

**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.)
)
JANICE DEFRANCES, ET AL.,)
)
Defendants.)**

RRL

PROPOSED ORDER

The parties in this matter have jointly moved to partially modify the existing Consent Decree in this case. [Doc. 56]. The Court's Special Master submitted a report outlining the status of Defendants' compliance with the current Consent Decree, and advocating for the parties' proposed modification. [Doc. 58]. Class notice of the proposed modification was ordered and class members were given an opportunity to object. [Order, April 30, 2014, Doc. 62; Order May 1, 2014, Doc. 64]. No class objections to the proposed modification were received by the Court or the parties and a hearing on the modification was conducted on June 18, 2014. Reviewing the evidence in this matter, the Court finds that the parties have established significant changes in the facts sufficient to support modification of the Consent Decree.

I. The Facts Supporting Modification

A. History of the Case

This dispute dates back to 1971, when a group of juvenile inmates of Rhode Island's Boys' Training School (RITS) sued the state officials who ran the School 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 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. Compliance with these elements is overseen by a 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. One of these requirements is the subject of the parties' proposed modification.

B. The Parties' Proposed Change to the Consent Decree

The provision which the parties wish to modify is as follows:

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 at ¶ 11(2). The parties' claim that in the intervening years since they agreed to this provision, best practice in juvenile justice has changed dramatically, and that the American Correctional Association (ACA) standards are no longer the sole set of standards for measuring program quality and constitutional compliance in the field of juvenile corrections. The parties propose to adopt another set of standards based on the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) standards which they assert are now best practice in the

field.

The new proposed language the parties propose to adopt as a modification to paragraph 11(2) of the 2000 Order is as follows:

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.

The actual standards the parties wish to adopt in lieu of the ACA standards are referred to as "JDAI+ Standards" because of additions and modifications to the original JDAI standards that have been made to incorporate requirements of the Consent Decree. For instance, because RITS is both a facility for detained and adjudicated youth, the parties felt that additional standards needed to be set forth for assessment of needs and risk and treatment and rehabilitation services. As a result, significant portions of Appendix A and B of the Consent Decree have been incorporated into the JDAI+ Standards. *See* Declaration of Janice DeFrances at ¶ 11 [Doc. 56-2]; *see also* Declaration of Mark Soler at ¶ 27 [Doc. 56-1]. The JDAI+ standards also reflect modifications of the original standards that did not apply to the unique situation of the RITS. *See* DeFrances Decl. ¶ 12 [Doc. 56-2]; Soler Decl. ¶ 28 [Doc. 56-1].

The Parties, the Court's Special Master, and juvenile justice experts from the Center for Children's Law & Policy (CCLP), including expert Mark Soler, worked together for almost a year to produce a JDAI+ tool to be used as a substitute for the ACA standards. *See* Declaration of Mark Soler at ¶ 29 [Doc. 56-1]. Mr. Soler is the Executive Director of CCLP and a nationally recognized expert in the field of juvenile justice with over thirty-five years of experience. He has litigated federal civil rights class actions involving conditions of confinement for juveniles in

states across the country, and has been involved in major juvenile justice reform efforts nationwide, including providing technical assistance to jurisdictions such as Baltimore, Maryland; Philadelphia, Pennsylvania; Allegheny County, Pennsylvania; Shelby County, Tennessee; and Benton and Washington Counties in Arkansas. Soler Decl. ¶¶ 1-2; 5-6.

In support of the JDAI+ standards, the parties submitted the Declaration of Mark Soler.

In his testimony, Mr. Soler indicates that he has evaluated the JDAI+ standards and asserts:

Based on my experience over the past thirty-five years, I believe that the standards proposed to the Court are an excellent set of standards for assessing conditions, policies, and practices at the Rhode Island Training School and for protecting the health, safety, and civil and constitutional rights of youth in the Training School. The standards proposed to the Court are far superior to the ACA standards....

Soler Decl. ¶ 30. The parties have submitted the proposed new standards to the Court. *See* DeFrances Decl. Ex. 2 [Doc. 56-2]. Notably, the Court's Special Master, Michael Lewis, has also submitted a substantial report to the Court supporting the adoption of the JDAI+ standards, "without hesitation." *See* Report of the Special Master at 7 [Doc. 58].

In lieu of the ACA accreditation process, the parties propose that an inspection team of experts, including at least two juvenile justice experts, a medical doctor, a behavioral health expert, and an education expert perform an independent inspection of RITS. *See* DeFrances Decl. Ex. 3 [Doc. 56-2]. This inspection will evaluate whether the facility has attained "substantial compliance" with the JDAI+ standards. Substantial compliance is evaluated based on two metrics: (1) mandatory inspection standards, which are standards that impact on the health and safety of youth and employees assigned to the facility and standards that reflect the terms set forth in the Consent Decree; and (2) non-mandatory inspection standards, which include the remaining standards. For purposes of "substantial compliance" the facility must achieve all of the mandatory inspection standards and 90% of the non-mandatory standards. *Id.*

C. The JDAI Standards Reflect Current Best Practice in the Field and the Philosophy of Juvenile Corrections in Rhode Island.

In support of the need to modify the Consent Decree, the parties submitted both the Declaration of nationally recognized juvenile justice expert, Mark Soler. [Doc. 56-1] and the Declaration of DCYF's Director, Janice DeFrances [Doc. 56-2]. Mr. Soler provided evidence to the Court that since 2000, the JDAI standards have been developed and that they are now considered best practice in the field of juvenile corrections. *See* Soler Decl. ¶¶ 14, 16, 23, 26 [Doc. 56-1]. Mr. Soler further testified that the JDAI standards have been embraced by jurisdictions across the country, including 200 sites in 39 states, as well as the Civil Rights Division of the U.S. Department of Justice. *Id.* at ¶¶ 5, 16.

The parties have also provided evidence that the JDAI standards differ from the ACA standards in significant ways providing greater protections for the Plaintiff class and reflecting the goals and policy mandates of DCYF and the RITS. While the ACA standards incorporate minimum constitutional standards, JDAI standards also incorporate best practices in the field and are considered to be more demanding and rigorous. Soler Decl. ¶ 23.

In particular, the Court notes that the JDAI standards require higher thresholds for conditions in facilities and protection of youth than the ACA standards. For example, the ACA standards for juvenile detention facilities allow for confinement of a juvenile in a room for up to five days for violation of any facility rule, unless otherwise provided by law. The JDAI standards provide that room confinement may only be imposed for the most serious offenses and may not be imposed for more than 72 hours. Soler Decl. ¶ 19. Additionally, the ACA standards allow staff to use physical force on youth "in instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to maintain or regain control, and then only as a last resort and in accordance with appropriate statutory authority," whereas the JDAI

standards allow staff to use only approved physical force techniques, and only “when a youth’s behavior threatens imminent harm to the youth or others.” *Id.*

Significantly, DCYF provided testimony to the Court that JDAI’s focus on reducing the use of room confinement and isolation on youth and limiting such practices to the most extreme cases where safety and security of the youth and others is at imminent risk, is a primary commitment of both the Department and the RITS. DeFrances Decl. ¶ 8 [Doc. 56-2].

The JDAI standards also prohibit certain practices that are now considered excessive, unnecessary, counter-productive, and harmful to youth. But the ACA standards allow such practices. For example, the ACA standards for juvenile detention facilities allow the use of chemical restraints such as tear gas, pepper spray, and mace to subdue youth who misbehave. The ACA standards also allow the use of four- and five-point restraints (head, arms, legs). The JDAI standards prohibit the use of chemical restraints, four- and five-point restraints, the use of pain compliance techniques to control youth behavior, hitting or striking youth, chokeholds, hogtying youth or restraining youth in uncomfortable positions, and restraining youth to fixed objects such as walls or beds. Soler Decl. ¶ 20.

Again, DCYF provided testimony to the Court that JDAI’s rejection of these practices is an important principle shared by DCYF and the RITS. DeFrances Decl. ¶ 9.

The JDAI standards are also more comprehensive than the ACA standards in areas critical to the welfare and rehabilitation of the Plaintiff Class. For example, the JDAI standards contain detailed provisions for special education for confined youth with educational disabilities, in accordance with the requirements of the federal Individuals with Disabilities Education Act (IDEA). The ACA standards do not have specific requirements for special education services for confined youth. Soler Decl. ¶¶ 21, 24.

Director DeFrances submitted testimony that approximately 40 % of the Plaintiff class at RITS are eligible for special education services. Over the last decade, the percentage of youth at RITS with disabilities has grown and meeting the needs of these youth is a key challenge and responsibility of the institution. As such, providing special education services that meets or exceeds federal mandates is a key component of the education program at the RITS. DeFrances Decl. ¶ 10.

The Court also finds it significant that the JDAI standards contain detailed requirements for the topics to be covered when staff provide orientation to a youth at admission to the facility, detention data to be collected on each youth, information to be collected during health and mental health screenings at admission and full health and mental health assessments after admission, training for facility staff on health-related issues, components of the facility suicide prevention program, and grievance procedures. Again, the ACA standards do not contain any comparable provisions. Soler Decl. ¶ 21. Such important requirements have long been central to the data collection and medical and mental health care provisions of the Consent Decree. *See* Order, Appendix B, § II.

Mr. Soler's testimony regarding the operational language utilized in the JDAI standards versus that of ACA also indicates the greater strength of JDAI. As Mr. Soler asserted, the JDAI standards are written to be more directive and to focus on the actual operation of facilities. For example, most JDAI standards begin with words like, "Facility staff [do/do not]...." or "Youth receive...." In contrast, most ACA standards focus on the existence of written policies and procedures about what should happen in the facility. Thus, most ACA standards begin with the words, "Written policy, procedure, and actual practice provide that..." Soler Decl. ¶ 25. As noted by juvenile justice expert Mark Soler, the existence of written policies and procedures is

insufficient to protect the health, safety, and rights of confined youth because the actual behavior of staff can vary considerably from written policy. Mr. Soler supported this assertion by noting his own experience with successful federal civil rights litigation against juvenile facilities that have been accredited by the ACA, but which nevertheless have violated the civil and constitutional rights of confined youth in their conditions and practices. Based on his decades of experience in juvenile justice, Mr. Soler affirms that the requirements of the JDAI standards are more protective of youth confined in facilities. *Id.*

Testimony also makes it clear that both RITS and DCYF have already embraced the JDAI standards by becoming a JDAI site in December of 2009. *See* DeFrances Decl. ¶ 4 [Doc. 56-2]. As a JDAI site, DCYF and the RITS have worked with key stakeholders in the community, such as the Attorney General's Office, the Public Defender, the Family Court, and the Providence Police Department, to modify policy and practice in conformance with JDAI requirements. DeFrances Decl. ¶ 5. The State's commitment to become a JDAI site reflects a policy choice to ensure that Rhode Island's juvenile justice system and the conditions of confinement and programming at the RITS reflect youth-centered, national best practices, and that all youth who can safely remain in the community pending adjudication are allowed to do so rather than be placed at the RITS. DeFrances Decl. ¶ 6. Director DeFrances testified that since Rhode Island became a JDAI site, the average daily census of youth held at RITS has gone from roughly 152 in calendar year 2009 to 81 as of March 1, 2014. DeFrances Decl. ¶ 7.

II. The Parties Have Met the Legal Standard for Modification of a Consent Decree

The Supreme Court in *Rufo v. Inmates of Suffolk County Jail* set forth a two pronged requirement for the modification of a consent decree. First, the modification must be warranted by a substantial change in facts or law, and second, the modification must be suitably tailored to

the changed circumstances. 502 U.S. 367, 384 (1992). Application of the *Rufo* standard is very fact specific, as each court must determine whether there has been a substantial change in facts or law relevant to the consent decree at issue. 502 U.S. at 384. Specifically, the moving party must establish at least one of the following four factors by a preponderance of the evidence to obtain modification: (1) a significant change in factual conditions; (2) a significant change in law; (3) that “a decree proves to be unworkable because of unforeseen obstacles”; or (4) that “enforcement of the decree without modification would be detrimental to the public interest.” *Democratic Nat. Committee v. Republican Nat. Committee*, 673 F.3d 192, 202 (3rd Cir. 2012) quoting *Rufo*, 502 U.S. at 384.

In *King v. Greenblatt*, the First Circuit held, “The party seeking to modify a consent decree carries the burden of showing a specific significant change in the underlying factual circumstances or the legal principles integral to the original order.” 127 F.3d 190, 195 (1st Cir. 1997). The First Circuit also interpreted *Rufo* to include a mere philosophical shift as sufficient to warrant modification due to a change in factual conditions. *Id.* at 195. The court stated, “A party relying on a philosophical shift to justify changes in a consent decree must spell out the fair implications of the shift and must demonstrate that continued adherence to the decree will be inequitable, unfair or untenable.” *Id.* At the same time the court in *King* found that when considering a philosophical shift as a basis for modification, “[t]he sort of factual changes that may qualify include unanticipated developments that render continuation of the decree inequitable, or that, for reasons unrelated to past discrimination or the fault of the parties, make it extremely difficult or impossible to satisfy obligations that, while imposed by the decree, are not part of its fundamental purpose.” *Id.* at 195 (internal citations and quotations omitted).

A. The Parties Have Demonstrated a Change in Facts Due to the Philosophical Shift in Best Practice Standards in Juvenile Justice.

At the time of the original agreement in this matter in 2000, the parties could not have known of the evolving standards of practice and professional judgment which now characterize best practice in juvenile justice. However, the Order did anticipate that the ACA might have a “successor organization recognized as being the authoritative professional association setting standards for conditions of confinement of juveniles.” Order at ¶ 11(2).

While JDAI is not a successor to ACA in the strict sense of the word, the JDAI standards are now recognized in the field of juvenile corrections to reflect the best practices changes that have occurred in the field over the past fourteen years. Soler Decl. ¶¶ 14, 16, 23. It is also clear from the evidence produced that the JDAI standards are better for the youth held at RITS because they constitute stronger protections of the Plaintiffs’ rights with a greater focus on programming and rehabilitation. Soler Decl. ¶¶ 17-26. Importantly, since the original Decree, the State has also become a JDAI site embracing these new, stronger best practice standards. DeFrances Decl. ¶ 4. The substantial change in the facts required for modification by *Rufo* have unquestionably been met in this case. 502 U.S. at 384. The Court is also convinced by the testimony presented that the changes embodied in the JDAI standards and Rhode Island’s decision to become a JDAI site represent a philosophical shift in the field of juvenile justice both in the State of Rhode Island and nationwide. *King v. Greenblatt*, 127 F.3d at 195.

B. Enforcing the Decree without Modification would be Detrimental to the Public Interest.

The Court in *Rufo* particularly noted that a *flexible* approach is often essential to achieving the goals of reform litigation, particularly the “public’s interest in the sound and efficient operations of its institutions.” 502 U.S. at 368. *Rufo* further noted that the public’s interest in such cases is also the best interests of the prisoners. *Id.* at 382 (county sheriff argued that modification of decree would actually improve conditions for pretrial detainees).

In this case, modification of the consent decree is clearly in the public's interest. Testimony submitted by the parties establishes that the substitution of the JDAI+ standards for the ACA standards is clearly better for the health, safety and welfare of youth at RITS. *See Soler Decl.* ¶¶ 22-26; 27-29. At the same time, modification of the Consent Decree allows DCYF and RITS to focus their limited resources and funding on the adoption of best practices. Testimony by Director DeFrances points out that forcing the parties to adopt ACA standards is contrary to the efficient operation of RITS because it would force the diversion of resources to an accreditation process that will not improve the institution or help it focus limited resources on positive youth development. DeFrances Decl. ¶14. Moreover, modifying the Consent Decree to allow a focus on compliance with JDAI standards will facilitate work already in progress since Rhode Island became a JDAI site in December of 2009. DeFrances Decl. ¶ 4. Given the equities for both parties involved in the adoption of the JDAI+ standards, the Court is convinced that the public is best served by modification of the Consent Decree.

C. The Proposed Modification of the Consent Decree is Suitably Tailored to the Changed Circumstances.

The Court finds that the proposed modification to the Consent Decree is suitably tailored to the established factual changes which necessitate the modification. *Rufo*, 502 U.S. 367, 384. The replacement of the ACA standards for the JDAI+ standards and the rigorous inspection and evaluation process set forth in the DeFrances Declaration for determination of "substantial compliance" with the JDAI+ standards (DeFrances Decl. Ex. 3 [Doc. 56-2]) are more than adequate to replace the existing provision. The proposed modification does not fundamentally change the spirit of the Decree's original requirement. Instead, this modification is tailored to respond to changes in the field of juvenile justice which has evolved in the fourteen years since the parties first entered into the Consent Decree in question.

In consideration of the above, the Court **GRANTS** the joint motion to modify the consent decree as set forth herein.

III. The Special Master and Closure of the Case

The Court originally appointed the Special Master to oversee four elements in the Consent Decree. Order at ¶11(1)-(4). On April 14, 2014, the Special Master reported to the Court that three of these elements had been substantially complied with:

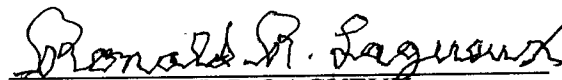
- (1) Completion of the construction of a new facility to house and provide the required programming to the residents or renovation of the existing facility such that either the new facility or the renovated existing facility is adequate and sufficient to meet all housing, educational and programming requirement contained herein and meets all standards of the American Correctional Association for juvenile correctional facilities.
- (3) 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.
- (4) 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.

Report of the Special Master [Doc. 58]. The remaining element in paragraph 11(2) of the Order is the provision which has been modified under this Order. 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.

IT IS SO ORDERED:

DATED: June 17, 2014


HON. RONALD R. LAGUEUX
SR. UNITED STATES DISTRICT JUDGE