

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

Plaintiff

v.

C.A. No 14-175

STATE OF RHODE ISLAND

Defendant

REVIEW OF STATE'S RESPONSE TO THE COURT MONITOR'S JANUARY 25, 2017 REPORT ON CONSENT DECREE COMPLIANCE

Issued: April 18, 2017

INTRODUCTION

The *Report of the Court Monitor on Rhode Island's Consent Decree Compliance* issued on January 25, 2017 recommended that the State take actions to address issues of compliance with respect to several key progress benchmarks. The State was further requested to report to the Monitor on the status of its efforts by February 28, 2017.

This report reviews the documentation that the State provided and subsequently revised and resubmitted. It is organized to track the structure of the compliance report issued on January 25, 2017, identifying under each section the performance benchmarks to be addressed, and, *in italics*, the original assessment and recommended actions. These are followed by a summary of the response that the State submitted on February 28, 2017 as amended, and the Monitor's assessment of the extent to which the State's response addresses the original recommended actions. Documentation provided by the State is included in the Attachments Section.

REVIEW OF RECOMMENDED ACTIONS

Section B. Supported Employment Services and Placements (CD Sections IV & V)

Benchmark 4 - Youth Exit Target Population Hours Worked §V(J).

Assessment: Requirement Not Met. *Individuals of the Youth Exit Target population who are working in employer paid integrated employment average 8.6 hours per week or approximately 43% of the 20 hours per week required by the Consent Decree.*

Recommended Actions: *The State is requested to develop, in collaboration with IDD provider agencies, a plan and strategy for increasing the average hours worked per week across all individuals in the Youth Exit, Sheltered Workshop and Day Target populations. The plan should be submitted to the Monitor by February 28, 2017 and implementation begun on March 1, 2017.*

State Response: See Attachment 1.

Final Assessment: Recommended Actions Taken. The plan submitted by the State provides a credible roadmap for increasing the number of hours worked across all individuals in the four target populations. The plan includes four strategies beginning with the Youth Exit Population to:

1. Identify the needs and desires of individuals in supported employment and the barriers to increasing work hours.
2. Address and improve the method and quality of data collection to better document and track information on hours worked and wages earned, target training to staff regarding competitive employment standards and strengthen the ability of existing data collection tools to gather needed information.
3. Improve collaboration with IDD providers and other groups to address and remove key barriers to increasing the number of hours worked per week.
4. Implement, in collaboration with DD provider agencies, a series of strategies to assist DD provider agencies in increasing the number of hours of paid employment received by individuals in the Consent Decree Target Populations, consistent with their individual needs and preferences.

Section D. Career Development Planning Outcomes and Practices (CD Sections IV and VII)

Benchmark 4 – Career Development Plan Outcomes: Youth Transition Target Population §IV(3); §VIII (3) and (7).

Assessment: Requirements Not Met. *The Consent Decree requires that all members of the Youth Transition Target Population have career development plans. The state’s Consent Decree Database reports a total of 470 individuals in the Youth Transition Population. RIDE reports a total of 462 individuals in the Transition Target Population with intellectual disabilities, 368 of whom (80%) have career development plans in place. While the State has demonstrated progress in this area, the requirement that all members of the Transition Target population have CDPs has not yet been achieved.*

Recommended Actions. *RIDE and ORS report that they have implemented monitoring and quality improvement strategies to identify noncompliance with this requirement and determine the need for additional training or oversight to improve career development planning. However, numbers of individuals continue to be without needed CDPs. RIDE and ORS are requested to review and improve their current policies and practices for ensuring that CDPs are provided in a timely fashion to all individuals who have been determined to need one, and to provide a report to the Court Monitor on the steps they are taking to comply with this provision not later than February 28, 2017.*

State Response: See Attachment 2.

Final Assessment: Recommended Actions Taken. RIDE provided additional information on the actions that it is taking to improve oversight of career development planning (CDP) and to ensure members of the target populations receive individualized CDPs as required by the Consent Decree. Actions include: (a) documenting the CDP implementation date, (b) sending notices to special education directors reminding them of CDP requirements in the Employment First Policy and the Transition Timeline, (c) collaborating with the Regional Transitional Coordinators to follow up with special education directors on the status of youth who are reported to be without a CDP, and (d) disaggregating current data to determine the number of individuals who have CDPs by grade to improve identification and follow-up. ORS will improve its current tracking system to ensure implementation and better coordinate CDPs between ORS and the LEAs.

Benchmark 5 – Career Development Plan Outcomes: Sheltered Workshop Target Population and the Day Program Target Population §IV(5); §VII.

Assessment: Requirements Not Met. *Quantitative data from the State’s Consent Decree Database indicates that 86% of the Sheltered Workshop target population and 87% of the Day Program target population do not have career development plans in place. A qualitative review of the content of existing career development plans performed on a sample of 80 individuals strongly suggests that the majority of plans that are in place do not meet Consent Decree requirements for person-centeredness and content. DDD’s current training schedules and plans will not develop the provider capacity needed to ensure that Target Group members receive the person centered services and supports to which they are entitled within a reasonable time frame.*

Recommended Actions: *DDD has agreed that additional efforts need to be taken to address the critical need for training on career development planning. The Division reports that it is implementing an accelerated training schedule for provider agency staff and is expanding the scope of its contract with the Sherlock Center to enable the Center to take a leading role in expanding person-centered planning and training initiatives across all agencies and in the provider community. The Monitor requests DDD to provide an operational plan by February 28, 2017 to: (a) expand CDP training to all provider organizations and families, (b) ensure all members of each target group receive a person-centered career development plan that meets the quality and content requirements outlined in the Consent Decree by June 30, 2017, and (c) provide the Monitor with quarterly updates on these activities from April 1, 2017 forward.*

State Response: (See Attachments 3 and 3a).

Final Assessment: Recommended Actions Taken, Requirements are Met. DDD provided an operational plan to address the recommended actions outlined above. The plan is designed to:

1. Expand career development planning training and guidance to the state’s DD provider agencies by expanding the State’s current contract with the Sherlock Center to improve the design of the plan format and strengthen provider training and technical assistance.
2. Ensure all members of each target group receive a person-centered career development plan that meets the quality and content requirements outlined in the Consent Decree by June 30, 2017 by requiring that the CDPs that are completed for youth while they are in school are provided to DDD at intake into adult services and are used to inform the development of the adult services CDP. DDD will provide all provider agencies with lists of their Target Population members who do not yet have a CDP by March 20, 2017, and

require that these be submitted by June 30, 2017. DDD caseworkers and the Associate Director for Employment will reach out to self-directing individuals who do not have a CDP to ensure the plans are completed by June 30, 2017.

3. Provide Quality Reports to the Monitor on the number of CDPs in each target population, a summary of outreach, guidance, and training activities, and feedback from providers regarding any challenges in completing CDPs for the individuals that they serve.

Benchmark 6 - Benefits Planning §IV(6). All individuals in the RI Youth Exit, Sheltered Workshop, and Day Program Target Populations will receive benefits planning information and counseling from qualified professionals who are experienced and certified in Social Security and SSI regulations. Benefits planning and information will be provided no later than the year in which the person is scheduled to transition to a supported employment placement in accordance with the schedule in Section IV(8)(a) and (b).

Assessment: Requirement Not Met. *The finding that the State is not ensuring sufficient access to benefits planning activities and resources was highlighted in the 2015 Monitor's Progress Report. BHDDH-DDD and ORS were required to develop a plan for ensuring a sufficient number of certified benefits counselors are available to assist members of the four Targeted Groups as required by the Consent Decree within 90 days. The Benefits Counseling Update that was submitted to and approved by the Monitor provides a credible path toward the expansion of benefits counseling services statewide. Unfortunately, information has not been provided on the extent to which the plan's objectives were being achieved. .*

Recommended Actions: *The State must report to the Monitor on the status of the 8 objectives and outcomes identified in the above mentioned Benefits Planning Update not later than February 28, 2017. Any objectives not yet accomplished must be completed within that same time period. The State will provide a list of all individuals from each target group who are not receiving needed benefits planning services along with a plan to initiate needed services by February 28, 2017.*

State Response: (See Attachment 4, 4a). Attachment 4a provides a list of employed Target Populations members who have not engaged in benefits planning.

Final Assessment: Recommended Actions Taken, Requirements are Met. The State updated its progress on meeting the 8 objectives and outcomes identified in the Benefits Planning Update in January. It submitted a description of current status of benefits planning activities and related next steps along with the requested list of individuals from each Consent Decree Target Group who are not receiving benefits planning services on February 28, 2017. The State's description of the steps that it intends to take to fully address each of the 8 objectives constitutes a plan and timeline for meeting the requirements of this benchmark.

Section E. Transition Planning for Youth (CD Section VIII)

Benchmark 6 – Trial Work Experiences §VIII(6). Before exiting secondary school all transitioning youth shall have an opportunity to experience at least two trial work experiences, each of approximately 60 days in duration, in an individualized, integrated employment setting meeting the definitions and standards set forth in Sections V(D)-(E).

Assessment: Requirement Not Met. RIDE has mechanisms for evaluating students' participation in integrated trial work experiences but has not provided this information to the Monitor.

Recommended Actions: RIDE and ORS are requested to provide to the Monitor by February 28, 2017 data on the number and percentage of transitioning youth who have had the opportunity to experience at least two trial work experiences as required by the Consent Decree.

State Response: (See Attachments 5, 5a, 5b, 5c). Attachments 5a and 5b identify Youth Exit Population members who have and have not received community based trial work experiences, as well as summary information on these individuals.

Final Assessment: Recommended Actions Were Taken, Requirements are Met. RIDE and ORS provided the requested information and also described the steps being taken to fully inform the LEAs and others of the Consent Decree requirements with respect to this benchmark and the additional steps being taken to collect and report data on individuals' access to trial work experiences.

Benchmark 7 – Services to Transition Age Youth §VIII(9). BHDDH, ORS, and RIDE shall ensure that the appropriate services and supports are available to transition-age youth who choose to work in the community before their 21st birthday rather than remaining in school. BHDDH will update its policies and administrative rules to enable eligible individuals to access BHDDH services by age 18. ORS will update its policies and administrative rules to enable eligible individuals to access vocational rehabilitation services at age 16. RIDE will issue a statewide directive to local school districts to begin the transition planning process at age 14.

Assessment: Requirements Not Met. A report on the Transition Timeline and related compliance activities issued by the Court Monitor on July 22, 2016¹ found that the State was in compliance with this provision. It was noted, however, that sections of the Timeline referring to the evidence to be gathered to verify that actions required by the Consent Decree were taken needed to be strengthened. RIDE is monitoring the delivery of transition services as required but, as noted above, has not provided information documenting that all transition age youth are receiving opportunities to participate in two trial work experiences as required. ORS VR counselors assigned to each secondary school are monitoring the delivery of transition services but no policies have been established to facilitate access to VR services beginning at age 16. DDD has identified key actions to be taken by the Division during the transition process and has stated its intention to name a Transition Coordinator in January 2017. The Division has developed, but not yet fully implemented, a process for evaluating the extent to which the actions listed in the Transition Timeline are being provided.

Recommended Actions: It is requested that the following be provided to the Court Monitor by February 28, 2017:

- RIDE - information confirming that individuals in transition are offered two trial work experiences.

¹ Report of the Court Monitor on United States of America v. State of Rhode Island Case Number CA14-175 Defendants Third Status Report. Issued July 22, 2016. Charles Moseley, Court Monitor.

- *DDD – documentation of the full implementation of processes for verifying that required notifications and activities described in the Transition Timeline have taken place.*
- *ORS – documentation that policies and/or administrative to facilitate individuals who are able to access vocational rehabilitation services beginning at age 16 have been written and implemented.*

State Response: (See Attachments 6, 6a-6d).

Assessment: Recommended Actions Were Taken, Requirements are Met.

RIDE. To confirm that youth in transition are being offered two trial work experiences RIDE issued a memorandum issued on February 28, 2017 to Special Education Administrators identifying the transition-related benchmarks requiring that all transition age youth receive a career development plan (CDP) by age 14 years, as well as other Consent Decree requirements referenced by RIDE’s Employment First Policy and Transition Timeline. The memo stated that RIDE will follow up individually with districts with students in the Transition Target Population who are identified by the Special Education Census as not having a CDP on file. The memo additionally references the requirement that transition age youth have the opportunity to experience two work experiences each of 60 days duration. Copies of the Memo to Special Education Directors on Consent Decree Compliance, the Transition Timeline and RIDE’s Employment First Policy are included at Attachments 6b, 6c, and 6d respectively.

ORS. ORS issued the required policy directive (see Attachment 6).

DDD. DDD provided a description of the steps that the division is taking to ensure compliance with Transition Timeline activities. The Meeting Notification Form is being used to track the progress of youth transition population members between the ages of 14 to 21 years beginning with their first IEP/CDP forward. Information from the form will be included in a spreadsheet that also will record DDD’s attendance at IEP and CDP meetings and any referrals for assistance from the Rhode Island Parent Information Network (RIPIN). DDD also will receive monthly reports from RIPIN regarding the services provided. DDD also will attend and regularly report on other school and transition related meetings. A summary of transition related meetings is provided at Attachment 6a.

The State is now in compliance with this provision.

Section F. Training (CD Section IX)

Benchmark 2 – Staff Training §IX(3). The State ensures that all persons involved in the discovery and assessment process, the preparation and implementation of career development plans and the provision of supported employment and integrated day services, and placements for members of the Target Populations have completed necessary training and have attained and retain the required competencies.

Assessment: Not Met. *Progress is being made on the provision of training to provider agency staff. RIDE is meeting the requirements of this provision through the department’s ongoing efforts to provide technical assistance and education to teachers and staff. DDD and ORS have provided training and are implementing training programs to ensure that appropriate provider agency staff have received necessary training and attained the competencies required by the Consent Decree. While both agencies report that expanded training efforts are underway, the numbers of*

provider staff who have meet required training requirements falls short of the performance benchmark. Continued and expanded efforts need to be made by DDD and ORS to meet this requirement.

Recommended Actions. *To comply with this provision, DDD and ORS are requested to develop a mechanism for providing regular reports to the Monitor on the number and percentage of employment and day support staff in each provider agency who are trained and certified, consistent with the requirements of Provision IX(3) of the Consent Decree by February 28, 2017.*

State Response: (See Attachment 7)

Final Assessment: Recommended Actions Were Taken. DDD and ORS provided the requested plan to track, monitor and report on staff training and certification. The plan provides a format for approving new training resources as well as a mechanism for reporting on the training and certification of staff that will indicate for each provider agency the number and percentage of employment and day support staff who are trained and certified.

Section G. Outreach, Education and Support (CD Section X)

Benchmark 2 – Employment First Task Force §X(3). By May 1, 2014, the State will create an Employment First Task Force that will include, but will not be limited to, representatives of the technical assistance entities discussed in Section XII, the Community Provider Network of Rhode Island, the Paul V. Sherlock Center on Disabilities at Rhode Island College, the Rhode Island Disability Law Center, the Rhode Island Developmental Disabilities Council, the Rhode Island Parent Information Network, the Rhode Island Business Leadership Network, individuals with IDD, and parent and family representatives. The Task Force will meet with the meet with the Monitor and State officials on a quarterly basis to discuss the successful implementation of the Consent Decree and produce policy recommendations, research and information pertaining and have a role in providing in-reach, outreach, education, transition and linkage activities.

Assessment: Requirements Not Met. *The Employment First Task Force is not meeting its charge as outlined in the Consent Decree. No policy recommendations or reports on the status of barriers to Consent Decree implementation have been issued.*

The Task Force functions as an independent, voluntary group of advocates and stakeholders who are not directly involved in state agency operations. The Consent Decree outlines a short list of requirements, but leaves decisions regarding leadership, organization, member responsibilities and operational policies that are necessary to ensure that the identified tasks and obligations are completed to the Task Force’s discretion. Although it is charged with responsibility for making policy recommendations, the Agreement does not specify to whom such recommendations are to be made nor the nature or intent of any research to be conducted or information to be disseminated. As an independent body, the Task Force does not have administrative support or oversight by any state agency.

The Task Force has the potential to provide an independent and meaningful role in supporting the ability of the State to accomplish the reforms identified by the Consent Decree, and the ability of individual members of the Target Populations to receive the services and supports to which they are entitled. But change needs to take place if the Task Force is to achieve its full potential.

Recommended Actions: *The following actions are recommended. Focus should be directed toward providing needed structure without compromising the separate and independent voice of advocates and stakeholders:*

1. *It is recommended that the Task Force submit its reports, findings, analyses and recommendations to the Executive Office of Health and Human Services (EOHHS) and the Court Monitor, along with other entities as determined by the Task Force. EOHHS is requested to make administrative support available to the Task Force, as the Task Force deems appropriate, to assist the group in carrying out its mission, roles and responsibilities.*
2. *The Task Force Chairperson in collaboration with the Deputy Secretary of EOHHS, are requested to convene a small work group of key individuals including representatives of the Community Provider Network of Rhode Island, the Paul V. Sherlock Center on Disabilities, the Rhode Island Disability Law Center, the Rhode Island Developmental Disabilities Council, Advocates in Action, the Rhode Island Parent Information Network, individuals with I/DD, parents and families, and state agency representatives to:*
 - a. *Review and reach agreement on the role, purpose, leadership, structure and functioning of the Employment First Task Force with respect to: leadership, including tenure and responsibilities; decision making practices (simple majority or consensus); the role of subcommittees and the relationship between subcommittees and the full body; group purpose and focus; and actions needed to ensure the participation of self-advocates.*
 - b. *Clarify the roles and responsibilities of Task Force members, including expectations for membership and participation, the outcomes to be achieved and the audiences with whom the outputs of the Task Force will be shared.*
 - c. *Clarify the role and responsibilities of state agency officials from BHDDH-DDD, ORS and RIDE with respect to their responsibilities for: (a) regularly attending meetings, (b) reporting on State activities and progress on meeting the Consent Decree objectives and outcomes, and (c) responding to requests from Task Force members for information, follow-up or logistical support.*
 - d. *Determine points of overlap or interaction between existing policy-related committees managed by BHDDH, ORS and RIDE and the activities to be completed or addressed by the EFTF.*
 - e. *Prepare an annual report to the Monitor, the State and for public dissemination, that identifies barriers to successful implementation of the Consent Decree, recommendations useful in addressing the barriers, best practices, and suggested actions to assist individuals in the Target Populations successfully transition to integrated employment and day settings.*

The Task Force Chairperson is requested to report to the Monitor on the convening of the work group discussed in subsection 2 above and the gathering of preliminary recommendations from the work group regarding improved functioning of the Employment First Task Force by February 28, 2017.

State Response: (See Attachment 8)

Final Assessment: Recommended Actions Were Taken. Requirements are Met. The Chairperson of the Employment First Task Force met with the General Counsel of the Executive Office of Health and Human Services as requested discussed a response to each of the recommended actions. The Chairperson provided the Monitor with a written response that documented actions taken and included the requested information.

Section H. Provider Capacity (CD Section XI)

Benchmark 1 - Developing Provider Capacity §XI (1)&(2). BHDDH and ORS will ensure provider capacity that is sufficient to furnish supported employment and integrated day services to individuals in the Sheltered Workshop, Day Program and Youth Exit Populations.

***Assessment: Requirement Not Met.** DDD and ORS have sought to improve Target Population Members' access to providers by increasing individual funding and staff training requirements. Although practices have been implemented and clear progress has been made, it is too early to determine whether the procedures and policies will have the intended impact. This provision will be monitored to ensure that the intended outcomes are being achieved and provider access is sufficient to meet the requirements of the Consent Decree.*

***Recommended Actions:** The State is requested to gather and report data from provider agencies on the numbers of individuals eligible for DDD and/or ORS services who were denied services during the periods: July 1, 2016 through December 31, 2016; January 1, 2017 through March 31, 2017; and April 1, 2017 through June 30, 2017. The report should identify the service provider, the reasons for service refusal or delay, the length of the delay, and recommendations for improving access to services. It is requested that the first report covering July 1, 2016-December 31, 2016 be provided to the Monitor by February 28, 2017.*

State Response: (See Attachment 9)

Final Assessment: Recommended Actions Were Taken. Requirements are Met. The State prepared an analysis of provider capacity as requested documenting by service provider, the reasons for service refusal or delay, the length of the delays that have taken place, and recommendations for improving access to services.

The State is requested to report to the Monitor on the status of its plan to build and improve the capacity of provider agencies to provide integrated supported employment and integrated day services to members of the Consent Decree Target Populations. The status report should address the findings and recommendations of the *Plan for Addressing Provider Capacity* that was submitted to the Monitor on April 15, 2017 and should cover the period January 1 through June 30, 2017 and be submitted not later than July 15, 2017.

Respectfully Submitted,

Charles Moseley Ed.D.
U.S. District Court Monitor
April 18, 2017