

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

UNITED STATES OF AMERICA,
Plaintiff,

V.

STATE OF RHODE ISLAND,
Defendant.

C.A. No. 13-442-JJM-PAS

UNITED STATES OF AMERICA,
Plaintiff,

V.

STATE OF RHODE ISLAND,
Defendant.

C.A. No. 14-175-JJM-PAS

**SHOW CAUSE ORDER WHY THE STATE OF RHODE ISLAND
SHOULD NOT BE HELD IN CONTEMPT
FOR VIOLATING PRIOR ORDERS OF THIS COURT
AND THE CONSENT DECREE**

The Consent Decree requires substantial compliance by 2024.¹ The Court Monitor has filed status reports showing that the State is deficient in meeting benchmarks, provider capacity,² workforce development for those who the self-direct, fiscal and comprehensive planning, transportation, and development of community-based system.

¹ Section XIX of the Consent Decree. ECF No. 5 at 31 (“The Parties anticipate that Rhode Island will have complied with all then provisions of the Consent Decree by the end of the State Fiscal Year 2024.”)

² Section XI of the Consent Decree, Section XI. ECF No. 5 at 20.

In response to the Court Monitor's reports during the past year, the Court issued three Orders - January 6, 2021, March 16, 2021, and April 28, 2021. ECF Nos. 129, 133, 135. The Court issued these Orders, after notice and hearing, directing the State to take specific actions in order comply with the Consent Decree.

The State has not fully complied with these Court Orders that emanated from the Consent Decree according to the Court Monitor's report dated May 31, 2021. ECF No. 140. In essence, the Court Monitor reports that to comply with the Consent Decree by 2024, the State must transform the system for providing services and supports and must achieve and maintain sufficient capacity for supported employment and integrated day services.

Highlights from the May 31 Court Monitor Report shows that:

- “[O]nly 52% of the (supported employment) benchmark for the sheltered workshop target population has been met and only 79.4% of the (supported employment) benchmark for the day program population has been met.” ECF No. 140 at 1.
- “[O]nly 55% of the Consent Decree adult population were participating in integrated community activities [and only] for an average of 9.48 hours per week.” *Id.*
- The primary reason for the deficiencies is “the shortage of direct support staff.” *Id.* at 2.
- There is a “capacity gap of more than 1000 direct support staff and the need for competency-based training.” *Id.*

- The State is out of compliance with the sections of the Consent Decree (Sections IV, V(K) and VI(B)) that describe a model for services and supports that is significantly different from the model in place before the Consent Decree. *Id.*
- The State has failed to develop a three-year fiscal plan that supports and maintains sufficient capacity to deliver the necessary services. *Id.*, at 3.

In its January 6, 2021 Order, the Court, following the recommendation of the Court Monitor, after notice and hearing, required the State to develop a three-year budget strategy that included:

- (a) providing annual increases for Direct Support Professionals wages in order to reach \$20.00 by Fiscal Year 2024;
- (b) providing proportional increases for other support staff;
- (c) providing increased funding for comprehensive plan development aligned with individual budgets;
- (d) providing increased funding for transportation;
- (e) providing a per capita amount for the acquisition of technology; and
- (f) providing funding to address the costs of transitioning Developmental Disabilities supports to an individualized community-based model.

ECF No. 129 at 1.

In its March 16th Order, the Court offered the State an opportunity to propose an alternative fiscal plan to ensure compliance with the Consent Decree by 2024. ECF No. 133 at 5. (“if the State wishes to submit a three-year budget strategy proposal that differs from the specifics of the January 6th Order but would result in substantial timely compliance with the Consent Decree, the State and, if they so choose, stakeholders, may submit alternative proposals for consideration by the Court by May 17, 2021”). The State submitted no such alternative fiscal proposal.

Under Section XVII(6)(g) of the Consent Decree, the Court Monitor, and any consultants or staff, is instructed to testify and present evidence about the State's compliance with the Court's Order and the Consent Decree.³

And the State is ordered to show cause why the Court should not hold the State in contempt (or any other appropriate judicial remedy) for failing to comply fully with the prior Orders of this Court,

In selecting a means to enforce the consent judgment, the District Court was entitled to rely on the axiom that "courts have inherent power to enforce compliance with their lawful orders through civil contempt." *Shillitani v. United States*, 384 U.S. 364, 370, 86 S.Ct. 1531, 1535, 16 L.Ed.2d 622 (1966). When a district court's order is necessary to remedy past discrimination, the court has an additional basis for the exercise of broad equitable powers. See *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275, 28 L.Ed.2d 554 (1971)

Spallone v. United States, 493 U.S. 265, 276 (1990).

The State response must address compliance with:

1. A three-year budget strategy for complying with the fiscal requirements of the Consent Decree in this Court's January 6, 2021 and March 16, 2021 Orders.
2. Setting the "Direct Service Provider rates for FY 2022, at a minimum, at a rate reasonably comparable to the rates paid in the Commonwealth of Massachusetts and the State of Connecticut and the starting rate in the state-operated R.I. Community Living and Supports ("RICLAS") system." ECF No. 135 at 1.

³ See, e.g., Section XI(11) of the Consent Decree ("If any service gaps or obstacles are identified . . . the Monitor may recommend the necessary actions to remedy these gaps and address these obstacles . . .")

3. Ensuring a workforce for both providers and self-directed individuals that is required to enact the requirements of the Consent Decree.

The Court will hold an evidentiary hearing to determine the facts on whether the State is in contempt and if so, what the remedy the Court should order. The following schedule will apply in preparation of that evidentiary hearing.

July 16	The Court Monitor will name any witnesses he intends to present to the Court for hearing.
July 30	Written reports of the Court Monitor's testimony and his witnesses' testimony will be due to the State and Department of Justice ("DOJ")
August 6	State and DOJ provide written comments on the reports
August 13	Court Monitor issues final reports
August 27	Any depositions shall be completed
September 3	The State shall file its written list of defenses.
September 10	State will name any witnesses it intends to rely upon.
September 17	State witness statement / expert reports disclosure deadline.
September 24	Any depositions of State witnesses shall be complete.
October 1	DOJ shall list any witnesses it intends to call at the hearing and the parties shall exchange information on any rebuttal witnesses to be called.
October 8	Any written discovery and any depositions shall be completed
October 18-22	Evidentiary hearing will be held from Monday, October 18, 2021 through Friday, October 22, 2021 in person before the Court

IT IS SO ORDERED.

s/John J. McConnell, Jr.

John J. McConnell, Jr.
Chief Judge
United States District Court

July 12, 2021