

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DWIGHT DURAN, et al.,

Plaintiffs,

vs.

Civil No. 77-0721-JC

GARY JOHNSON, et al.,

Defendants.

TERMINATION PLAN – PART I

The undersigned parties hereby agree as follows:

1. The parties have developed the following "road map" ("Termination Plan"). This Part I covers the system wide issues of medical care, mental health (including substance abuse treatment), and special education, and the PNM issues of inmate activity, administrative segregation, legal access, food service, and living conditions. Part II addresses the remaining extant issues in this case.
2. The Termination Plan provides definitive, specific, and measurable tasks to be accomplished in order to achieve substantial compliance. The areas covered in Part I include medical care, mental health, special education, substance abuse treatment, food service, and living conditions. For these areas, Part I of the Termination Plan is comprehensive with respect to actions needed to achieve substantial compliance, with the exception of fire safety in the area of living conditions, and with the further exception of outpatient ambulatory mental health care and subject to final discussion regarding the scope of auditing in mental health. Moreover, these exceptions will be addressed in Part II of the Termination Plan.
3. With respect to inmate activity, administrative segregation, and legal access, this

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Part I lists certain specific tasks that must be completed before a check out audit occurs. Part II will address the full scope of the obligations defendants must meet in these areas in connection with substantial compliance and on which defendants will be audited in the check out audits described in Part II of this Termination Plan. For the areas of inmate activity, administrative segregation, and legal access, if defendants complete the obligations listed in this Part I and maintain compliance with those obligations as well as those described in Part II, they will have achieved and maintained substantial compliance.

4. Part II will describe with particularity defendants' obligations in all areas of the case not addressed in Part I (e.g., inmate discipline). It also will address the full scope of defendants' obligations in areas as to which this Part I is not comprehensive (inmate activity, legal access, and administrative segregation). Finally, Part II will set forth, area by area, the scope and methodology for check out audits and for self monitoring in all areas covered in the Termination Plan except medical care.^v If the check out audits find that defendants have achieved and/or maintained substantial compliance, which is to say that defendants have accomplished the tasks required by the Termination Plan and that no back sliding (as that term is defined below) has occurred in areas in which a finding of substantial compliance has been made, the parties, subject to the terms of paragraph 8 of this preliminary statement, will file a joint motion to vacate.

5. Plaintiffs' purposes in this process are to ensure a fair and reasonable check out audit in each area of the case, to ensure that a finding of substantial compliance is meaningful, and to identify areas, if any, in which back sliding has occurred so that appropriate corrective

^v These matters with respect to medical care are fully addressed in Exhibit A to Part I.

action can be taken (including corrective action that may require a request for the appropriation of additional resources by the 1998 legislature) prior to vacating the areas of the case covered by the Termination Plan in 1998.

6. Defendants' purposes in this process are to know exactly what must be done to achieve substantial compliance, to understand what elements of their obligations will be audited and how those audits will be conducted, and to have their obligations described specifically and clearly enough to have their compliance accurately and objectively measured.

7. If a check out audit or a self monitoring report reflects that an area is not in substantial compliance (due to failure to accomplish the tasks described in the Termination Plan or due to back sliding) defendants will have a period of thirty days to cure that deficiency. If defendants determine that more than thirty days are required to correct the deficiency, they will inform the special master of the reasons for the need to take longer than thirty days and the amount of time needed to correct the deficiency.

8. Defendants intend to achieve substantial compliance during 1997. If the check out audits reflect substantial compliance or no back sliding (as appropriate) and the self-monitoring in each area that occurs after the check out audit reflects continued compliance, no later than November 1, 1998 the parties will file a joint motion asking the court to enter an order by December 31, 1998 vacating all orders covered in the Termination Plan; provided, however, that defendants will conduct their normal self monitoring in November 1998 and will forward the reports of that self monitoring to the special master, provided further, that the order vacating all orders covered in the Termination Plan will not be entered until the special master certifies to the court that the November 1998 self monitoring report reflects substantial compliance. The special

Master will confer with both parties prior to making that certification.

9. The parties agree and acknowledge that in some instances the provisions of the Termination Plan modify the modification and termination provisions of the Modified Decree, and that a Rule 23(e) process may be required.

10. Defendants will not file a motion pursuant to the Prison Litigation Reform Act as to Termination Plan issues prior to December 31, 1998 unless plaintiffs file a motion for contempt as to, or object to a recommendation for vacation of, an issue covered by the Termination Plan, by its terms or with respect to which the special master specifically has recommended vacation of the Decree, either generally or in a particular area. Notwithstanding the foregoing, defendants may file a motion pursuant to the Prison Litigation Reform Act if the special master makes a finding that defendants have failed to achieve substantial compliance in an area and that this failure was the direct result of circumstances caused by inmates that made substantial compliance impossible, extraordinarily difficult, or infeasible.

11. The following definitions apply in this Termination Plan:

check out audit -- the audit to be conducted in each area, each of which is described in Part II of the Termination Plan; if defendants have achieved substantial compliance or they have maintained substantial compliance (*i.e.*, no back sliding), the audit report will note that finding and will initiate the self-monitoring for that area, the scope and methodology of which are described in Part II of the Termination Plan; provided, however, that the report may amend the plan for self-monitoring found in Part II in light of specific findings made during the check out audit

*inmate, person
incarcerated in
NMCD, prisoner --* any member of the *Duran* class

*NMCD, Defendants,
Department --* the New Mexico Corrections Department and the defendants in *Duran vs. Johnson*

self-monitoring -- a process, described in Part II of the Termination Plan, by which maintenance of compliance is audited following the check out audit; depending on the area, self-monitoring may or may not include participation by the special master or a court expert consultant

back sliding -- deviations from defendants' obligations that are sufficiently significant

that, had those deviations been found at the time substantial compliance originally was determined as to that area, the deviations would have prevented a finding of substantial compliance as to that area.

*substantial
compliance --*

substantial compliance, as defined in paragraph E.2 of the Order of Reference, with the requirements contained in both Part I and Part II of the Termination Plan

System wide issues

1. **Medical**

- a. (1) No later than March 15, 1997, consistent with the recommendations of the Special Master's Fifty-first Report, Defendants will direct their medical vendor to employ an additional 1.0 FTE Medical technician/LPN and an additional 1.75 FTE RN at the Main Inpatient Infirmary. If the medical vendor is unwilling or unable to add these positions, defendants will ensure that the positions are added and in any event will ensure that, as a result of these increases in staffing, after March 15, 1997 the staff complement at that facility will be 1.0 FTE Charge RN, 6.5 FTE RNs, and 1.0 FTE Medical technician/LPN.
- (2) No later than January 22, 1997, consistent with the recommendations of the Special Master's Fifty-first Report, Defendants' medical director will develop and implement a plan that provides for the review and evaluation of the medical care provided to all hospitalized inmates whose conditions are medically complex or life threatening.
- (3) No later than January 30, 1997, consistent with the recommendations of the Special Master's Fifty-first Report, Defendants' medical vendor will develop

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TERMINATION PLAN – PART II

The undersigned parties hereby agree as follows:

1. Part I of this Termination Plan, which the parties previously initialed, covers the system wide issues of medical care, mental health (including substance abuse treatment), and special education, and the PNM issues of inmate activity, administrative segregation, legal access, food service, and living conditions.

2. Part II addresses all extant substantive issues in this case area by area. Only sections I, II, III.A, B, and C, and IV of the 1991 Settlement Agreement are unaffected by this Termination Plan. The full scope of the obligations defendants must meet for substantial compliance is set out for each topic on which defendants will be audited in the check out audits described in this Part II. Part II sets forth in the attached appendices, area by area, the scope and methodology for check out audits and for self monitoring in all areas of the case except medical care.^{1/} In addition, during the check out audits the auditors will be conducting spot checks to determine if back sliding has occurred. The auditors will interview inmates and staff, review NMCD files and documents, and make personal observations.

^{1/} These matters with respect to medical care are fully addressed in Exhibit A to Part I.

3. If the check out audits find that defendants have achieved and/or maintained substantial compliance with the Modified Decree in all areas, which is to say that defendants have achieved substantial compliance with the Termination Plan and that no back sliding (as that term is defined in Part I) has occurred in areas in which a finding of substantial compliance has been made, the parties, subject to the terms of paragraph 8 of Part I, will file a joint motion to vacate.

4. The check out audits will be organized and conducted by the special master during 1997. In each area, until the check out audit is conducted defendants will continue to prepare and distribute the Awaiting Self Monitoring ("ASM") reports on the current basis and timetable, except that ASM reports that are prepared monthly will be distributed monthly.


5. Prior to the completion of the final check out audit in the case, the parties will meet at least quarterly with or without the special master, by telephone or in person, to discuss the ASM reports and to discuss progress and concerns. Evidence of significant concerns may affect the substance of or timetable for the check out audits.

6. Following each check out audit, the special master informally will discuss his findings with the parties. If the finding is other than substantial compliance, the provisions of paragraph 7 of Part I will govern.


7. Once an area is found in substantial compliance after a check out audit, defendants will begin self monitoring in that area, using the self monitoring protocols included as appendices to this Part II. The self monitoring reports will be distributed monthly. The parties will continue to meet at least quarterly with or without the special master, by telephone or in person, during the self monitoring period to discuss the self monitoring reports and to work

collegially to ensure that the Termination Plan process continues to function properly. At any such meeting plaintiffs may provide evidence of back sliding in an area and request that the special master investigate the status of that area and informally report his findings to the parties. In such case the special master will evaluate the evidence presented by plaintiffs to determine if an investigation would be appropriate (e.g., if the evidence appears to present credible concerns about systemic, as opposed to episodic, back sliding). If the result of the investigation, if any, is a finding by the special master that the area is not likely to be in substantial compliance in the last quarter of 1998, he will discuss those findings with the parties and suggest to defendants steps that could be taken to correct the back sliding and ensure that the area is in substantial compliance in the last quarter of 1998.

8. Effective with the execution of this agreement and continuing until the vacation of the orders as provided herein, plaintiffs' counsel will have access to the NMCD facilities on the same basis and under the same agreements as are presently in effect.



 Mark H. Donatelli
 For Plaintiffs



 Robert Tabor Booms
 Assistant Attorney General
 For Defendants



 Robert J. Perry
 Secretary of Corrections