by means of increased oversight of the review process, or by any other means necessary to ensure that the terms of the Consent Decree are followed in ways that benefit the class as a whole;

c. any pattern of actions by either party that undermine the spirit and goals of the Consent Decree and that unnecessarily waste the resources and energies of the parties will, upon proper showing, constitute a finding of procedural non-compliance; and

d. any future notice to the CAB regarding issues of non-compliance pursuant to section 8.07 of the Decree shall be submitted by the moving counsel of record to the opposing counsel of record and the CAB only after informal attempts have been made to resolve the dispute, consistent with sections 8.01(b) and 8.06 of the Consent Decree.

### III. DIRECTIVES AND FINDINGS REGARDING THE DEVELOPMENT OF THE FOUR-YEAR PLAN

1. Within thirty (30) days of this directive, the State shall revise and resubmit the four-year plan to the P&A, in accordance with the review process, addressing the following:

a. the schedule, including detailed time-frames, program and residential placement responsibilities and locations and support services

for placements of all school age class members residing at WSTS, in accordance with the terms and obligations of the Consent Decree;

b. the issues raised in the October 10, 1991, Report of Dr. Alfred Healy;

c. the rationale for seeking federal Intermediate Care Facility/For the Mentally Retarded (ICF/MR) funding to further the outcomes required by the Consent Decree; and

d. the analysis of the staff reduction plan at WSTS as it downsizes, and information regarding the status of the staff pool, consistent with the terms of the Consent Decree.

e. The information required in Part 1(a-d) above shall be submitted by the State only to the extent that it has not already been made available to the P&A and the CAB. Upon the expiration of the thirty day revision period, P&A will have ten (10) days to submit any responses to the State regarding the revision of the four-year plan.

2. To facilitate compliance and prevent mis-communications between the parties, documents set forth in Appendix D of the Decree and submitted pursuant to the review process shall be sent by the counsel of record to opposing counsel of record. In addition, to further enhance opportunities for collaborative effort between the parties, any non-privileged information relevant to the implementation of the Decree shall be brought, in a timely fashion, to the attention of the other party.

3. Reducing the number of filled beds at WSTS by July 1, 1993, to the final census required by the Consent Decree does not mean that the State's obligations under the Decree are necessarily completed.

4. The CAB reaffirms section 6.01(f) of the Decree in that no class member shall be discharged from WSTS to meet a placement timetable. However, the State is not necessarily precluded from meeting the terms of the Consent Decree prior to or later than December 31, 1994. Ultimate compliance may occur only if, upon proper showing by the parties, the CAB is able to determine that the State has fulfilled its obligations under the Decree and so certifies to the United States District Court for the District of Wyoming.

5. Pursuant to section 2.02(k) of the Decree, services and supports called for in an individual's Individual Program Plan (IPP) shall be provided by the State regardless of federal ICF/MR funding. Adherence at WSTS to ICF/MR standards does not necessarily indicate compliance with the terms and conditions of the Consent Decree.

6. Pursuant to section 6.01(g)(3) of the Decree, a conclusion that only individuals with more severe disabilities -- for example, those who are medically fragile, aged and/or have behavioral disabilities -- will remain at WSTS is not warranted. Actual placements from WSTS remain subject to availability of the community-based supports and services, which the State has an obligation to develop pursuant to the Decree.

7. Defendants are responsible for reasonable compliance with the goals, objectives and obligations set forth in the four-year plan and the Consent Decree, regardless of the final budget approved by the Wyoming State Legislature. To that end:

a. as set forth in section III(1) above, within thirty (30) days of this directive, the State shall modify the four-year plan to satisfy the directives set forth herein. This directive is not to be taken as requiring the State to rewrite the four-year plan;

b. the revised four-year plan will be submitted to the P&A, in accordance with the review process. The P&A will then have ten (10) days to make any final suggestions or comment;

c. the plan shall be submitted to the CAB for approval;


d. upon approval of the plan, future modifications of the plan shall follow the review process as set forth in the Consent Decree. The CAB acknowledges that, with changing circumstances and needs of the class members, the plan may need modification in the future to meet the requirements of the Consent Decree. The CAB reserves the right to review or direct any such modifications as necessary.

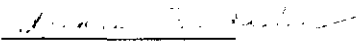
8. The CAB commends the parties for their willingness to work together, and for the progress already made over the past year toward achieving the goals and terms of the Consent Decree and many of the issues raised herein. The directives and findings herein do not reflect a view by the CAB that either party has not been pursuing objectives that are meant to serve the best interests of citizens of Wyoming with developmental disabilities and their families.

#### IV. CONCLUSION

The findings and directives herein shall be issued to the parties and filed with the Court, in accordance with the authority of the CAB as appointed by the United States District Court for the District of Wyoming. The parties are directed to comply immediately with the findings and directives set forth herein.

Submitted this \_\_\_ Day of February, 1992, by The Compliance Advisory Board.

  
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Peter David Blanck

  
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Sondra B. Kaska

copy to: Shirley Kingston, Dennis Coll, Michael Reese, Danny Wilde