

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KENNY A., by his next friend	:	
Linda Winn, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	1:02-CV-1686-MHS
	:	
SONNY PERDUE, et al.,	:	
	:	
Defendants.	:	

ORDER

This action is before the Court on plaintiffs' motion for discovery. For the following reasons, the Court grants the motion.

This class action brought on behalf of foster children in Fulton and DeKalb Counties was settled as to the State Defendants¹ by a Consent Decree entered on October 27, 2005. Section 17 of the Consent Decree sets forth procedures for enforcement of its provisions by Class Counsel. With regard to discovery, Section 17 provides as follows: "Nothing in this Consent Decree

¹ State Defendants are the Governor of Georgia, the Georgia Department of Human Services and its Commissioner, the Fulton County Department of Family and Children Services and its Director, and the DeKalb County Department of Family and Children Services and its Director.

shall authorize or enable the Class or its Counsel to initiate discovery without order of the Court following the filing of a motion by Class Counsel as authorized by the Federal Rules of Civil Procedure and the local rules of Court.” Consent Decree § 17.F.

Pursuant to this subsection, plaintiffs move for discovery relating to State Defendants’ use of diversion, safety resources, and temporary guardianships. “Diversion” refers to a decision not to investigate a report of abuse or neglect that is not considered serious enough for intervention, but instead to interview the family members to evaluate their needs and then refer them to appropriate services while the child remains in the home. A “safety resource” is the home of a friend or relative with whom parents agree to place their child while a report of abuse or neglect is being investigated or while services are being provided to the family. A “temporary guardianship” refers to a guardianship granted by the probate court that may be used as a means of “solidifying” placements that began as safety resources.

Based on reports of state-wide investigations by the Georgia Office of the Child Advocate (“OCA”), plaintiffs express concern that State Defendants

may be misusing diversion, safety resources, and temporary guardianships to inappropriately limit the number of children entering foster care. Plaintiffs seek discovery to determine whether and to what extent these practices are occurring in Fulton and DeKalb Counties, where they may prevent abused and neglected children from becoming class members and benefitting from the protections of the Consent Decree.

Specifically, plaintiffs seek (1) all documents concerning policies, practices, and procedures relating to diversion and safety plans applicable or used in Fulton and DeKalb Counties currently or at any time during calendar year 2009; (2) a list identifying all children in Fulton and DeKalb Counties whose cases, at any time during calendar year 2009, involved the use of (a) diversion, (b) safety resources for more than 30 days, or (c) temporary guardianships; and (3) copies of case files of children to be designated by plaintiffs based on this information for purposes of conducting a case record review.

State Defendants oppose plaintiffs' motion. They argue that the discovery plaintiffs seek improperly extends beyond the "four corners" of the

Consent Decree because it relates solely to children who are not in the State's custody and who are therefore not members of the plaintiff class. State Defendants point out that the Consent Decree specifically omits diversion/differential response policies from its coverage and instead carves out the right for plaintiffs to bring a separate legal action to challenge those processes. Consent Decree § 19.D. They contend that plaintiffs are improperly seeking either to expand the scope of this litigation or to gather information to support a new lawsuit.

State Defendants also note that the Consent Decree already provides for limited data collection regarding the diversion/differential response program and instances of maltreatment of children who are not in foster care and therefore not members of the plaintiff class. Id. § 20.G. They argue that plaintiffs are not now entitled to more information with respect to this "outside-the-class" matter than they agreed to in the Consent Decree.

Finally, State Defendants argue that the OCA reports cited by plaintiffs were conducted on a state-wide basis and do not specifically implicate the implementation of diversion/differential response policies in Fulton and

DeKalb Counties, which are the only areas covered by the Consent Decree. State Defendants also point out that, in response to the OCA reports, they commissioned a study by the University of Georgia's Carl Vinson Institute of Government and contracted with an expert to provide recommendations for implementation of a state-wide differential response system.

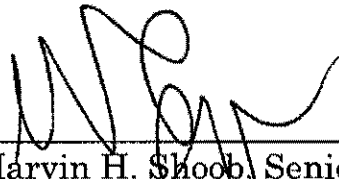
After carefully considering the parties' submissions, the Court concludes that the discovery sought by plaintiffs is appropriate and should be allowed. The Court finds that the OCA reports raise at least the possibility that diversion, safety resources, and temporary guardianships are being used in Fulton and DeKalb Counties to keep children out of foster care inappropriately, and that this possibility is sufficient to justify discovery on this issue. State Defendants do not dispute that the inappropriate use of these practices to suppress class membership would be a violation of the Consent Decree. Nor do State Defendants contend that the discovery requested would be unduly burdensome. Under these circumstances, the Court concludes that plaintiffs are entitled to conduct the requested discovery in order to determine whether to initiate enforcement proceedings.

For the foregoing reasons, the Court GRANTS plaintiffs' motion for discovery [#639] and ORDERS that:

1. Within 10 days, State Defendants shall provide to plaintiffs documents concerning all policies, practices, and procedures relating to diversion and safety plans applicable or used in Fulton and DeKalb Counties currently or at any time during calendar year 2009.
2. Within 10 days, State Defendants shall identify to plaintiffs, for both Fulton County and DeKalb County, in chronological order, all children whose cases, at any time in calendar year 2009, involved the use of (a) diversion, (b) safety resources for more than 30 days, or (c) temporary guardianships, providing:
 - i. The child's name;
 - ii. The child's case number;
 - iii. The child's date of birth;
 - iv. The child's sex; and
 - v. The child's race.
3. After State Defendants provide the information in items (1) and (2) above, plaintiffs shall identify the files to be produced for the

purposes of a case record review. State Defendants shall then produce copies of the complete, original DFCS case files for review by Class Counsel and/or their agents, consultants, or experts, within 20 days of plaintiffs' request.

IT IS SO ORDERED, this 20 day of May, 2010.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia