

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Jimmy Doe, <i>et al.</i> ,)	
on behalf of themselves and all)	
others similarly situated,)	
)	No. 99 C 3945
Plaintiffs,)	
)	Hon. John A. Nordberg
v.)	
)	Magistrate Judge Martin C. Ashman
Cook County, <i>et al.</i> ,)	
)	
Defendants.)	

AGREED SUPPLEMENTAL ORDER

Introduction

1. Currently pending before the Court is Plaintiffs' Petition to Enforce Memorandum of Agreement filed on November 8, 2005. On January 11, 2006, this Court requested the parties to utilize the services of Michael J. Mahoney and Charles A. Fasano, the monitors appointed in this case by the Court ("Monitors"), to mediate the issues raised in the Petition. The parties, through their counsel, and the Monitors have met and conferred at length on this matter. As a result of these mediation efforts, the parties have agreed to the entry of this Agreed Supplemental Order ("ASO").

2. The primary objective of this ASO is to ensure that the Cook County Juvenile Temporary Detention Center ("JTDC") is in substantial compliance with the Memorandum of Agreement ("MOA") approved by the Court on December 30, 2002. In accordance with this ASO, the Defendants are required to be in substantial compliance with the MOA within eight (8) months of the entry of the ASO.

3. The ASO is supplemental to the MOA, which shall remain in full force and effect, with the exception of the modification provided for in paragraph 16 herein.

Terms of the Agreed Supplemental Order

4. Within sixty (60) days of the entry of the ASO, the Monitors, together with the individuals identified in paragraph 5 below, shall present a modified Implementation Plan (“MIP”) to the parties for their consideration. The MIP will be designed to bring the JTDC into substantial compliance with the MOA and shall identify with sufficient particularity the actions to be taken by the Defendants to achieve substantial compliance with the MOA within six (6) months following the final approval of the MIP by the Monitors. The MIP shall include a compliance schedule that will set forth specific periodic benchmarks to measure progress toward achieving substantial compliance with the MOA. Following presentation of the MIP to the parties, the parties shall have seven (7) days to submit any comments or objections they may have to the MIP to the Monitors. Seven (7) days thereafter, and with due consideration of the parties' comments, the Monitors shall make appropriate revisions to and approve the final contents of the MIP.

5. In order to assist the Monitors with the obligations required of them under the ASO, including their obligations referred to in paragraph 4, the Monitors, with the agreement of the parties, have decided to retain the professional services of Dr. David Roush, Carl Sanniti, Dr. Louis Kraus, and Dr. Michael Cohen (Monitors’ “designee(s)”).

6. In order to prepare the MIP, the Monitors and their designees shall evaluate the conditions and services at the JTDC and shall consult as appropriate with Cook County officials and employees, counsel for the parties, and residents of the JTDC. The Monitors and

their designees, upon request by the parties, shall provide the parties with the information obtained through their evaluations and consultations.

7. The Monitors, their designees, and the Compliance Administrator described in Paragraph 9 below, shall have reasonably prompt access to the staff and residents of the JTDC to permit them to carry-out their duties under the ASO. The Monitors, their designees, and the Compliance Administrator shall also have reasonable access to documents or other information that are relevant to the discharge of their duties. The Monitors, their designees, and the Compliance Administrator shall have the authority to collect information and to meet with the parties, their counsel, JTDC personnel and private contractors granted to the Monitors pursuant to Paragraphs 60 and 64 of the MOA. The Monitors shall provide to counsel for the parties copies of all reports, records, correspondence and any other documents prepared, submitted or received by them, their designees, and the Compliance Administrator. Nothing in this paragraph shall be construed as a waiver of the Defendants' rights to object to the release of any information protected by privilege. Any confidential information provided under this paragraph will be governed by the terms of the protective orders entered in this case.

8. The Defendants shall implement the MIP within the timeframes provided for therein. The Defendants shall fully implement the MIP and shall also be in substantial compliance with the MOA within six (6) months of final approval of the MIP. If, for good cause, unanticipated events prevent the Defendants from achieving substantial compliance within the specified time period, the Defendants may utilize the procedures set forth in paragraph 9(a) below by requesting mediation to extend the timeframes and, if necessary, by presenting the Defendants' request to extend the time period to this Court for consideration.

9. By May 24, 2006, the parties and the Monitors jointly will submit to the Court the name of a proposed Compliance Administrator.

(a) The Compliance Administrator shall provide day-to-day, on-site coordination of efforts to bring the JTDC into compliance with the MIP and the MOA. The Compliance Administrator shall consult directly with the Superintendent of the JTDC and make necessary recommendations concerning the manner in which Defendants should proceed to fully implement the MIP and substantially comply with the MOA. Should the Superintendent choose not to accept and implement a material recommendation by the Compliance Administrator, the Superintendent shall provide in writing the reasons for rejecting the recommendation and proposed alternatives to the Compliance Administrator, the Monitors and the parties. If the Compliance Administrator disagrees with the Superintendent's position, he/she shall submit written justification for the recommendation to the Superintendent and may request that the Monitors serve as mediators concerning this disagreement. Defendants shall bear the cost of all mediation services. Plaintiffs shall have notice of and an opportunity to participate in any mediation. In the event that mediation results in an agreement between the Superintendent and the Compliance Administrator concerning an appropriate course of action, that agreement will be enforceable as part of the MIP. If after fifteen days any party or the Compliance Administrator believes that the issue or issues have not been resolved adequately by mediation, the issue or issues may be presented to the Court for resolution by either party.

(b) The Monitors and Compliance Administrator shall report to the Court and the parties at least every 30 days on the status of their work including all

recommendations made by the Compliance Administrator and the response of the Defendants to those recommendations. The Court shall terminate the appointment of the Compliance Administrator upon a showing of substantial compliance with the MIP and the MOA.

10. Within 21 days of the entry of the ASO, the staff members identified under separate confidential exhibit, who have been alleged to have engaged, on more than one occasion, in conduct constituting physical abuse of a class member will receive intensified training and counseling through the JTDC with a curriculum approved by Monitors. These individuals will not be assigned to work on a housing unit or in a position requiring direct resident contact until they have completed the training and counseling described herein. Additionally, the specific staff members identified in the separate confidential exhibit having a higher number of allegations of alleged abuse will also be the subject of a program, approved by the Monitors, of increased supervisory monitoring and oversight upon reassignment following completion of their training and counseling. The procedures set forth in this paragraph are of an interim nature and do not replace the Defendants' obligations to timely investigate and institute remedial measures when allegations of excessive force are made by residents.

The Defendants along with the Monitors have met with representatives of the Illinois Department of Children and Family Services (DCFS) to review existing JTDC protocols for reporting alleged cases of abuse or neglect to DCFS. Defendants will amend the existing protocols to address any material deficiencies identified in this process. Any such changes will be approved by the Monitors. Defendants agree to

cooperate with any request by DCFS to reinvestigate any cases of alleged abuse or neglect that were not accepted by the DCFS hotline.

11. Within 75 days of the entry of the ASO, the Defendants will transfer direct and full authority and control over all health, dental and mental health services at the JTDC – including authority and control over all related policies, personnel, budgets and resources – to the Cook County Bureau of Health Services. If, due to unforeseen circumstances, the transfer of authority is delayed, the Defendants may request an extension of this deadline by presenting the issue to the Monitors. If an extension is reasonably warranted, the Monitors shall extend the deadline by an appropriate period of time to enable the Defendants to complete the transfer of authority.

12. The Monitors shall remain vested with the authority, duties, responsibilities, and entitled to reasonable compensation, as set forth in the MOA. Additionally, the Monitors shall submit to this Court, with copies to the parties, written reports describing the status of Defendants' efforts to implement the MIP at least every 60 days following their approval of the MIP. The Monitors, Compliance Administrator and Superintendent shall meet at least on a monthly basis with counsel for the parties to review the status of implementation and to obtain the comments of the parties. In evaluating implementation of the MIP, the Monitors may utilize their discretion to request the assistance of any persons with knowledge suitable to analyze the conditions and practices at the JTDC. Nothing herein is intended to preclude the Defendants from seeking assistance from any other agency/organization in the provision of and improvement of services provided by the JTDC.

13. The Monitors shall continue to be responsible for monitoring and enforcing compliance with the MOA and shall continue to have the authority, duties, and

responsibilities as set forth therein. In addition, the Monitors shall be responsible for monitoring and enforcing compliance with the MIP and ASO. The Plaintiffs shall also have the authority, duties, and responsibilities as set forth in the MOA for monitoring and enforcing compliance with the MOA. Additionally, the Plaintiffs shall be responsible for monitoring and enforcing compliance with the MIP and ASO. The Plaintiffs and Defendants agree to cooperate with the Monitors and each other in this process. Without further leave of court, the parties, at any time during the eight (8) month period set fourth in paragraph 4 above, may take discovery as provided for under the Fed.R.Civ.P., directed toward the issues of compliance with the MIP, ASO, and MOA. Counsel for all parties shall receive notice of and shall be allowed to be present during all inspections or surveys of the JTDC by the Monitors or their designees.

14. The Defendants shall, subject to approval of the Court, ensure the reasonable compensation of the Monitors' designees and the Compliance Administrator at their usual and customary rate. The Defendants shall also reimburse the Monitors' designees and the Compliance Administrator for all reasonable and necessary expenses incurred in the course of their work pursuant to the ASO. All reasonable compensation and reimbursement requests submitted pursuant to this paragraph will be promptly reviewed by the State's Attorney's Office and submitted to the Court within 45 days for approval. Once Court approval is obtained, the requests for compensation and/or reimbursements will be promptly submitted by the State's Attorney's Office to the Cook County Board for approval for payment and payment shall be made within 60 days of Court approval.

15. The Monitors, their designees, and the Compliance Administrator shall be available at the request of either party or the Court to testify at any evidentiary hearing to evaluate compliance with the MIP, ASO or MOA.

16. Due to the new time frames and procedures described in this ASO, the Court, with the agreement of the parties, finds it appropriate to modify the timeframes in Paragraph 66 of the MOA. Paragraph 66 of the MOA is modified as provided in the Attachment to this ASO.

17. In consideration of the parties' agreement set forth herein, the Plaintiffs' Petition to Enforce the MOA is stayed for a period of eight (8) months following the entry of the ASO. Nothing herein shall be construed to prohibit the parties during that eight (8) month period from seeking other or further relief including but not limited to enforcement of the MIP, ASO, and/or the MOA.

18. The Court retains jurisdiction of this matter for all purposes, including modification of the ASO and to enter any additional orders necessary to enforce the ASO and the MOA. This ASO does not resolve Plaintiffs' claims to fees, costs and expenses incurred since entry of the MOA. In the event the parties are unable to resolve those claims by agreement, Plaintiffs may file a motion for an award of fees, costs and expenses pursuant to the Local Rules of the Northern District of Illinois within 120 days of the entry of the ASO. Defendants have reserved their right to object to any motion seeking an award of fees, costs and expenses.

It Is So Ordered.

John A. Nordberg
United States District Judge

Dated: _____

Attachment

66. The following procedures will govern termination of this Agreement:

a. Defendants' Right to Review of the Agreement After March 1, 2009

At any time after March 1, 2009, if defendants believe they have substantially complied with the terms of this Agreement for at least one year, they shall notify the plaintiffs in writing of their desire to terminate this Agreement ("Termination Notice"). Plaintiffs' counsel will have an opportunity to conduct reasonable discovery concerning factual issues relevant to the determination of compliance. If plaintiffs wish to oppose termination of this Agreement, plaintiffs must file a motion in this Court within 90 days from the date plaintiffs received defendants' Termination Notice. This Agreement shall remain in effect until the Court resolves that motion. Plaintiffs shall have the burden of demonstrating that the defendants have not remained in substantial compliance with the terms of this Agreement for a period of one year. Nothing in this Agreement shall be interpreted to compel defendants to file a Termination Notice.

b. Mandatory Review of Agreement After Five Years.

If and only if defendants have not submitted a Termination Notice, the parties and the monitors shall meet on March 1, 2010, to discuss whether defendants have substantially complied with the terms of this Memorandum of Agreement for a period of at least one year. The parties will be permitted 90 days from this first meeting to file a stipulation or motion with the court reflecting the outcome of those discussions. During those 90 days, plaintiffs' counsel will have an opportunity to conduct reasonable discovery concerning factual issues relevant to the determination of compliance.

(i) If after those 90 days the parties agree that defendants have substantially complied with the terms of this Agreement for a period of at least one year, they shall submit to the Court a stipulation terminating this Agreement.

(ii) If after those 90 days the parties agree that defendants have not substantially complied with the terms of this Agreement for a period of one year, they shall submit to the Court a stipulation that this Agreement will remain in effect. The stipulation shall describe the basis for the parties' conclusion that defendants have not substantially complied with the terms of this Agreement.

(iii) If after those 90 days the parties do not agree as to whether defendants have substantially complied with the terms of this Agreement for a period of at least one year, plaintiffs shall file a motion in this Court opposing termination of the Agreement. Plaintiffs shall have the burden of demonstrating that the defendants are not in substantial compliance with the terms of this Agreement. This Agreement shall remain in effect until the Court resolves the motion.

c. Severability

The terms of this paragraph are severable. If a court with jurisdiction over this Agreement rules that the Prison Litigation Reform Act or any other federal law preempts any part of this paragraph, the remainder of this Agreement will remain in effect.