

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JIMMY DOE, <i>et al.</i> ,)	
)	
Plaintiffs,)	No. 99 CV 3945
)	
v.)	
)	
COOK COUNTY, <i>et al.</i> ,)	Judge James F. Holderman
)	
Defendants.)	

SPECIAL REPORT OF TA ON TRANSITION ISSUES

Earl Dunlap, Transitional Administrator (TA) of the Cook County Juvenile Temporary Detention Center (JTDC), hereby submits the following special status report on transition issues.

Introduction

When the parties appeared in Court on January 27, 2015, it was announced that the Office of the Chief Judge (OCJ) had selected someone to fill the position of JTDC Superintendent and the selected individual would begin working on February 9, 2015. The upcoming transition of authority from the TA to the new Superintendent is a welcome development, but one that requires careful planning and coordination to ensure that all of the progress achieved during the TA's tenure is not lost. As the Court is aware, the TA has made repeated efforts over the past several months to engage OCJ in a joint transition process, with no response from OCJ. The TA is pleased that OCJ has finally selected a Superintendent, but the TA

remains very concerned about the apparent lack of any other planning by OCJ for an orderly transition process.

Upon learning from this Court that a new Superintendent was hired, the TA convened a meeting of the *Doe* parties to discuss the impending transition process. At the meeting, the parties identified the issues most crucial to this litigation that would bear on the transition. These issues are discussed in summary format below. This list is by no means exhaustive, but it highlights the matters most in need of attention from OCJ and coordination between the TA and new Superintendent before transition can occur.¹

I. Why Transition is Complicated

As an initial matter, it must be noted that the task of transitioning administrative control of the facility from the OTA to the OCJ is complicated. It is certainly not as simple as an administrative agency simply changing hands from one appointed leader to another.

For the past seven years, the JTDC has been under the administrative control of the TA, who, by virtue of various court orders entered in this case, enjoyed flexibility that OCJ and the Superintendent will not have. For example, the OTA has used, and continues to use, an expert consultant named Bob Dugan to coordinate implementation of the Resident Management Information System, a

¹ On February 5, OCJ revealed the identity of the newly-selected Superintendent – Mr. Leonard Dixon – to the TA, and on February 10, OCJ made Mr. Dixon available for a meeting with the TA. Although the TA has been disappointed by OCJ's lack of engagement over the past several months, the TA was encouraged by the February 10 meeting with Mr. Dixon and is hopeful that the transition process can finally begin in earnest.

critical component of compliance with MIP. Mr. Dugan is deeply invested in this important project, and losing him at this point would be a considerable setback.

The order appointing the TA allowed Mr. Dunlap to involve Mr. Dugan by contracting directly with him and circumventing County contracting requirements. Once the TA's appointment is over, however, OCJ will likely have to go through the County's lengthy and sometimes-byzantine procurement and contracting procedures in order to contract directly with Mr. Dugan to keep him on board.

More importantly, OCJ has never before undertaken operation of a facility of similar size or responsibility. The JTDC is the largest juvenile detention facility in the country. It has around-the-clock responsibility for the safety, security, and care of hundreds of young people. OCJ has no experience running an agency of this magnitude or in operating a facility that demands attention on a 24/7 basis. Aside from selecting a new Superintendent, it is unclear whether OCJ has developed any internal infrastructure for operating the facility. To give one example, the OTA has utilized an employment agency called CareerBuilder to help recruit and "on-board" new staff. OCJ's personnel department has not indicated whether its Human Resources department has the capacity to undertake this task or if it will need to retain CareerBuilder.

II. Staffing

One of the most crucial issues facing the JTDC is and always has been maintaining appropriate levels of qualified staff. Understaffing plagued the JTDC in the early years of the TA's appointment. Although the TA succeeded in bringing

staffing up to an adequate level, attrition and absenteeism have been and continue to be vexing issues. Prior to transition, OCJ must have a system in place to maintain appropriate staffing levels, which should include a plan for recruiting and “on-boarding” qualified staff in a relatively short period of time. Without such a plan, hiring will slow down considerably, and dangerous conditions will likely return.

The OCJ needs to consider a number of issues that will bear on its ability to maintain appropriate staffing levels, issues that include, but are no means limited to, staff turnover rates, levels of vacancies resulting from staff discipline, leave of absences, injuries, FMLA, and absence of County-recognized “relief factors” for mandated posts, benefit time accrual, etc.

First, OCJ must consider whether and to what extent it intends to use contracted staffing services. As referenced above, the TA uses CareerBuilder to assist with the legwork of recruiting and screening new staff, which keeps the “on-boarding” period relatively short. If OCJ intends to continue to use CareerBuilder, it needs to begin negotiating a contract with them as soon as possible. Likewise, the TA has used Wackenhut, a private security company, to supplement staffing on various posts when current staffing levels fall short. Fortunately, Wackenhut already has a contract with the County, which will enable the OCJ to use Wackenhut’s services at the JTDC when necessary for at least the next year.

In addition, when transition occurs, JTDC employees will be required to meet staffing requirements of the Administrative Office of Illinois Courts (AOIC). As the

TA has referenced in past Court filings, *see* R.530, at 15-20; R.557, at 5-6, he has assisted the OCJ in this regard for the past several years by ensuring that all new hires meet the AOIC requirements. Under AOIC requirements, everyone who works at the JTDC must be officially “certified” by AOIC, a process that can take around two weeks, sometimes longer. However, in order to maintain a short “on-boarding” process, the TA has conditionally hired staff before they officially have AOIC certification, which is not consistent with OCJ’s current practice of hiring only after employees obtain AOIC certification.

Additionally, the Court and *Doe* parties will recall from prior briefing on the Court-approved staffing plan that there are a certain number of JTDC staff (approximately 76) who currently work in positions where they have direct and continuous contact with JTDC residents but do not meet the AOIC degree requirement. *See* R.589 (6/23/10 Memorandum Opinion and Order approving the TA’s staffing plan). OCJ must decide how to address this issue, and be prepared for the possibility that AOIC requirements will result in the loss of that staff.

Yet another complicating factor is the application of the *Shakman v. Cook County*, No. 69 cv 2145 (N.D. Ill.) consent decree to the JTDC. The *Shakman* plaintiffs have taken the position that *Shakman* applies to the JTDC, and that a *Shakman*-compliance hiring plan must therefore be developed for the facility. The *Shakman* plaintiffs asked the TA to develop such a plan, but in light of the pending transition, the TA has suggested that it would be more appropriate for the *Shakman* parties to discuss the issue with OCJ. *See* R.686, at 6-18 (referencing this

issue in a past report). The TA believes that this task should be left to OCJ, which can take its own position as to whether it is obligated to create a *Shakman* hiring plan, and which, if it is, will have to live with the long-term impacts of implementing such a hiring plan. As the TA understands it, implementation of a *Shakman* hiring plan could significantly delay the on-boarding process, so if OCJ decides to create one, then it must be devised with special attention to this issue.

III. Personnel & Labor

Relatedly, before transition can occur, the Superintendent must develop and implement an employee discipline and grievance system to ensure that staff, especially those that present a risk to JTDC residents or security of the facility, can be held accountable. In this area, the TA has been in a unique position because the Illinois Labor Board not exercised jurisdiction over the TA's actions. In addition, the TA's current system utilizes a hearing officer and investigator who are contractors of the OTA, not employees of the County. If the Superintendent wants to retain these individuals, OCJ will need to negotiate either employment or contractual relationships with them. The OCJ and the Superintendent might find themselves in a position where they simply desire to start from scratch when it comes to implementing a system for handling discipline and grievances.

Relatedly, OCJ will need to start negotiating labor contracts with two different JTDC collective bargaining units, a process that could take several years. At the same time, employees in some managerial positions are in the process of seeking collective-bargaining rights. OCJ must take steps during these processes to

maintain a functioning that allows OCJ to hold those staff accountable notwithstanding any delays in the collective bargaining process. Likewise, OCJ must approach collective bargaining in a manner that preserves the “Center within a Center” system, which has been the cornerstone of the TA’s reform efforts. *See* R.589 (6/23/10 Memorandum Opinion and Order discussing this system).

IV. Overpopulation

The Superintendent and the OCJ must develop plans for dealing with overpopulation at the JTDC, an issue that the TA has previously raised with some urgency to this Court and with the *Doe* parties. As the TA has explained, JTDC’s functional operating capacity is 382. This is the number of residents that can be safely housed at the JTDC due to various physical plant and operational limitations. *See* R.711, at 7-10; R.759.

For a period of time in the fall of 2014, the JTDC population exceeded the 382 functional operating capacity (the population peaked in mid-November at 418 residents), with significant negative results. *See* R.759. Neither the County nor OCJ had any mechanism in place for limiting the population, which, fortunately, fell around the holiday season (as it typically does).

Presently, the population is around 350, but if past trends are any indication of the future, the population can be expected to exceed 400 residents when the weather heats up in the summer. The Superintendent and OCJ must come up with a plan for finding alternate placements for JTDC residents when the population exceeds 382. If OCJ allows the population to exceed 382 and stay at that level for

any length of time, unsafe conditions will return to the facility. *See generally* R.759 (TA's 11/26/2014 Special Report on Overcrowding).

V. Capital Projects

Finally, OCJ must develop a plan to maintain momentum on a number of capital projects are at critical stages of implementation. One of the most difficult undertakings of the TA's appointment has been implementation of capital projects that bear on compliance with the MIP, such as installation of video cameras and implementation of a Resident Management Information System (RMIS). *See* R.530, at 9-11; R.646, at 9-10; R.680, at 7-9; R.686, at 5-6; and R.711, at 5-6. To put it simply, there is an incredible amount of red-tape in County bureaucracy that must be overcome for projects of this magnitude to be implemented. Fortunately, the attorneys who represent the County in this matter have dedicated themselves over the past few years to shepherding these projects along, and real progress has been made. The long-awaited camera system is finally in place, and other projects are moving. However, the TA is concerned that momentum will be lost without the pressure of this litigation, unless OCJ has a system in place for continuing to see these projects through.

The most important of these is the RMIS, which is still in the contract stage. As the TA has explained in prior reports, implementation of the RMIS system is required for compliance with various portions of the MIP. *See e.g.*, R.711, at 5-6. As noted above, the TA has retained Bob Dugan, a nationally-recognized expert in the field, to oversee this and other technology-related capital projects tied to MIP

compliance (for example, the camera and rounds tracking system, the wireless network, and the electronic medical records systems). The TA very strongly recommends that the Superintendent and OCJ make every effort to keep Mr. Dugan on board so that he may see this project through to completion. Not only is Mr. Dugan at the top of his field, but he also developed institutional knowledge concerning the facility's unique needs and the many different players within the Cook County and Cermak Health Systems bureaucracies who must participate in implementation.

Conclusion

As always, the TA stands ready and willing to work with OCJ, this Court, and the *Doe* parties to achieve an orderly transition. Although OCJ has not engaged with the TA or the *Doe* parties prior to this point, the TA sincerely hopes that the appointment of Superintendent Dixon will enable the parties to begin working together and that this Report will assist in that important process.

RESPECTFULLY SUBMITTED,

/s/ Jon Loevy
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CERTIFICATE OF SERVICE

I, Jon Loevy, an attorney, certify that on February 11, 2015, I served this document on counsel of record via the CM/ECF system.

/s/ Jon Loevy