

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN A., ET AL.)	
)	
Plaintiffs)	Civ. Act. No. 3:00-0445
)	Judge Todd Campbell
v.)	
)	
PHIL BREDESEN, ET AL.)	
)	
Defendants)	
)	

**STIPULATED MODIFICATIONS TO THE SETTLEMENT AGREEMENT
AND REQUEST FOR COURT APPROVAL OF THE 2008 MODIFIED SETTLEMENT
AGREEMENT**

I. STIPULATED MODIFICATIONS

**A. STIPULATION EXTENDING MONITORING AND CREATING PERIOD
IV**

This case was settled by a Settlement Agreement approved by the Court on July 27, 2001 (the "Settlement Agreement"). Section XVI of the Settlement Agreement set forth a number of "Outcome and Performance Measures" that Defendants were required to achieve for three different 18-month periods, defined as Periods I, II and III. *See* Settlement Agreement § XVI.

On November 20, 2003, Plaintiffs filed a motion seeking to hold Defendants in contempt of court for failing to implement the terms of the Settlement Agreement. By "Stipulation of Settlement" approved by the Court on December 29, 2003, the parties resolved the contempt motion. (*See* Stipulation of Settlement of Contempt Motion, Dec. 29, 2003 (attached as Exhibit A)). The Stipulation of Settlement extended Period II under the Settlement Agreement by 15

months and redefined Period III to be the 18-month period beginning December 1, 2005, and ending May 31, 2007. (*See id.* at 11). The Stipulation of Settlement also provided that, for a defined term, the *Brian A.* technical assistance committee (the “TAC”) “will function as the independent monitor” for purposes of Section XV of the Settlement Agreement. (*See id.* at 9).

By “Stipulation Extending Monitoring,” entered by the Court on February 28, 2006, it was agreed and ordered, in pertinent part, that “[t]he TAC shall continue in the role of independent monitor, as defined in Section XV of the Settlement Agreement, at least for the duration of Period III (as redefined in the Stipulation of Settlement, December 1, 2005 – May 31, 2007) plus an additional three months (the ‘Continuation Period’).” (Stipulation Extending Monitoring at 3, Feb. 28, 2006 (attached as Exhibit B)).

By “Stipulated Modifications to the Settlement Agreement and Request for Court Approval of Modified Settlement Agreement,” entered by the Court on May 9, 2007 (“Stipulated Modifications of 2007”), Period III was extended by a period of 13 months, such that Period III began on December 1, 2005 and ended on June 30, 2008. (*See* Stipulated Modifications of 2007 at 2, May 9, 2007 (attached as Exhibit C)). It was agreed and ordered, in pertinent part, that the TAC continued in its role as independent monitor at least for the duration of the redefined Period III, plus an additional three month Continuation Period. (*See id.* at 3). The TAC was to report on performance under the entire Settlement Agreement during and after the end of the redefined Period III. (*See id.*).

The Stipulated Modifications of 2007 further required that, prior to the conclusion of the Continuation Period, *i.e.*, September 30, 2008, the parties, in consultation with the TAC, would determine whether it was advisable for the TAC to continue in the role of independent monitor following the expiration of the Continuation Period or whether a separate independent monitor

should be retained to fulfill the responsibilities described in Section XV of the Settlement Agreement. (*See id.*). The parties and the TAC have met numerous times and have discussed extensively the options for continuation of monitoring and the creation of a “Period IV” under the Settlement Agreement.¹

Pursuant to Section XVII of the Settlement Agreement providing for modification “on the consent of the parties,” the parties now stipulate and agree, and request Court approval, as follows:²

1. A Period IV shall be created under the Settlement Agreement, which began on July 1, 2008 and shall end on December 31, 2009. (*See* Exh. D at § XVI, p. 40; Exh. E at § XVI, p. 40).

2. The TAC shall continue in the role of independent monitor, as defined in Section XV of the Settlement Agreement, at least for the duration of Period IV, plus an additional six-month Continuation Period. (*See* Exh. D at § XV, p. 38; Exh. E at § XV, p. 38).

3. The TAC shall consist of three to five neutral experts in the child welfare field. In no event shall the number of standing TAC members be less than three or more than five. (*See* Exh. D at § XIV.A, p. 37; Exh. E at § XIV.A, p. 37).

4. Defendants shall continue to fund the TAC’s monitoring and technical assistance functions. The Annie E. Casey Foundation (“the Foundation”) has supported funding

¹ The parties and the TAC are continuing to negotiate modifications of provisions, applicable to Period IV, and will separately present those to the Court for review and requested approval.

² Enclosed as Exhibit D (“2008 Red-Lined Modified Settlement Agreement”) is a red-lined version of the Settlement Agreement, which presents the proposed modifications set forth herein. Enclosed as Exhibit E is a final “clean” version of the 2008 Modified Settlement Agreement (“2008 Modified Settlement Agreement”), which incorporates all prior modifications to the Settlement Agreement approved by the Court and the proposed modifications set forth herein. For ease of reference, citations are provided to both the 2008 Red-Lined Modified Settlement Agreement and the 2008 Modified Settlement Agreement for all language discussed herein.

of the TAC since the TAC's inception. The parties expect the Foundation will continue funding through the end of calendar year 2008 at a reduced level. The parties do not expect any Foundation funding to be available to support the TAC beyond the end of calendar year 2008. Defendants shall make up any such reductions in funding through the end of calendar year 2008 and shall assume full responsibility for funding of the TAC thereafter. The TAC shall exercise final authority over its use and expenditure of monitoring and technical assistance funding. (*See* Exh. D at Section XV.H, p. 39; Exh. E at Section XV.H, p. 39).

5. The TAC shall report on performance under the entire Settlement Agreement after the end of Period IV. The TAC shall also report on performance during Period IV. (*See* Exh. D at Section XV.A, p. 38; Exh. E at Section XV.A, p. 38).

6. Only after the completion of Period IV, as defined in Section XVI, may Defendants seek the termination of court jurisdiction over any specific provision in the Settlement Agreement, as follows: (a) Defendants may seek the termination of court jurisdiction over any specific provision of the Settlement Agreement if the Monitor finds substantial compliance with the provision at the end of Period IV; (b) If the Monitor finds non-compliance with the provision at the end of Period IV, and the Monitor subsequently finds sustained compliance with the provision for two consecutive six-month periods after the end of Period IV, Defendants may seek a ruling terminating court jurisdiction over that provision from the court. (*See* Exh. D at Section XVIII.C, p. 55; Exh. E at Section XVIII.C, p. 55).

7. The Settlement Agreement shall remain in full force and effect until at least the conclusion of Period IV. Following the conclusion of Period IV, and after the Monitor submits a report on compliance levels after Period IV, the Defendants may seek a ruling from the court for the full termination of court jurisdiction over the Settlement Agreement based on

achievement of the compliance levels specified, so long as there are no pending non-compliance motions and no other pending remedial court orders based on non-compliance with any provisions of the Settlement Agreement, unless Plaintiffs can demonstrate that continued court jurisdiction is necessary to accomplish the purposes of the Settlement Agreement. (See Exh. D at Section XVIII.C, p. 55; Exh. E at Section XVIII.C, p. 55).

8. The contemplated creation of Period IV and continued monitoring will best further the purposes of the Settlement Agreement.

B. SPECIFIC MODIFIED PROVISIONS IN THE 2008 MODIFIED SETTLEMENT AGREEMENT

Pursuant to Section XVII of the Settlement Agreement, the parties agree to modify the Settlement Agreement, and request Court approval, as follows:

1. Delete the text of Section XIV.A of the Settlement Agreement in its entirety and replace it with the following language:

A Technical Assistance Committee of three to five neutral experts in the child welfare field has been selected to assist the state in meaningful implementation of the requirements of this Settlement Agreement. The technical assistance committee will have the ability to consult and involve other experts as necessary. John Mattingly, of the Annie E. Casey Foundation, has agreed to convene the technical assistance committee and provide guidance and leadership, as he is available. Should any of the three to five technical assistance committee members become unavailable, the remaining technical assistance committee members will be authorized, but not required, to select replacement neutral child welfare experts to serve on the technical assistance committee. Appointment of additional technical assistance committee members shall require the consent of the parties and shall be made in a manner appropriate to meet DCS' evolving technical assistance needs. In no event shall the number of standing technical assistance committee members be less than three or more than five.

(See Exh. D at Section XIV.A, p. 37; Exh. E at Section XIV.A, p. 37).

2. Delete the text of Section XV.A of the Settlement Agreement in its entirety and replace it with the following language:

DCS shall enter into a contract consistent with the terms of this Settlement Agreement with an independent and neutral party who will monitor compliance with the terms of this Settlement Agreement. The TAC will function as the independent monitor, in the place of Sheila Agneil. The TAC shall continue in the role of independent monitor at least for the duration of Period IV, plus an additional six month Continuation Period. Prior to the conclusion of the Continuation Period, the parties, in consultation with the TAC, will determine whether it is advisable for the TAC to continue in the role of independent monitor following the expiration of the Continuation Period or whether a separate independent monitor should be retained to fulfill the responsibilities described in this section of the Settlement Agreement. The TAC shall report on performance under the entire Settlement Agreement after the end of Period IV. The TAC shall also report on performance during Period IV.

(See Exh. D at Section XV.A, p. 38; Exh. E at Section XV.A, p. 38).

3. Delete the text of Section XV.H of the Settlement Agreement in its entirety and replace it with the following language:

Defendants shall continue to fund the TAC's monitoring and technical assistance functions. The Annie E. Casey Foundation ("the Foundation") has supported funding of the TAC since the TAC's inception. The parties expect the Foundation will continue funding through the end of calendar year 2008 at a reduced level. The parties do not expect any Foundation funding to be available to support the TAC beyond the end of calendar year 2008. Defendants shall make up any such reductions in funding through the end of calendar year 2008 and shall assume full responsibility for funding of the TAC thereafter. The TAC shall exercise final authority over its use and expenditure of monitoring and technical assistance funding.

(See Exh. D at Section XV.H, p. 39; Exh. E at Section XV.H, p. 39).

4. Delete the text of the introductory paragraph after the title for Section XVI and before subsection XVI.A of the Settlement Agreement in its entirety and replace it with the following language:

This section lists the child welfare outcomes and performance indicators related to practice improvements. Performance targets are listed for four time periods for the child welfare outcomes and the practice performance indicators. Period I covers 18 months beginning on September 1, 2001. Period II began on March 1, 2003, and ended on November 31, 2005, and Period III began on December 1, 2005, and ended on June 30, 2008. Period IV began on July 1, 2008 and ends on December 31, 2009.

(See Exh. D at Section XVI, p. 40; Exh. E at Section XVI , p. 40).

5. Delete the text of Section XVIII.C of the Settlement Agreement in its entirety and replace it with the following language:

C. Termination and Exit

1. Only after the completion of Period IV as defined in Section XVI, Defendants may seek the termination of court jurisdiction over any specific provision in this Settlement Agreement, as follows:
 - a. Defendants may seek the termination of court jurisdiction over any specific provision of this Settlement Agreement if the Monitor finds substantial compliance with the provision at the end of Period IV. If plaintiffs do not agree that court jurisdiction should be terminated, defendants may seek a ruling terminating court jurisdiction over that provision from the court. The parties intend that the court shall grant termination of jurisdiction over the provision only if (1) defendants can prove substantial compliance with the provision; AND (2) if plaintiffs fail to demonstrate that the provision is directly related to defendants' achievement of compliance with other provisions of this Settlement Agreement.
 - b. If the Monitor finds non-compliance with the provision at the end of Period IV, and the Monitor subsequently finds sustained compliance with the provision for two consecutive six-month periods after the end of Period IV, defendants may seek a ruling terminating court jurisdiction over that provision from the court. The parties intend that the court shall grant termination of jurisdiction over the provision only if defendants can prove substantial compliance with the provision AND if plaintiffs fail to demonstrate that the provision is directly related to defendants' achievement of compliance with other provisions.
2. This Settlement Agreement shall remain in full force and effect until at least the conclusion of Period IV. Following the conclusion of Period IV, and after the Monitor submits a report on compliance levels after Period IV, the defendants may seek a ruling from the court for the full termination of court jurisdiction over this Settlement Agreement based on achievement of the compliance levels specified, so long as there are no pending non-compliance motions and no other pending remedial court orders based on non-compliance with any provisions of this Settlement Agreement, unless plaintiffs can demonstrate that continued court

jurisdiction is necessary to accomplish the purposes of this Settlement Agreement.

(See Exh. D at Section XVIII.C, p. 55; Exh. E at Section XVIII.C, p. 55).

6. The proposed modifications outlined above will best further the purposes of the Settlement Agreement.

7. The 2008 Modified Settlement Agreement, attached as Exhibit E hereto, replaces and supersedes the Settlement Agreement entered by the Court on May 11, 2007. Other than as set forth herein, previous stipulations and orders in this action shall remain in full force and effect.

Dated: September __, 2008

SO ORDERED:



HONORABLE TODD J. CAMPBELL, U.S.D.J. DATE

APPROVED FOR ENTRY:

ATTORNEYS FOR PLAINTIFFS:

/s/ Marcia Robinson Lowry
MARCIA ROBINSON LOWRY (*pro hac vice*)
IRA LUSTBADER (*pro hac vice*)
CHILDREN'S RIGHTS, INC.
330 Seventh Avenue, 4th Floor
New York, NY 10001
(212) 683-2210

/s/ David L. Raybin

DAVID L. RAYBIN (TN BPR #003385)
JACQUELINE B. DIXON (TN BPR #012054)
HOLLINS, WAGSTER,
WEATHERLY & RAYBIN, P.C.
Fifth Third Center, Suite 2200
424 Church Street
Nashville, Tennessee 37219
(615) 256-6666

OF COUNSEL FOR PLAINTIFFS:

RICHARD B. FIELDS (TN BPR #4744)
688 Jefferson
Memphis, TN 38105
(901) 578-7709

JOHN W. PIEROTTI (TN BPR #7851)
ROBERT LOUIS HUTTON (TN BPR #15496)
Glankler Brown, PLLC
Suite 1700, One Commerce Square
Memphis, TN 38103
(901) 525-1322

WADE V. DAVIES (TN BPR #016052)
Ritchie, Fels & Dillard, P.C.
606 W. Main Street, Suite 300
Knoxville, TN 37902
(865) 637-0661

ATTORNEYS FOR DEFENDANTS:

/s/ Douglas E. Dimond

DOUGLAS E. DIMOND (TN BPR #017953)
ELIZABETH C. DRIVER (TN BPR #019363)
Office of the Attorney General
General Civil Division
2nd Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37243
(615) 532-7913