

REPORT OF THE COURT MONITOR

On

UNITED STATES OF AMERICA v. STATE OF RHODE ISLAND

Case No. CA14-175

DEFENDANT'S FOURTH STATUS REPORT

Filed July 29, 2016 and Revised on September 3, 2016

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U.S. District Court Monitor**

Report Issued: September 9, 2016

Progress Summary	
Court Order Provision	Assessment
2. Live Database	Provision Met
3. Database Access	Provision Met
5(d)(4). BHDDH Newsletter Update	Provision Met
5(f). SIS Interviewer Training	Provision Met
5(h). CDP Training	Provision Met
5(i). RIDE Census Clerk Training	Provision Met
5(j). Hire QI and Employment Spec	Provision Met
5(k). Verification of Services	Provision Met
5(l) Supported Employment Authorization	Provision Met
5(m) Performance Based Contracting	Provision Met
5(n) Increase Salaries and Benefits	Provision Conditionally Met
4. Compliance with Other Deadlines	Evaluation Deferred

I. INTRODUCTION

This review assesses the documentation and actions taken by the State of Rhode Island as described in the Defendant's Fourth Status Report to determine progress and compliance with respect to certain requirements set forth in the Court's Order of May 18, 2016. Specifically addressed are provisions of the Order that were required to be completed or addressed by the State by July 29, 2016 through August 1, 2016. This progress report follows the organizational format of the State's Fourth Status Report to facilitate comprehension and tracking.

A draft version of this Monitor's Report was shared with the State of Rhode Island (State) and the Department of Justice (DOJ). The State was provided the opportunity to clarify several points, update exhibits and furnish additional information regarding the activities it has taken with respect to meeting Court Order Provisions 5(k), 5(l), and 5(m). The State issued revisions to the Fourth Status Report on September 3, 2016. The assessment of progress documented in this Monitor's Report is based on the additional information provided by the State and DOJ.

Provision 4 of the Court Order issued on May 18, 2016 requires the State, "from this date forward to comply with every deadline in the Consent Decree..." Although significant progress has been made by the State in achieving the requirements of the Order, other provisions of the Consent Decree have not been accomplished as required. The evaluation of progress on this provision of the Court Order is reviewed below in Section XI. Other Matters and is deferred for consideration at a future date.

II. LIVE DATABASE TO EFFECTIVELY TRACK EACH MEMBER OF EACH TARGET POPULATION OUTLINED IN THE CONSENT DECREE

Court Order Provision 2: *Create a live database that that will allow for the efficient and effective tracking of each member of each target population outlined in the Consent Decree and all related and required services and outcomes...*

Status. The State has developed and implemented a live database, the Consent Decree Data Tracker System, to track all of the benchmarks included in Provision 2 and detailed in the State's Exhibit 1(a), 1(b) and 1(c), as revised on September 3, 2016.

The Consent Decree Data Tracker System reports data on the services and outcomes received by each member of each target population, longitudinally tracking each individual using a unique identifier. The Transition Population consists of a rolling census of students ages 14-21 with I/DD identified by RIDE. Reports on the Youth Exit Population focus on students with I/DD who have left school since 2013, documenting their entry to the BHDDH developmental disabilities service system. Members of the Sheltered Workshop and Day Target populations were identified in 2013, one year prior to the Consent Decree, and are static groups whose membership changes only by death or their exit from the service system.

The database provides information through five reports:

1. **The Consent Decree Total Population** provides an unduplicated count of the individuals in each Target Population, the number of individuals who are deceased and the current census of each target group.
2. **The Consent Decree Employment Report** provides counts and percentages of individuals who are employed in integrated settings.
3. **The Report on Career Development Plans and Certified Benefits Plans** provides both the count and percentages, broken down by Target Population of those individuals who have documented in their files a Career Development Plan, a Certified Benefits Plan or both.
4. **Transition Process for Youth Exit to BHDDH Services** provides a timeline from date of application or first contact through the start of services for the Youth Exit population.
5. **The Report on Weekly Hours Worked** provides data from both ORS and the Sherlock Survey on the hours worked, broken down by target group and type of employment.

Additional reports are available to the Court Monitor and the Department of Justice on request.

Assessment: Provision Met. The State reports that the database was developed as a short-term (12-18 months) solution to be replaced by a more modern and comprehensive Case Management System that will include an electronic medical record. The data is being made

available in two phases (See Exhibit 1(b)). Phase I (April - June 2016) includes the core information described above that could be gathered and reported during an initial three-month timeframe. Phase II (July – December 2016) will expand reporting capabilities to include attendance of BHDDH or ORS staff at individual education plan (IEP) meetings and the delivery of Benefits Counseling Sessions, as well as key activities that take place as individuals transition from school to BHDDH services. A summary chart, provided by the State at Exhibit 1(c) as revised September 3, 2016, entitled the Consent Decree Proposed File and Database Layout identifies the information that is summarized in the database including, the source of the data (state agency or external source such as the Sherlock Survey), a description of the data being collected, and the type of information provided. Each of the various data points identified within the Court Order has been identified as an element of the database.

III. ACCESS TO CONSENT DECREE DATABASE

Court Order Provision 3: *By July 29, 2016 provide the United States and the Court Monitor with either access to the database or a list of database entries from which the United States and the Court Monitor will select files for verification.*

Status. The State provided access to the database as required. The plan described by the state and included in the Fourth Status Report was itself revised on July 18, 2016 following discussions between the Monitor, the United States and the State of Rhode Island (See Exhibit 2 as revised September 3, 2016). The Department of Justice and the Monitor received the full list of Target Group members from the state and each selected a sample of 40 files selected at random from the target populations. Copies of client files were provided by the State in advance of the deadline.

Assessment: Provision Met.

IV. SHARING OF CONSENT DECREE UPDATE THROUGH BHDDH'S NEWSLETTER

Court Order Provision 5(d)(4): *As a part of its communication plan the State will outline*

its efforts to gather information from the community, including but not limited to a specific Consent Decree Update shared through the BHDDH Newsletter by July 29, 2016.

Status. BHDDH issued a Consent Decree Update Newsletter on July 26, 2016. A copy is included in the State's Fourth Status Report as Exhibit 3. The Update provided descriptive information on the Consent Decree, a description of targeted groups, placement goals, state actions, advice for individuals and families, and a contact person for additional questions.

Assessment: Provision Met.

V. TRAINING OF BHDDH POLICY NO. SIS-4

Court Order Provision 5(f). *By July 29, 2016 file with the Court agendas or meeting minutes that demonstrate training of all SIS Interviewers and Assessors on the change to BHDDH Policy No. SIS-4 required by Provision 5(e).*

Status. Documentation was furnished by BHDDH that was signed by six SIS reviewers attesting that each had read and understood SIS Policy No. 4 Service Tier Policy/Assigning Resource Allocation. The seventh reviewer was out of work on medical leave. The State is requested to ensure the document is signed by the seventh reviewer after she returns from medical leave.

Assessment: Provision Met.

VI. IMPLEMENTATION OF ONGOING CDP TRAINING

Court Order Provision 5(h). *By 29, 2016 BHDDH, ORS and RIDE must implement ongoing training on the use of career development plans and provide regular supervision to ensure all relevant agency staff are using the plans as contemplated by and required in the Consent Decree.*

Status. BHDDH, RIDE and ORS furnished documentation that training in career development planning has been provided on an ongoing basis since July 2016 as required. A copy of the PowerPoint presentation used by BHDDH to train all social services staff, providers, families, individuals with disabilities, and stakeholder groups was reviewed by the Monitor. A training schedule was available for the months of August and September 2016. BHDDH indicated that career development plans will be reviewed by the DD division

Associate Director/Employment Specialist on a routine basis. ORS reports that it uses the career development planning format developed and implemented by RIDE in 2014 and that ORS staff have participated in RIDE sponsored trainings as well as trainings provided by ORS since that time. RIDE reports that training on career development planning for LEA and RIDE staff begin on September 26, 2014 and has continued since that time. Additional training occurred in October 2014, April 2015, October 2015 and April 2016. RIDE has furnished reports of training on career development planning provided to LEAs on a quarterly basis.

Assessment: Provision Met. BHDDH is requested to report to the Monitor a short summary of all training on career development planning that was provided through September 30, 2016. The report should indicate the dates that the training took place and the individuals and groups who received the training.

VII. RIDE'S IMPLEMENTATION OF CENSUS CLERK TRAINING

Court Order Provision 5(i). *By July 29, 2016 RIDE must train all census clerks to accurately report the number of career development plans in place.*

Status. RIDE provided a detailed memo to Special Education Census Personnel regarding the addition of four new data fields to the eRIDE Special Education Census to comply with the requirements of the Consent Decree on August 25, 2015. The goal was to have all records up to date by the close of the Special Education Census in June, 2016. The RIDE Special Education Census Manager provided individual technical assistance to school district census clerks to ensure the accuracy of reporting. The requirement to report the Career Development Plan "date" was added to the Special Education Census and Special Education Census personnel were notified of this change on June 2, 2016. Special Education Directors were notified of this census change on June 16, 2016.

Assessment: Provision Met. RIDE is requested to provide the Monitor with copies of the three memos identified above.

VIII. HIRING OF PROGRAM DEVELOPER AND EMPLOYMENT SPECIALIST

Court Order Provision 5(j).

Status. Documentation confirms that the Program Developer – Associate Director for

Quality Assurance and program Improvement and the Employment Specialist have been hired by BHDDH.

Assessment: Provision Met.

IX. IMPLEMENT A SUPPORTED EMPLOYMENT SERVICES INCENTIVE PROGRAM

Court Order Provision 5(k). *By August 1, 2016 implement a new reimbursement model for services rendered including, but not limited to career exploration/discovery services, vocational situational assessments, work trials, development of job seeker profiles, job search and job placement, job training and job support, support coordination, and transportation services*

Status. BHDDH's Supported Employment Services Package, Person Centered Supported Employment Services Program (Exhibit 8 as revised September 3, 2016), describes a payment system verifying that the services listed in Provision 5(k) above are included as required.

Assessment: Provision Met.

Court Order Provision 5(l). *By August 1, 2016 [the State must] implement a new service package design that includes service authorization for Supported Employment Services.*

Status. BHDDH's Supported Employment Services Package – Person Centered Supported Employment Services Program (Exhibit 8 as revised September 3, 2016) includes supported employment services as authorized services as required.

Assessment: Provision Met.

Court Order Provision 5(m). *By August 1, 2016 the State will properly implement performance-based contracts for Supported Employment services to individuals in the target populations that link funding to graduated levels of provider achievement of quality numerical targets and implementation timelines.*

Status. Exhibit 8 of the State's Fourth Status Report, as revised on September 3, 2016, describes the structure BHDDH intends to use to provide targeted payments to provider agencies that incentivize the achievement of employment outcomes among individuals with

IDD receiving support. The plan is designed to link service related payments to “numerical targets and implementation timelines” set forth in the Consent Decree. The new incentive based system makes provider payments contingent upon several variables including the achievement of identified placement criteria, meeting set credentialing and training requirements, and developing the capacity to achieve high levels of placement over time. Incentive payments are designed to augment existing funding for employment services and, as with the current rate setting system, are based on SIS acuity scores. This structure ensures higher incentive payments are available for individuals with more complex and challenging needs.

Assessment: Provision Met.

X. APPROPRIATELY INCREASE SALARIES, BENEFITS, TRAINING, AND SUPERVISION FOR DIRECT SUPPORT PROFESSIONALS AND JOB COACHES

Court Order Provision 5(n). *By August 1, 2016, appropriately increase salaries, benefits, training, and supervision for Direct Support Professionals and Job Coaches.*

Status. The State summarized its plan to increase wage rates for direct support professionals and job coaches in Exhibit 9, *Notice of BHDDH Direct Support Professional and Job Coach Wage Increases Methodology and Verification Requirements*. Under the plan, BHDDH will adjust all rates for Direct Support Professionals and Job Coaches to a base rate of \$11.55 per hour. Additional adjustments will be made to reflect increased fringe benefit costs that providers will incur as a result of the wage rate increase. Wage increases for direct support workers and job coaches are intended to target the lowest wage earners within Developmental Disability Organizations and will result in an overall increase of approximately 3.1%. All providers are required to submit payroll data reflecting wage scales pre- and post-raise to ensure that the additional funds are given to direct support professionals and job coaches in the form of an ongoing hourly wage increase (with the exception of the increase designated as “Employee Related Expenses”). Rate increases will apply retroactively for all claims billed subsequent to July 1, 2016, pending approval by Medicaid. An adjustment payment will be provided to each agency covering the incremental additional amount due for claims billed during the period beginning July 1, 2016. Retroactive payments will be made by provider agencies to direct support professionals and job coaches in accordance with post-rate increase compensation levels set by each agency.

Assessment: Provision Conditionally Met. The plan submitted by BHDDH provides what appears to be an effective structure for increasing salaries and benefits for direct support professionals and job coaches as required by the Consent Decree. The plan mentions that the funding includes “employment related expenses” but does not describe the nature of those costs or affirm that such expenditures specifically cover costs related to training and supervision as required by the Consent Decree and the Court Order. Additional information is needed to verify that the increased funding approved for direct support staff and job coaches will be used to “increase salaries, benefits, training and supervision” as required by Provision 5(n).

Also, the State is requested to notify the Monitor following the disbursement of the one time payment to provider agencies as described above and the date at which rate increases were fully implemented.

XI. OTHER MATTERS: FROM THIS DATE FORWARD COMPLY WITH EVERY DEADLINE OF THE CONSENT DECREE

Court Order Provision 4. *From this date forward comply with every deadline in the Consent Decree with compliance measured in part by regular reports of supported employment placements filed with the Court by the Court Monitor.*

Status. Since the issuance of the Court’s Order on May 18, 2016, the State has made substantive efforts to change policies, procedures, operational practices, program structures, funding, and provider services as required by the Consent Decree. In June, the Rhode Island Legislature approved the Governor’s recommendations for a substantial increase in funding totaling over \$11 million to pay for improvements in client services, supports, staff training, and program infrastructure necessary to comply with the requirements of the Consent Decree.¹ During July and August 2016 the State has taken steps to increase provider funding to improve salaries, benefits, training, and supervision for direct support staff and job coaches. BHDDH has developed and is implementing a new performance based provider contracting system that is designed to incentivize the placement of individuals with I/DD in integrated supported employment and integrated day situations. The department also is implementing a new Career Development Planning process and is training staff on person-centered planning and person-centered service delivery. System change funding has been distributed to eligible service providers from the Sheltered Workshop Trust Fund and the Conversion Institute at the Rhode

¹ See Report of the Court Monitor Filed July 1, 2016.

Island College Sherlock Center is working closely with provider agencies to assist them in shifting the delivery of supports from segregated sheltered workshops and day programs to integrated individualized employment and day services. In addition, the department hired three key staff to manage and direct supported employment, quality improvement and systems transformation, among other duties. Additional technical assistance is being utilized by the State to make needed changes in policy and practice.

Assessment: Performance Evaluation Deferred. The State is implementing substantive changes across the array of day and employment services furnished to individuals with I/DD by BHDDH, ORS and RIDE, as well as other departments and agencies within state government. Not all of the systems change requirements and deadlines set by the Consent Decree have been met to date. Placement benchmarks for individuals in the Youth Exit Target Populations, for example, have not been met. Continued refinements need to take place in the State's data system and additional policies and practices need to be implemented in the areas of quality improvement, provider capacity, and the expansion of integrated and individualized day services and supports, among others. While challenges remain, the foundational steps taken by the State to address key areas related to funding, administrative oversight, training, and documentation, consistent with the Court Order, are moving the State on a path toward achieving the requirements of the Consent Decree. As a result of these efforts, I believe that it is appropriate to defer the assessment of the State's progress on meeting every deadline in the Consent Decree, as described in Provision 4 of the Court Order, to a later date as determined by the Monitor following consultation with the State and the United States.

Regular reports on the status of the State's progress on meeting supported employment placement benchmarks are a key measure of the State's compliance with the Court Order and the Consent Decree. A summary of the current status of supported employment placements will be filed by the Monitor as an addendum to this current report. Additional reports will be filed with the Court by the Court Monitor on a quarterly basis.