

REPORT OF THE COURT MONITOR

On

UNITED STATES OF AMERICA v. STATE OF RHODE ISLAND
Case No. CA14-175

DEFENDANT’S THIRD STATUS REPORT
Filed July 1, 2016

Charles Moseley Ed.D.
U.S. District Court Monitor

Report Issued July 22, 2016

Progress Summary	
Court Order Provision	Assessment
1. Allocate Sufficient Budget	Provision Met
5(a). Management Plan	Provision Met
5(b). Transition Timeline	Provision Met
5(g). IEP Meeting Attendance	Provision Met
5(c). Communication Plan	Provision Met
5(d). Communication Plan	Provision Met
5(e). SIS Resource Allocation	Provision Met
CD XI.(10) Conv. Trust Fund	Provision Conditionally Met

I. INTRODUCTION

This review assesses the documentation and actions taken by the State of Rhode Island, as described in the Defendant's Third 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 1, 2016. This progress report utilizes the same organizational format of the State's Third Status Report to facilitate comprehension and tracking.

During the review of the budgeting process related to Provision 1 described below, it became clear that the State had not complied with the requirement of Consent Decree provision XI.(10) to begin distributing Sheltered Workshop Conversion Trust Fund dollars to enable provider conversion to supported employment services. Trust Fund dollars are necessary to build the capacity of provider agencies to achieve the employment placement benchmarks under the Consent Decree. The importance of this requirement and status of activities was discussed during the Evidentiary Hearing on April 8, 2016. The State is taking action to fully comply with this provision (see below Section VII Other Matters).

A draft version of this report was shared with the State and DOJ. The State was given the opportunity to provide additional information to clarify its responses in three areas. This report acknowledges and reflects the additional information provided by the State and the Department of Justice.

II. THE BUDGET 2017 Budget Analysis

Court Order Provision No. 1: *Appropriate the additional money contained in the Governor's budget for fiscal year 2017 in order to fund compliance with the Consent Decree.*

Status. The Governor's original budget request for developmental disabilities services submitted to the General Assembly on February 3, 2016 was \$114,259,149 in general revenue funds with a total DD budget commitment of \$235,223,032. Following the Court's Order of May 18, 2016, the Governor amended the DDD budget request and proposed an increase the general revenue funding to \$122,540,564. The amount finally approved by the General Assembly and signed by the Governor on June 21, 2016 was \$119,651,536 in general revenues and a total budget commitment of \$246,242,419. This represents an increase of \$11,019,387 over the original

request. Specific budget set asides relevant to the Consent Decree include:

- An additional \$4 million (\$2 million state general revenue dollars plus \$2 million in Federal match) to expand integrated employment and integrated day services as required by the Consent Decree.
- An additional \$5.1 million (\$2.5 million from general revenues and \$2.6 million Federal Match) to boost compensation for private provider Direct Support Staff.
- Funding for four staff positions focusing on Consent Decree Implementation including: Consent Decree Coordinator, Employment Specialist, Chief Transformation Officer and Program Development Director.
- Funding for the Conversion Institute at the Sherlock Center will covered by existing resources.

The amended budget also includes a restoration of \$2.2 million in professional supports provided in day centers as part of the amended budget request. The original request reallocated such services to existing Medicaid contracts with managed care organizations (MCOs). Because some professional support services will continue to be provided outside MCO contracts, the Governor's amended budget restored some funds. The Governor's request for \$5.8 million (general revenues plus Medicaid match) to address DD caseload growth was not approved by the Legislature citing the lack of data on caseload growth during the past year. The Legislature did, however, recommend that additional funding be provided when the growth occurs.

Assessment: Provision Met. The total increased general revenue funding of \$11,091,387, as detailed above, will provide sufficient funding for the State to meet the requirements of the consent decree during FY2017. The final approved budget does not include funding for caseload increase, but the Legislature recommended that additional funding be available when growth occurs. A BHDDH Eligibility Unit Update dated 6/29/16 reports that 125 new individuals were determined to be eligible for State funded services between 7/1/15 and 6/30/16. The report states that as of April 15, 2016 approximately 70% of applicants were between the ages of 16 and 21 years and were not expected to exit school during the 2015-16 school year. The Consent Decree provides a process for ensuring the members of the four target groups will be offered supports and services to transition from school to adult services during the current 2016-17 fiscal year. BHDDH is requested to report to the Monitor on any members of the Transition Target population whose acceptance into the adult DD system is delayed or deferred due to lack of funding.

III. MANAGEMENT PLAN

Court Order Provision No. 5(a): *Finalize a project management plan developed and agreed to by BHDDH, ORS and RIDE.*

Status. The State's project management plan identifies Consent Decree goals and tasks, the project lead or person responsible for ensuring each task is accomplished, the current status, due date for completion, and comments. Sufficient documentation is provided to identify and track key requirements and accomplishments. The plan does not include a description of the organizational strategies being used within BHDDH to accomplish the required system change benchmarks, nor does it reference current collaborative efforts such as the Interagency Consent Decree Advisory Team that meets regularly to coordinate activities between departments. Given the personnel changes within BHDDH, the departure of the department's director, the DDD director and the chief transformation officer, it is understandable that a more developed operational management plan has not yet been put together.

Assessment: Provision Met. It is recommended that the current management plan be expanded to reference organizational roles and implementation strategies as noted above once the key management personnel are in place, but not later than December 1, 2016.

IV. TRANSITION TIMELINES AND IEP MEETING

Court Order Provision No. 5(b) and (g): *Finalize a transition timeline by BHDDH, ORS and RIDE. Finalize a plan for ensuring consistent attendance by ORS or BHDDH at IEP meetings for transition age youth.*

Status. Transition Timeline (No. 5(b)). A comprehensive Transition Timeline developed by RIDE, BHDDH and ORS provides detailed information on the activities to be performed and accomplished with and on behalf of students in transition. BHDDH provided additional information on the activities and benchmarks that the division intends to accomplish during this period. The actions to be taken by the three departments are clear. However, the sections on the Timeline referring to the evidence to be gathered and used to determine that the required actions were taken needs to be strengthened. Specifically, RIDE and BHDDH need to identify how and

by whom career development planning (for example) and other activities will be evaluated to ensure the intended outcomes are achieved.

Assessment (No 5(b). Provision Met. The Transition Timeline identifies each agency's responsibility for engagement and associated timelines.

Status. IEP Meeting Attendance (No. 5(g). The Order requires the State to finalize a plan for ensuring consistent attendance by individuals employed by BHDDH or ORS at IEP meetings for transition age individuals. The Transition timeline (Document 37-3 as revised by the State and submitted on 7/18/16) establishes a plan for attendance by ORS or BHDDH at IEP meetings for transition age youth (14-21 years of age). The timeline and BHDDH Eligibility Unit Update revised by the State and submitted on 7/18/16 provides information regarding the actions to be taken by RIDE, ORS and BHDDH to meet the needs of Youth Transition group members at key stages or "touch points" in the transition process. Activities are organized into sections according to student age brackets between 14 and 21 years. The Transition Plan states that State representatives from ORS and BHDDH are available for consultation and participation at IEP meetings for transition aged youth in layers of increasing involvement as students progress in age and move toward transition to the adult system. The Plan states that ORS Counselors are regular members of the school teams for all Transition Age youth and are available for IEP consultation and involvement as requested. BHDDH representatives are available to attend IEP meetings for younger (14-16) age youth on the basis of a school or parental request.

For students 16 to 18 years of age, BHDDH has contracted with the Rhode Island Parent Information Network (RIPIN) to attend IEP meetings. The Transition Plan indicates that an ORS Rehabilitation Counselor will be present at IEP meetings as well as during annual Career Development team meetings. Once the individual is 18 months from exiting school, the BHDDH Eligibility Unit will attend IEP meetings. RIDE describes a variety of actions taken by the State and by the Local Educational Authorities (LEA) during this period.

Assessment (No. 5(g). Provision Met. The Transition Plan and supporting materials provided for attendance by ORS or BHDDH at IEP meetings for individuals in transition ages 14 to 16

years only at the request of the school or the family. Following feedback from the Monitor in the draft version of this report sent to the Parties on July 21, 2016, the State provided an Addendum to the Consent Decree Transition Plan (dated July 2016) reaffirming and clarifying its commitment to have ORS and/or BHDDH staff available for all IEP meetings for Transition Age Youth, including those aged 14-16. The State commits to amending the IEP Meeting Notice that is used by all school districts in RI to include a statement informing parents that as part of the Transition Process they have access to and can request the participation of ORS and BHDDH staff at their child's upcoming IEP meeting. The Addendum is incorporated by reference into the Consent Decree Communication Plan already submitted by the State. The Plan itself is being amended to reflect the State's commitment to ensuring that families understand that ORS and BHDDH staff are available to participate in their IEP meeting for youth age 14-16 as appropriate to the needs of their child and based upon their choices and expressed preferences.

V. COMMUNICATION PLAN

Court Order Provision Nos. 5(c) and 5(d). *The State will finalize a communications plan for communicating with individuals and families on pending BHDDH services. The communications plan will describe efforts for gathering information from the community.*

Status. Communications Plan for Pending Services (No. 5(c). BHDDH's Eligibility Unit Update on June 29, 2016, as revised on July 18, 2016, reports on the roles and responsibilities of the Eligibility Unit and the process used by DDD to determine eligibility for adult DD services. The eligibility determination process describes a plan for communicating the status of eligibility determination requests to individuals and families. The Eligibility Unit Update states that a member of the eligibility unit will meet with each individual and family to explain the procedures the State uses to determine service eligibility, assess individual support needs and allocate funding for services to be provided. Furthermore, the description of the eligibility determination timeline and related communications identify key points of communication between the division and the individual and family with respect to: the need for additional information, the scheduling of the SIS evaluation, tier assignments, the start of services, self direction, and response to pending applications.

Assessment (No. 5(c). Provision Met. The revised Eligibility Unit Update describes the methods used by DDD to communicate with individuals and families regarding the required

elements of eligibility determination and resource allocation. An eligibility worker is on call to answer both general and specific questions. Contact information is provided on the BHDDH website, on brochures and on all correspondence from the Eligibility Unit and is shared with families during IEP meetings. Upon receipt of an application a letter is provided to families and the individual confirming receipt of the application and the timeline for review and decision making.

It is important to note that the eligibility determination process frequently is associated with a great deal of anxiety and concern among individuals with disabilities and their families. By its nature, the process is technical, complicated and difficult for a layperson to understand. Direct contact with an eligibility determination staff member offers an important opportunity for families to learn about the process and have their questions answered. It is recommended that BHDDH develop and distribute a description of the eligibility determination process that is clear, easy to access, user-friendly and written in plain language to assist individuals receiving support understand how the process operates and the staff at DDD to contact with questions and requests for support.

Status. Communication Plan (No. 5(d)). The Consent Decree Communications Plan outlines BHDDH's plans and strategies for gathering information from the community including individuals, families, providers, members of the media and the general public. The plan identifies target audiences, objectives, messages, communication strategies and outcomes. A chart describing Proposed Outreach Activities by Core Consent Decree Topics identifies topics, primary audiences, tactics materials and the staff with lead responsibilities for organizing the training or communication activity including intended completion dates. Specific dates are provided for attendance at future Employment First Task Force meetings as required by the Court Order. At the request of the Monitor, completion or target dates were provided for updates made to agency websites that provide individuals and families with practical information on services and deadlines to support seamless transitions, and for the specific Consent Decree Update to be shared through the BHDDH newsletter by July 29, 2016.

Assessment (No. 5(d)). Provision Met.

VI. SERVICE TIER POLICY/ASSIGNING RESOURCE ALLOCATION (SIS)

Court Order Provision No. 5(e). *Revise BHDDH SIS Policy.*

Status. Service Tier Policy (No. 5(e)). BHDDH revised Policy number SIS-4, Service Tier Policy/Assigning Resource Allocation initially approved on 11/28/12 on June 29, 2016. The revision includes the provision that “All decisions involving tier assignments and any changes to tier assignments are made solely on the basis of individual support needs as indicated by the SIS assessment in a manner that is consistent with the individual’s support needs, separate and apart from resource allocation considerations.” Tier assignments are made by an independent entity under contract with BHDDH utilizing a statistically determined algorithm that assigns individuals to funding levels based on their support needs as indicated by their SIS scores. The DD division director has authority to adjust an individual’s funding allocation outside of the SIS tier assignment process based on documentation of the individual’s need.

Assessment (Par 5(e). Provision Met. The language of the revised policy meets the requirement that of the Court Order that “all decisions involving SIS tier assignments and changes will be made by BHDDH staff in a manner that is consistent with individuals’ support needs, separate and apart from resource allocation considerations.”

VII. OTHER MATTERS

Consent Decree Provision XI.(10) Establishment and Distribution of the Sheltered Workshop Conversion Trust Fund. *By October 1, 2014 the State, including BHDDH and ORS, will establish and begin distributing a Sheltered Workshop Conversion Trust Fund in the amount of \$800,000 to provide up-front start up costs to providers that have agreed to convert their services from primarily sheltered employment to primarily supported employment services.*

Status. Provision No. 4 of the Court Order filed on May 18, 2016 requires the State to comply with every deadline in the Consent Decree “from this day forward.” The review and analysis of the State’s final 2017 Budget (Section II above) revealed that the Trust Fund dollars to be distributed to providers to cover approved start up costs had yet to be dispersed as of July 21, 2016. The State of Rhode Island’s Compliance Status Report filed on April 1, 2016 noted that the State had provided “full funding of \$800,000 over two years (FY15 and FY16) for the Trust Fund called for in the Consent Decree.” Testimony offered during the Evidentiary Hearing held on April 8, 2016 (p. 90; pp. 151-152) indicated that invoices for Trust Fund dollars had been

submitted by provider agencies to BHDDH and were awaiting payment. As of this date, July 21, 2016, three months later, payment has not occurred. Trust Fund dollars were included in BHDDH's FY2015 and FY 2016 budgets. Applications were completed by provider agencies and submitted to BHDDH in accordance with an established timeframe. Applications were reviewed, revised as necessary and received approval. Provider agencies submitted invoices to BHDDH in March 2016. As of July 21, 2016, however, no Trust Fund dollars had been dispersed.

Assessment. Consent Decree Provision XI.(10) Conditionally Met. The State was notified by the Monitor that it is out of compliance with Consent Decree Provision XI.(10.) by the draft version of this report issued for review by the Parties on July 21, 2016. Following receipt of the draft report, the Deputy Secretary EOHHS provided the Monitor with a detailed description of the State's efforts to meet this requirement to date. She assured the Monitor that payments from the Conversion Trust Fund are in process and will be issued and received by each of the provider agencies that were approved for Trust Fund grants not later than Friday July 29, 2016. The Monitor recommends to the Court that action on this finding not be taken until after July 29, 2016, following a determination by the Monitor that funds have been received by each of the nine provider agencies and the State is in full compliance with this provision. It is further recommended that if funds have not been received by this date that fines, as provided by the May 18, 2016 Court Order, be imposed by the Court for failure to comply with this this provision effective July 1, 2016.

Respectfully Submitted,
Charles Moseley EdD.
U.S. District Court Monitor
July 22, 2016