

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

INMATES OF THE RHODE ISLAND)	
TRAINING SCHOOL,)	C.A. No. 71-4529-L
)	
Plaintiffs,)	
)	
v.)	
)	
TRISTA PICCOLA, ET AL.,)	
)	
Defendants.)	
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JOINT MOTION FOR DISMISSAL

On June 30, 2017, the Special Master appointed by this Court, Michael Lewis, filed his final report acknowledging Defendants' full compliance with the terms of the Consent Decree. [Doc. 69]. Pursuant to this Court's order the parties now jointly move the Court to dismiss this action. [Doc. 67 at 14].

I. PROCEDURAL HISTORY

This dispute dates back to 1971, when a group of youth at the Rhode Island Training School (RITS) sued the state officials who ran the institution under 42 U.S.C. § 1983 in an effort to improve the conditions of their confinement at that facility. In 1972, a class of all youth who are detained or adjudicated at the Training School was certified by Judge Raymond Pettine of this Court. In 1973, the parties entered into a Consent Decree which addressed Plaintiffs' concerns including overcrowding, a deteriorated and inadequate physical plant, insufficient staffing, and inadequate academic, vocational, and physical education programs. A Special Master was appointed to oversee compliance with the Consent Decree. There have been several amendments to the original Consent Decree over the years. The last such Amendment prior to 2014 was

approved and entered by this Court in 2000.

In 2000, the Parties agreed to four new requirements that Defendants would comply with as part of the Decree. The four new requirements were as follows:

- (1) Completion of the construction of a new facility to house and provide the required programming to the residents or renovation of the existing facility such that either the new facility or the renovated existing facility is adequate and sufficient to meet all housing, educational and programming requirement contained herein and meets all standards of the American Correctional Association for juvenile correctional facilities.
- (2) Development and full implementation of a revised Policy and Procedures Manual which Manual shall be annually reviewed and revised and continuously maintained in full force and effect by the defendants.
- (3) Full continuous implementation of the administrative grievance procedure developed with the assistance of the Master that will constitute an enduring non-judicial means of handling residents' complaints including a defendant developed process for handling resident grievances that is agreed by the parties to be effective.
- (4) Full accreditation of the Rhode Island Training School for Youth by the American Correctional Association (or successor organization recognized as being the authoritative professional association setting standards for conditions of confinement of juveniles), which accreditation shall be obtained and continuously maintained at all future times by the defendants[.]

Compliance with these requirements is overseen by the Special Master who is directed to report to the Court once Defendants have substantially complied with the four elements. *See* Order, October 2, 2000, at ¶ 11 [Doc. 10]. On April 15, 2014, the Special Master reported to the Court that the Rhode Island Training School had achieved “substantial compliance” with three of four requirements. Those requirements include: (1) the completion of new construction; (2) development and full implementation of a revised Policy and Procedures Manual; and (3) full and continuous implementation of the administrative grievance procedure. Report of the Special Master [Doc. 58].

The remaining requirement was modified by Order of the Court on June 18, 2014.

See Order, June 18, 2014 [Doc. 67]. The original requirement included the following:

Full accreditation of the Rhode Island Training School for Youth by the American Correctional Association (or successor organization recognized as being the authoritative professional association setting standards for conditions of confinement of juveniles), which accreditation shall be obtained and continuously maintained at all future times by the defendants[.]

Order, October 2, 2000, at ¶ 11 (2). The new language adopted by the Court requires the following:

The Rhode Island Training School for Youth shall achieve and maintain substantial compliance with the JDAI+ Standards negotiated by the Parties and the Special Master. Such compliance shall be measured by an inspection team comprised of two juvenile justice experts, a medical expert, a behavioral health expert, and an education expert lead by the Center for Children’s Law & Policy. Once substantial compliance is achieved by Defendants it shall be measured and monitored on a yearly basis by a team of qualified community members trained on the JDAI+ standards at all future times.

[Doc. 67 at 3]. The parties jointly moved for this modification because in the fourteen intervening years since the original provision was agreed to, best practices and standards in juvenile justice had changed dramatically. ACA standards are no longer considered best practice in the field. Both parties believe that the JDAI Standards are better for the youth held at RITS and ultimately the citizens of Rhode Island because these standards constitute stronger protections of the Plaintiffs’

rights with a greater focus on programming and rehabilitation. Importantly, since the original Consent Decree, Rhode Island had partnered with the Annie E. Casey Foundation, which developed the JDAI standards, and had committed to embracing the new, stronger best practice standards, and other forward thinking juvenile justice policies and practices. The Court approved of the parties' request to replace the ACA standards with the new JDAI standards, which incorporate key aspects of the Consent Decree; for example, treatment planning requirements. The Court found that modification of the existing Consent Decree was in the best interest of the public and that the "JDAI+ Standards" reflected the changed circumstances in the field necessary to justify modification of the Order. *See* Order, June 18, 2014 [Doc. 67].

In the June 18, 2014 order, this Court set forth the procedure for final closure of this case:

Once the Special Master reports that Defendants have reached substantial compliance with this new provision of Paragraph 11(2), the Mastership shall terminate. Moreover, after the Special Master reports substantial compliance with the newly modified requirement set forth in Paragraph 11(2), the parties shall jointly move to dismiss the case.¹

[Doc. 67 at 12-13]. The Special Master has now filed his final report with the Court indicating compliance with all the terms of the Consent Decree. [Doc. 69]. This full compliance prompts this motion to dismiss pursuant to the modified terms of the Consent Decree. [Doc. 67 at 13].

II. DEFENDANTS HAVE COMPLIED WITH THE TERMS OF THE CONSENT DECREE

As the Special Masters Report filed on April 15, 2014 noted, Defendants have previously

¹ Fed. R. Civ. P. 23(e) states that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise: (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal. (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate..." The Court has the discretion to order a second notice and hold another fairness hearing in connection with this voluntary dismissal. However, here, the Consent Decree and the Court's Order [Doc. 67] provides that once the Special Master reports full compliance to the Court, the parties shall jointly move to dismiss. *Id.* at 13. Moreover, the Court ordered notice and a time for objection at the time the Consent Decree was modified in 2014 [Doc. 64] and conducted a fairness hearing at that time on June 18, 2014. *See* Minute Entry, June 18, 2014.

complied with three of the four major terms of the Consent Decree. [Doc. 58 at 3-7]. The only remaining piece of the Decree is accreditation and compliance with the JDAI+ Standards incorporated into the Decree as part of the Court's June 18, 2014 Modification Order. [Doc. 67].

Following that order, a full, initial audit of RITS' compliance with the JDAI+ Standards was conducted from July 14-16, 2014 by three juvenile justice experts, a medical expert, a behavioral health specialist, and an education expert. These experts are associated with the Center for Children's Law and Policy (CCLP), a national public interest law and policy organization focused on the reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in those systems.² See Ex. A, Declaration of Kevin McKenna, July 18, 2017, ¶ 4 (hereinafter "McKenna Decl."). The JDAI Standards address eight different areas of operation at the RITS. The standards include the following:

- Section I Classification and Intake
- Section II Health Care
- Section III Access
- Section IV Programming;
- Section V Training and Supervision

² CCLP works to help jurisdictions throughout the country make their juvenile justice systems more equitable and effective. Over the last 10 years, they have worked on juvenile justice reform in 32 states and the District of Columbia. CCLP has played a leading role in the largest juvenile justice reform initiatives in this country, including the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) and the John D. and Catherine T. MacArthur Foundation's Models for Change Initiative. They have also worked to help juvenile justice systems and agencies in the wake of litigation, investigations, and media coverage of policies and practices. CCLP staff co-authored the extensive Juvenile Detention Facility Assessment Standards used by the Annie E. Casey Foundation's JDAI Initiative. The JDAI Standards are the most comprehensive and demanding set of standards for juvenile facilities in the country. They are the standards that are used to assess and improve conditions in over 300 JDAI sites in 39 states and the District and Columbia. The JDAI standards have been cited in investigations by the U.S. Department of Justice's Civil Rights Division. They have also served as the basis for federal and state legislation, as well as many agencies' policies. CCLP staff worked with legislative task forces in Louisiana and Mississippi in recent years to help those states develop comprehensive mandatory statewide standards for their juvenile facilities following numerous lawsuits and concerns about conditions in those states. Report of the Special Master, Attachment 2 at 2-3 [Doc. 69].

- Section VI Environmental Issues
- Section VII Restraints and Isolation
- Section VIII Safety

Including all sub-parts and the additional standards incorporated from the 2000 Court Order, there are over 600 JDAI+ Standards. McKenna Decl. ¶ 5. In order to achieve “substantial compliance” with the JDAI+ Standards under the Court Order, it was agreed that the RITS must conform to all of the designated mandatory standards and 90% of the non-mandatory standards. The mandatory standards were negotiated by the parties, the Special Master, and the JDAI expert auditors. There are 262 mandatory standards and over 350 non-mandatory standards. McKenna Decl. ¶ 6.

The parties had not expected that RITS would achieve “substantial compliance” at the time of the 2014 audit. Instead, the audit allowed the institution and the parties to clearly identify the areas where sustained work and expert consultation would be necessary to assist the facility to conform to the best practices. McKenna Decl. ¶ 7. The results of the 2014 audit identified several areas that required changes to policy, practice and operations. For example, in the areas of fire alarm testing during all shifts and ensuring a written policy mandating regular updates to the school library. McKenna Decl. ¶ 8. While many of the standards for which RITS was found not to have conformed to best practices required a straightforward change of policy and subsequent enforcement in practice, the more significant challenges were found in the areas of staffing (a 1:8 ratio between Juvenile Program Workers (JPWs) and youth), staff training, behavior management and crisis intervention, and individual treatment plan development and implementation. McKenna Decl. ¶ 9.

After these areas were identified, the parties, the Special Master, and the expert consultants worked together to review and revise nearly all aspects of staff training in the institution. Subjects

ranged from Medical and Mental Health Emergencies, First Aid, CPR & AED, to Preventing Victimization, Observing Residents' Federal Rights, and Restraints/Use of Force/De-escalation, to Protocols for Developing Behavior Management Plans and Individual Treatment Plans. Training curricula were updated and created to raise the level of skill and practice of RITS' staff at all levels. Curricula for the initial training academy for all JPWs were also revised. Once all of these curricula were approved and finalized, RITS started the process of re-training all staff. McKenna Decl. ¶ 10. Over 100 training sessions were conducted during an 18 month period. These sessions were held during all times of day and night in order to accommodate an institution that operates twenty-four hours every day of the year. McKenna Decl. ¶ 11.

At the same time, RITS worked to secure new JPW positions in order to achieve the best practice staffing ratio of 1:8. Two pre-employment training academies were conducted in order to hire and retain new and qualified staff. The RITS hired additional custody and control staff to ease the staffing burden at the facility. McKenna Decl. ¶ 12.

Enhancing the clinical work of the institution was also a focus of time and resources after the initial audit. The experts worked with RITS staff to develop more effective training for all clinical staff and also provided ongoing technical assistance to enhance the Individualized Treatment Plans (ITPs) and Behavior Management Plans (BMPs) for RITS residents so that the institution could move towards a more effective strength-based model when dealing with youth. These areas of practice are a priority of all parties, as the level of mental health need and acuity has risen over the last few years amongst the youth in the institution. McKenna Decl. ¶ 13.

After nearly two years of retraining, staff development, and institutional overhaul, the JDAI experts returned to RITS for another on-site audit on June 14-15, 2016. Prior to the audit, voluminous compliance documentation was provided to the three juvenile justice experts

conducting the audit. McKenna Decl. ¶ 14. As a result of this audit, the experts found that only 6 standards remained where additional work had to be done before the RITS could be deemed in substantial compliance with the best practice standards. Three of these standards were mandatory. McKenna Decl. ¶ 15. A copy of the audit team's full findings on all of the JDAI+ standards is attached to the Report of the Special Master, Attachment 3 [Doc. 69]. A copy of the remaining six standards is attached as Attachment 4 to the Report of the Special Master [Doc. 69].

Following the June 2016 audit, the parties and the auditors worked together to devise a means to reduce physical restraints on youth at the institution. An agreement was reached with the JDAI auditors, the plaintiff's counsel, and the Special Master that the RITS would explore a different de-escalation and restraint model. McKenna Decl. ¶ 16. As a result, the Rhode Island Training School adopted the experts' recommendation and engaged the well-regarded *Safe Crisis Management* crisis intervention model as offered by JKM Training Inc. McKenna Decl. ¶ 17. In the fall of 2016 JKM Training Inc. trained seventeen (17) juvenile corrections staff at the RITS to become trainers in the *Safe Crisis Management* Model. In turn, those staff trained over 120 staff in this new de-escalation and restraint model. McKenna Decl. ¶ 18. A large group of custody and control staff were trained in late November and early December of 2016 and the facility went fully operational with the new model in January of 2017. McKenna Decl. ¶ 19.

On April 13, 2017, the audit team from the Center for Children's Law and Policy (CCLP) returned to assess compliance with the remaining six standards and found substantial compliance with 5 of the 6 standards, including the three remaining Mandatory Standards. As the auditors noted, "we believe that the parties and Special Master have gone far above and beyond what was envisioned by the original Consent Decree. DCYF staff incorporated dozens of recommendations from the CCLP assessment team since the initial on-site assessment in July 2014." Report of the

Special Master, Attachment 2 at 4 (Doc. 69).

One of the key areas under review at the final audit was the behavioral management system and efforts to decrease restraints and increase staff skills in the de-escalation of conflict with youth residents. From the start of the training until the JDAI auditors' visit on April 13th, 2017 the RITS experienced a significant decline in the number of restraints conducted due to non-compliant behaviors. For the period of June of 2016 through March of 2017, Training School data reflects a 65% reduction in the utilization of physical restraints in response to a youth's non-compliant behavior. McKenna Decl. ¶ 20. In addition to the positive results reflected in the data, the auditors were concerned that staff demonstrate a better awareness of how the implementation of de-escalation skills provides for a safer, more effective means to address behavioral issues within the facility. In order to review this culture change, the auditors reviewed extensive documentation and interviewed both residents and staff. McKenna Decl. ¶ 21. Based on the significant reduction in restraints and the observed change in culture within the facility the auditors found the RITS to be in substantial compliance with the mandatory standard(s) related to behavior management techniques. McKenna Decl. ¶ 22.

The CCLP final report also identifies the following as some of the most significant improvements to the RITS since the initial assessment include:

- Development of an infrastructure to document and deliver staff training across a range of topics necessary for staff to work effectively with young people.
- Greater involvement of mental health and social work clinicians in creating Individualized Treatment Plans and Behavior Intervention Plans that contain measurable, specific, and incremental goals, along with proximate and proportionate rewards when youth make progress toward those goals.
- Creation of new medical protocols that allow for continuity of prescription medication for youth who have been prescribed psychostimulants and appropriate administration of non-prescription medication.

- Training of all staff on the premier curriculum on de-escalation and crisis intervention techniques. The training appears to have led to significant decreases in uses of force and room confinement for youth who demonstrate non-compliant behavior.
- Significantly reduced reliance on mandated double-shifts to achieve minimum staffing ratios.
- Improved consistency in policy and practice across several areas of facility operations, including visitation, food service, fire preparedness, laundry services, and intake screening for youth with disabilities and other medical and mental health issues.

Report of the Special Master, Attachment 2 at 4-5 (Doc. 69). The CCLP auditors concluded with the following: “[w]e believe that the implementation of the many policy and practice changes above will ensure that youth in DCYF custody receive the benefits of reforms long into the future.”

Id. at 5.

III. DISMISSAL OF THE CASE IS APPROPRIATE

As discussed above, the Defendants have satisfied all of the substantive requirements of the Consent Decree. “[A] consent decree must be interpreted in much the same way as a contract.” *Lamphere v. Brown Univ.*, 875 F.2d 916, 920-21 (1st Cir. 1989) (citing *Local Number 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501, 519, 106 S.Ct. 3063, 3074, 92 L.Ed.2d 405 (1986) (although consent decrees are treated like judgments for some purposes, “because their terms are arrived at through mutual agreement of the parties, consent decrees also closely resemble contracts”)) (citations omitted). Here, the necessary conditions having been met, the parties are obliged by the Consent Decree to seek dismissal of all claims.

Respectfully submitted,

Dated: July 19, 2017

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion for Dismissal was served by electronic mail this 19th Day of July, 2017 to:

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