



MR-MO-001-002

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

DONALD GIESEKING, et al.,

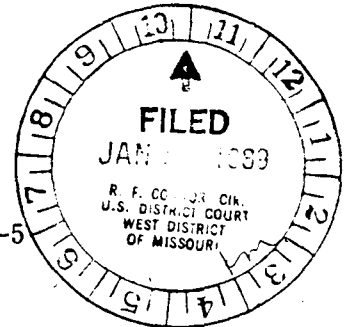
Plaintiffs,

v.

KEITH SCHAFER, et al.,

Defendants.

No. 86-4636-CV-C-5



ORDER

By report of September 19, 1988, the Special Master to whom this cause was referred entered his recommended findings of fact and conclusions of law. The parties were advised they could file written objections to the findings and recommendations.

A de novo review of the record in this cause, including the exceptions to the recommendations filed by plaintiffs on October 11, 1988, convinces the court that the recommendations of the Special Master are correct in all respects and should be adopted.

Plaintiffs' most significant objection to the Special Master's recommended findings of fact and conclusions of law are that the Special Master failed to follow the "law of the case" with respect to the question of whether Individual Habilitation Plans are required because the regional councils received Developmental Disabilities Act funds, an issue which was addressed by this court on August 13, 1987, on a motion for summary judgment. A careful review of the Special Master's recommended conclusions of law indicates the Special Master correctly analyzed the prior ruling of this court and did not depart from the "law of the case." Furthermore, the statutory interpretation and application proposed by plaintiffs are impractical. The reasons therefor are carefully analyzed and set forth in the Special Master's recommended findings of fact and conclusions of law and need not be readdressed here. The issues raised by plaintiffs'

objections are essentially a re-argument and have been adequately addressed in the Special Master's recommended findings of fact and conclusions of law.

The Special Master's recommended findings of fact are well supported by the evidence and conclusions of law are well reasoned and they are hereby adopted as the findings of fact and conclusions of law of this court. This court, therefore, makes the following findings.

(1) The State defendants are in substantial compliance with the Developmental Disabilities Act. The Act does not require the regional centers to provide Individual Habilitation Plans to all individuals who are eligible for services by the Division of the Mentally Retarded and Developmentally Disabled. The fact that Developmental Disabilities Act funds are received by the regional councils, which do not provide direct services to eligible individuals, does not require the regional centers to provide Individual Habilitation Plans for all registered individuals eligible for services.

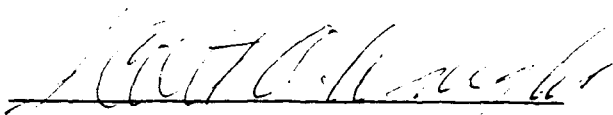
(2) Since the State defendants are in substantial compliance with the Developmental Disabilities Act, the Federal defendant, the Secretary of Health and Human Services, is not in dereliction of any duty under the Act to impose sanctions, terminate, or threaten to terminate, Developmental Disabilities Act funding as a result of any noncompliance.

(3) Plaintiffs have failed to establish that the State defendants have violated plaintiffs' rights under the Equal Protection Clause of the fourteenth amendment to the United States Constitution in that the evidence has demonstrated the Division of the Mentally Retarded and Developmentally Disabled uses a rational basis for establishing waiting lists and prioritization among clients on that list in order to conserve its limited funding and resources.

IT IS, THEREFORE ORDERED that judgment should be and it is hereby entered in favor of defendants and against plaintiffs on all claims. It is further

ORDERED that each party shall pay their own court costs.

Dated this 20 day of January, 1989.

A handwritten signature in cursive script, appearing to read "Scott O. Wright", is written over a horizontal line.

SCOTT O. WRIGHT
United States District Judge