

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOY EVANS, <u>et al.</u> ,)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff-Intervenor,)	Civ. No. 76-293 (SSH)
)	
)	
v.)	
)	
)	
ANTHONY WILLIAMS, <u>et al.</u> ,)	
Defendants.)	
)	
)	
)	

CONSENT ORDER

I. Background

On February 10, 1999, this Court imposed contempt fines of \$5,096,340.00 for Defendants' failure to comply with certain Court Orders in this case. Evans v. Williams, 35 F. Supp.2d 88 (D.D.C. 1999). On March 31, 2000, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded this matter for further proceedings. Evans v. Williams, 206 F.3d 1292 (D.C. Cir. 2000). The Court of Appeals determined that the contempt fines were criminal in nature and could not be imposed in the absence of appropriate procedural safeguards. Id. at 1297 n.4.

In order to address the issues still before the Court on remand, the parties have agreed to the following Consent Order. In this Consent Order, the Defendants and/or the District of Columbia agree to endow and annually fund, pursuant to the provisions below, a durable, independent, nonprofit organization that will monitor and advance the individual and collective interests of people with developmental disabilities in the District of Columbia's service delivery system, including Evans class members, in exchange for the waiver of any and all claims for past violations of the Court's Orders in this case as specified in section II of this Consent Order. The specifics of the parties' agreement are set forth below.

II. Resolution of Past Non-Compliance with the Court Orders

The parties have agreed to this Consent Order which resolves all issues related to Defendants' past non-compliance with the Orders in this case, including those related to the Court's February 10, 1999 finding of contempt and the imposition of fines, subject to the following:

- A. Except as otherwise stated in this section, the Plaintiffs and the Plaintiff-Intervenor agree to waive any and all claims for past violations of the Court's Orders in this case based on Defendants' past non-compliance with the existing Court Orders in this case during the period up to and including the date of the Court's entry of this Consent Order. The parties agree that this Consent Order does not affect the previously negotiated Settlement Agreement, dated September 22, 2000, as to the Symbal Foundation and the class members receiving services therefrom. In addition, Plaintiffs do not waive the claim for costs and reimbursement for the care of class member Beverly Sutton. Plaintiffs do not waive claims regarding University Legal Services, Inc., Protection and Advocacy Program's costs, expenses and attorneys' fees in this case that may have arisen prior to the date of this Order, subject to any available defenses or objections raised by the Defendants.
- B. The Plaintiffs and Plaintiff-Intervenor agree to waive any claim for damages based on Defendants' past non-compliance with the existing Court Orders in this case during the period up to and including the date of the Court's entry of this Consent Order. However, the Plaintiffs and the Plaintiff-Intervenor specifically do not waive any claim they may have for damages or equitable relief due to Defendants' conduct prior the date of the Court's entry of this Consent Order, with regard to the following categories of claims only:
1. safeguarding and/or management of the benefits, personal possessions, wages, bank accounts and/or funds of class members;
 2. the failure of the Superior Court of the District of Columbia to provide legal representation and lay advocacy services as required by the Orders of this Court in this case and by statute (see Title 6 D.C. Code Section 1901 et seq.); and
 3. claims by class members for damages or other relief based on causes of action independent of the Court Orders in this case. In relation to such claims only, Defendants have agreed to waive the requirements of

Title 12 D.C. Code Section 309 for class members who first suffered damages on or after January 15, 1998, through the date this Order is entered by the Court, except Defendants expressly do not waive the requirements of Title 12 D.C. Code Section 309 for claims brought under wrongful death or survival statutes.

- C. Nothing in this Consent Order shall be construed to prevent the Plaintiffs or Plaintiff-Intervenor from seeking equitable relief to remediate current violations (that exist as of the date of the Court's entry of this Consent Order) or new violations of this Court's Orders. Evidence of Defendants' conduct prior to the date this Order is entered by the Court shall be admissible in such proceedings, subject to any available defenses or objections raised by Defendants.
- D. Nothing in this Consent Order modifies the current Court-ordered fine schedule and process with respect to findings of contempt based on violations of this Court's Orders which may occur after the Court's entry of this Order.
- E. The Quality Trust shall not provide direct legal representation to class members with regard to any claims based on violations of the Court Orders in this case which occurred prior to the date this Order is entered by the Court.

III. Creation and Funding of the Quality Trust

- A. The parties agree to the creation of an independent, nonprofit organization to be named the Quality Trust for Individuals with Disabilities, Inc., (hereinafter "Quality Trust" or "QT").

- B. Within 15 days of the Court's entry of this Consent Order, the Quality Trust shall be incorporated as a nonprofit, 501(c)(3) corporation under the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Code Section 29-501 et seq.). The Quality Trust is to be incorporated as an independent entity to insulate it from control by the parties.
- C. The mission and purpose of the Quality Trust is set forth in a Settlement Agreement (attached as Exhibit A) which is to be signed by the parties and a designated representative of the Quality Trust, who is legally competent to bind the Quality Trust, and filed with this Court.¹ The Settlement Agreement specifies that the Quality Trust will provide, *inter alia*, monitoring, legal services and lay advocacy services for individuals with developmental disabilities² in the District of Columbia's service delivery system.

¹ The Settlement Agreement shall not be incorporated into or be a part of this Consent Order. The Consent Order and Settlement Agreement are related documents. The Consent Order sets out the obligations of the parties regarding the endowment and funding of the Quality Trust in exchange for the waiver of certain fines and other liability. The Consent Order is to be adopted by the Court and shall be enforceable by procedures and remedies available for violations of a court order. The Settlement Agreement is an agreement amongst the parties and the Quality Trust which sets forth the Quality Trust's operations and duties in order to ensure that the Quality Trust complies with the parties' agreement regarding its mission and functions. This Court shall retain jurisdiction to enforce the Settlement Agreement as to class members only, with remedies available to the parties to the Settlement Agreement under applicable contract law. Upon dismissal of this action, the Settlement Agreement shall be enforceable as a contract in the Superior Court of the District of Columbia.

² This Consent Order provides throughout that the Quality Trust's scope of activities shall include review of services to "consumers" rather than just "Evans class members." "Consumers" refers to all applicants and/or recipients of services of the District of Columbia's developmental disabilities service delivery system. The Evans class members (*i.e.*, those individuals who have at one time resided at Forest Haven) comprise a subset of this overall group of consumers. Defendants desire not to create a bifurcated system of services for its citizens with developmental disabilities, and therefore, agree that the Quality Trust's scope of activities shall include review of services to class and non-class members. This unified system does not extend the Court's jurisdiction to non-class members.

- D. Within 30 days of the filing of the Settlement Agreement signed by the Quality Trust, the Defendants and/or the District of Columbia agree to pay the sum of eleven million dollars for deposit into an interest bearing fund for the exclusive use of the Quality Trust.
- E. Within 30 days of the filing of the Settlement Agreement signed by the Quality Trust, as their initial annual payment, Defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds in the amount of two million dollars, prorated for the balance of the District of Columbia's Fiscal Year 2001 which ends on September 30, 2001. On or before October 1, 2011, Defendants and/or the District of Columbia shall provide the Quality Trust with the difference between two million dollars and the prorated amount paid in Fiscal Year 2001 pursuant to the terms of this paragraph (in Year 2000 dollars).
- F. Commencing October 1, 2001, for a period of five years, or until September 30, 2006, the Defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds of no less than two million dollars per year (all in Year 2000 dollars). The timing of the annual payment is set forth in paragraph III.H. below.
- G. Commencing October 1, 2006, for a period of five years, or until September 30, 2011, the Defendants and/or the District of Columbia shall provide the Quality Trust with annual operating funds in the amount of 1.9 million dollars in Year 2006, 1.8 million dollars in Year 2007, 1.7 million dollars in Year 2008, 1.6 million dollars in Year 2009, and 1.5 million dollars in Year 2010 (all in Year 2000 dollars). The timing of the annual payment is set forth in paragraph III.H. below.
- H. The Defendants and/or the District of Columbia shall provide annual operating funding to the Quality Trust on or before October 1 of each Fiscal Year for which the funds are intended (Fiscal Years 2001 to 2011), or as soon thereafter as the budget process will allow.

I. Nothing in this Consent Order is intended to preclude any party or the Board of Directors of the Quality Trust from advocating for funds to increase those available to the Quality Trust above two million dollars in Year 2000 dollars in any given year.

IV. Quality Trust's Right to Access and Information

A. The employees, contractors and consultants retained by the Quality Trust shall have full access to information that the Quality Trust deems reasonably necessary and appropriate in performing the monitoring and lay advocacy duties described in the Settlement Agreement. More specifically, the employees, contractors and consultants retained by the Quality Trust shall have full access to consumers, and their residences, facilities, buildings, programs, services, documents, records (including medical and departmental) and other materials that the Quality Trust deems reasonably necessary and appropriate in performing the duties of the Quality Trust's monitoring and lay advocacy functions. The Quality Trust may obtain copies of the aforementioned documents, records, and other materials. The Defendants and/or the District of Columbia shall provide the Quality Trust with information upon request relevant to individual supports and services provided in the District of Columbia's service delivery system and the Quality Trust may request written responses from the Defendants and/or the District of Columbia in this regard. Advance notice of any visit or inspection by the Quality Trust shall not be required. Representatives of the Quality Trust may conduct private interviews and meetings with any individual including employees, contractors or agents of the District of Columbia, as well as all provider staff. The Defendants and/or the District of Columbia shall require its employees, contractors, agents, as well as provider staff, to cooperate with the Quality Trust representatives.

B. Attorneys who provide direct legal representation of consumers under a contract or other arrangements with the Quality Trust shall have the right to access their clients' records and any and all information regarding their clients that flow from their attorney-client relationship. In litigation involving the Defendants and/or the District of Columbia, attorneys shall comply with the applicable rules of discovery and procedure.

C. The Quality Trust shall safeguard the information obtained pursuant to paragraph IV.A. above, as required by all

applicable laws and Court Orders protecting the confidentiality of such information.

- D. The Defendants and/or the District of Columbia shall keep the Quality Trust informed in a timely fashion of relevant budgetary information regarding the District of Columbia's Mental Retardation and Developmental Disabilities Administration ("MRDDA"), or its successor. The areas about which the Defendants and/or District of Columbia shall provide information to the Quality Trust are set forth in greater detail in the Settlement Agreement attached as Exhibit A.

V. Conclusion

- A. Upon (1) incorporation of the Quality Trust consistent with the terms of this Consent Order, (2) Court entry of this Consent Order, (3) filing of the Settlement Agreement referenced above with the Court with signatures from the parties and the Quality Trust, (4) the Defendants' and/or the District of Columbia's payment of eleven million dollars into an interest-bearing investment fund for the exclusive use of the Quality Trust as described in paragraph III.D. above, within 30 days from the date of the filing of the Settlement Agreement signed by the Quality Trust, and (5) the Defendants' and/or District of Columbia's initial payment to the Quality Trust within 30 days of the filing the Settlement Agreement signed by the Quality Trust, of the prorated amount of two million dollars for Fiscal Year 2001 for operating funds of the Quality Trust as described in paragraph III.E. above, the Plaintiffs and Plaintiff-Intervenor shall comply with the provisions set forth in section II above, and expressly waive any and all claims for past violations of the Court's Orders in this case as specified in section II above, based on Defendants' past non-compliance with the existing Orders in this case which occurred during the period up to and including the date of this Court's entry of this Consent Order.
- B. The United States does not waive its right to pursue any other claims against the Defendants or the District of Columbia with regard to disputes or claims that involve incidents or events that occurred during any period arising under laws, statutes and regulations other than the existing Court Orders in this case.

Respectfully submitted,

FOR THE PLAINTIFFS:

FOR THE PLAINTIFF-INTERVENOR:

STEVEN H. ROSENBAUM
Chief
Special Litigation Section

ELIZABETH JOHNSON
Deputy Chief
Special Litigation Section

JOSEPH B. TULMAN, No. 297671
Counsel for Plaintiffs
UDC David A. Clarke
School of Law
4200 Connecticut Avenue, NW
Building 38, Room 207
Washington, DC 20008
202-274-7317

RICHARD J. FARANO, No. 424225
United States Department of Justice
Civil Rights Division
Special Litigation Section
601 D Street, NW, Room 5118
Washington, DC 20004
202-307-3116

KELLY BAGBY, No. 462390
Counsel for Plaintiffs
University Legal Services
300 I Street, NE, Suite 202
Washington, DC 20002
202-547-0198

FOR THE DEFENDANTS:

ROBERT R. RIGSBY
Corporation Counsel, DC

JOHN GREENHAUGH
Senior Corporation Counsel

ROBERT UTIGER, No. 437130
Deputy Corporation Counsel

MARIA C. AMATO, No. 414935
Senior Counsel for
the Equity Division
441 Fourth Street, NW
Room 6S059
Washington, DC 20001
202-724-6642

WHEREFORE, the parties to this action, having agreed to the provisions in the Consent Order set forth above, and the Court being advised in the premises, this Court hereby GRANTS CONDITIONAL APPROVAL of this Consent Order pending final approval after a fairness hearing pursuant to Rule 23 of the Federal Rules of Civil Procedure.

DONE, this ___ day of _____, 2001, at Washington, DC.

HONORABLE STANLEY S. HARRIS
United States District Judge

WHEREFORE, the parties to this action, having agreed to the provisions in the Consent Order set forth above, and the Court

being advised in the premises and having concluded that this Consent Order is a fair resolution of these matters after a fairness hearing held on _____, 2001, this Consent Order is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this ___ day of _____, 2001, at Washington, DC.

HONORABLE STANLEY S. HARRIS
United States District Judge