UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUAN F., et al.,	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL NO. 3:89CV859 (CFD)
M. JODI RELL, et al.,	:	
Defendants.	:	

RULING AND ORDER INTERPRETING CONSENT DECREE

Summary

This ruling arises from a 1989 class action lawsuit brought by the plaintiffs, on behalf of numerous children against the Governor of Connecticut, the Connecticut Department of Children and Families ("DCF" or "Department") and the Commissioner of DCF ("Commissioner"), which is now the subject of a settlement supervised by this Court. The plaintiffs brought a motion for a temporary restraining order and preliminary injunction to prevent the defendants from suspending new intakes of children into the Voluntary Services Program operated through DCF and the Connecticut Department of Developmental Services ("DDS"). In response, the defendants have argued that the children receiving treatment or assistance in those programs are not members of the class. For the foregoing reasons, this Court finds that those children are members of the class, as described below.

I. Background

This suit raised a broad challenge to DCF's management, policies, operations, funding and protocols concerning abused and neglected children. In 1991, the action was resolved and the Court entered a consent decree ("Consent Decree") that restructured a large part of DCF and

set forth a detailed plan to improve the Department's operation and delivery of services.

The Consent Decree also provided for extensive court oversight and monitoring of DCF to ensure compliance with its mandates. Now, eighteen years later, DCF has raised a question as to membership in the Juan F. class and asserts that "at risk" children who receive services through the Voluntary Services Program offered by DCF, as well as those provided by DDS (by virtue of an interagency agreement with DCF), are not and have never been members of the class. This issue arose in connection with the defendants' recent announcement that they were planning to suspend all new intakes into DCF's and DDS's Voluntary Services Programs as part of the Connecticut Governor's efforts to address state budget issues. After the announcement, the plaintiffs filed a motion for a temporary and permanent injunction asserting that if the defendants were allowed to proceed with their plan to suspend new intakes, they would unilaterally cut off the service lifeline for vulnerable, at-risk children in the Juan F. class, which would leave those class members at imminent risk of irreparable harm and place defendants in contempt of their obligations under the Consent Decree.[1] In response to that motion, the defendants asserted that the plan to suspend new admissions to the Voluntary Services Programs does not implicate their obligations under the Consent Decree because DCF provides voluntary services to children with behavioral, emotional or mental health needs pursuant to its statutory

[1]During a hearing before this Court on December 16, 2009, the defendants stated that Governor M. Jodi Rell had rescinded the planned cuts to DCF's voluntary services budget, that the DDS voluntary services process was proceeding according to the usual procedures, and that the defendants would provide seven days notice of any material change in the DDS process. See Plaintiffs' Supplemental Brief, Civil Action No. 2:89-cv-859, Dkt. 596, p. 7. Notwithstanding the recision of the planned budget reductions, all parties agree that the class definition issues need to be resolved by the Court and are not moot.

mandate[2] and not because it is obligated to do so by the Consent Decree. They further asserted that because the children who receive voluntary services are not members of the Juan F. class, the court lacks jurisdiction to hear the plaintiffs' motion.

A. The Consent Decree and Manuals

The Consent Decree was the product of lengthy and extensive negotiations between the parties. This 120-page document that the court entered in 1991 effectuated and memorialized the parties' comprehensive, multi-faceted agreement and set forth the obligations and mandates that the defendants agreed to assume and perform in order to resolve the plaintiffs' claims.

Each section of the Consent Decree was implemented by a policy and procedure manual ("Manual") that the parties and a mediation panel negotiated and developed to provide binding, detailed directives and guidelines to govern the defendants' performance of those obligations and monitor their compliance with Consent Decree's mandates. The Manuals were adopted as court orders and were incorporated into the Consent Decree on September 1, 1992.[3] "Because of the difficult issues involved, as well as the importance to the plaintiff class of enforcing the

[2]In addition to the obligations the defendants assumed in the Consent Decree to provide services to children in the Juan F. class, there are also statutes and regulations that govern DCF's broad mandate to plan, create, develop, operate, arrange for, administer and evaluate a comprehensive and integrated state-wide program of services, including preventive services, for children and youth who are mentally ill, emotionally disturbed, substance abusers, delinquent, abused, neglected or uncared for. DCF clients broadly include all children and youth who are or may be committed to it by any court and all children and youth who are voluntarily admitted for services of any kind. Conn. Gen. Stat. § 17a-3(a).

[3]The Manuals provide that the Commissioner shall not issue any policy or take any action that conflicts with the Manuals and that information and directives contained in them supersede any conflicting pre-existing Department policy or training directive.

[Consent Decree], the [Consent Decree] called for extensive monitoring . . . and provided that the district court shall have continuing jurisdiction of this action to ensure compliance with the [Consent Decree]." Juan F. v. Weicker, 37 F.3d 874, 876-77 (2d Cir. 1994). Accordingly, the court entered a monitoring order and appointed a monitoring panel, later replaced by a full-time court monitor ("Monitor") akin to a special master, to oversee DCF's compliance with the mandates of the Consent Decree and Manuals and to investigate, mediate and resolve disputes and allegations of non-compliance. Id.

B. Provisions in the Consent Decree and Manual Regarding Voluntary Services

The Consent Decree established a Voluntary Services Program to provide information, advice, limited case management and access to services to, *inter alia*, "[f]amilies with minor children who are at risk of abuse or neglect because of substance abuse, mental health, domestic violence or other serious problems with the families' environment." Consent Decree § XIII, § (B)(3). It required the promulgation of a voluntary services manual detailing the issues of eligibility and the extent of services that would be provided. The resulting voluntary services manual created voluntary service units to provide "a means whereby an eligible family or youth could receive assistance from DCF without a presumption of abuse or neglect." The Voluntary Services Program was initially established as a pilot program, but the Manual provided for periodic review by the Monitor to determine its effectiveness and potential as a permanent program.[4] The pilot program, with various modifications, ultimately became permanent.

[4]As provided in the Manual, within twelve months after the pilot program began providing services, the Commissioner and the Monitoring Panel would decide whether to "(a) Continue the Pilot Program as a pilot program; (b) Discontinue the pilot program and expand

The Manual provided that the Commissioner would develop a plan for operating the Voluntary Services Program and establish procedures for, *inter alia*, responding to requests for assistance, determining client eligibility, providing services, monitoring and evaluating the program and mounting a public information and education campaign. The purpose of the campaign was to inform the DCF staff, other professionals, consumer groups and community organizations such as church groups, community centers, child guidance centers and youth service bureaus, of the availability of voluntary services and describe the services the program would offer, and the procedures for applying for services and eligibility. The campaign was to "stress the voluntary nature of the services and the distinctions between the voluntary services and services for abused and neglected children and their families." The Manual also provided that requests for voluntary assistance could only be made directly by a member of the household needing assistance and that DCF staff would be trained to distinguish between calls that should be referred to the DCF Hotline to report abuse or neglect from calls that were appropriate requests for voluntary services. This was important because children who were reported and found to be abused or neglected or found to be at risk of abuse or neglect were not eligible for the Voluntary Services Program.

C. DCF's Voluntary Services Program

Pursuant to the directives and mandates of the Consent Decree and Manual, as well as Connecticut statutes, see Conn. Gen. Stat. § 17a-11, DCF regulations, see Conn. Agencies Regs. §§ 17a-11-4 to 17a-11-27, and DCF's voluntary services policy manual, see Policy Manual,

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voluntary services statewide; or (c) Disband the Voluntary Services Program." Manual § XI(4).

Voluntary Services, §§ 37-1 to 37-9, DCF has, since the time the Voluntary Services Program was created, provided voluntary services to eligible children and youth who are not committed to the Department[5] and do not require protective services[6] intervention. According to those directives and mandates, the Voluntary Services Program serves children whose needs cannot be met through existing services available to the parent or guardian -- children who require community based treatment who might otherwise be committed as neglected, uncared for, or dependent in order to secure DCF services. Children are voluntarily admitted to the program upon application by the parent, guardian or child, if older than fourteen, and a determination by DCF that the child meets the program's eligibility requirements. Children who are the subject of a pending petition alleging abuse or neglect and children who have protective services involvement by virtue of a finding of abuse or neglect are not eligible for the program. In addition, if a child or youth is the subject of a report of abuse or neglect that is made either before or after the request for voluntary services is made and the report is substantiated, the child is transferred to protective services and voluntary services are terminated.

The Commissioner has the discretion to admit children to the Voluntary Services

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[5]Indeed, under the Connecticut statute governing voluntary services, commitment to or protective supervision or protection by the Department shall not be a condition for receipt of services and benefits. Conn. Gen. Stat. § 17a-129.

[6]DCF's policy manual describes "protective services"as "a specialized twenty-four (24) hours, seven (7) days a week program intended to protect children from birth to eighteen (18) years of age who have been abused or neglected." DCF Policy Manual §§ 30-3, 30-4. Protective services are different from other DCF services in that they are involuntary in the sense that the child's parent or guardian has not asked for help and it is not up to them to decide whether they want help. Id. Protective services are defined by statute as "public welfare services provided after complaints of abuse, neglect or abandonment, but in the absence of an adjudication or assumption of jurisdiction." Conn. Gen. Stat. § 17a-93(k).

Program if, in her opinion, the child could benefit from any of the services offered by or available to DCF. To be eligible for admission, the child or youth must have an emotional, behavioral or substance abuse disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV, that results in the functional impairment of the child or youth and substantially interferes with or limits his or her functioning in family, school or community activities. The substance abuse disorder must disrupt the child or youth's academic developmental progress, family or interpersonal relationships or be associated with present distress or disability or a risk of suffering death, pain or disability. A child with a developmental disorder or mental retardation, as defined in the DSM-IV, is only eligible if he or she also has an emotional, behavioral or substance abuse disorder and the alleviation of that disorder is the primary purpose of the request for voluntary services and the child or youth's treatment needs cannot be met through services currently available to the parent or guardian.

As a matter of DCF policy and practice, the Voluntary Services Program encourages the preservation and enhancement of family relationships and the continuing rights and responsibilities of parents whose financial resources prevent them from providing, despite their best efforts, the required care and treatment for children at serious risk of maltreatment because of behavioral or mental health disorders.

D. The Exit Plan and Outcome Measures

Until 2003, DCF's programs and services for members of the Juan F. class were operated and monitored under the provisions of the Consent Decree and Manuals. But then, to avoid possible court-ordered receivership of the Department, the parties, with the assistance of

the Monitor, engaged in lengthy negotiations to find a solution to remedy the Department's significant, undisputed and repeated failures to comply with the Consent Decree and Manuals, and lead to termination of court oversight. See Juan F. v. Rowland, No. H-89-859, 2004 WL 288804 (D. Conn. Feb. 10, 2004). Their efforts were fruitful and produced an agreement and stipulation, which was entered as an order of the court, providing that the Consent Decree and Manuals would be subsumed by an Exit Plan and detailed outcome measures ("Outcome Measures" or "OM") covering twenty-two areas of operation, including, *inter alia*, treatment plans (OM 3), caseload standards (OM 18), worker-child visitation (OM 16 & 17) and meeting childrens' needs (OM 15). Under the Exit Plan, the Monitor is required to measure and determine DCF's compliance with the Outcome Measures by conducting quarterly reviews of a statistically significant valid sample of cases and report his findings to the court. DCF is required to achieve compliance with all Outcome Measures in order to terminate the court's oversight and jurisdiction. At the present time, the governing document is the 2006 Revised Exit Plan ("Exit Plan").

E. The 2005 Interagency Agreement and Reallocation Option

In 2005, DCF entered an interagency agreement with DDS (formerly called the Department of Mental Retardation or DMR) which they referred to as the "Reallocation Option." The purpose of the agreement was to facilitate the coordination of voluntary services between the two departments for children who were involved with both agencies or DCF children who might be eligible for voluntary services through DDS. Pursuant to the agreement, DCF transferred children with developmental, intellectual or cognitive disabilities who were

eligible for or served by its Voluntary Services Program[7] to DDS's Voluntary Services Program.

Prior to entering the agreement, the Commissioner wrote to the Monitor on December 31, 2004 advising that the Reallocation Option, which would involve the "transfer of responsibility for voluntary services children who are also clients of [DDS]," had been submitted to the Office of Policy Management for approval. The Commissioner said she was seeking the Monitor's "guidance on assuring that this Option will permit these children to be served by DDS be exempt from the Juan F. class for purposes of compliance with the Consent Decree and Exit Plan Outcome Measures." She noted that the Option would go beyond the current practice "and actually transfer responsibility for the care of specifically identified voluntary services children from DCF to [DDS]" and that the Option made sense because it was fiscally responsible, would provide a clearer and more stable provision of supports and services to clients and their families, would allow for more clinically appropriate placements and the promise of better outcomes for those being served and DCF was involved for reasons other than abuse and neglect. She then asked "is it appropriate to view this [O]ption as not having any Juan F. legal accouterments and therefore all who fall under this [O]ption exempt from the Juan F. class and Exit Plan measurement?" The letter does not indicate that copies were sent to the plaintiffs or the court.

In response, the (then) Monitor answered "[h]aving carefully considered your request regarding the Reallocation Option of [DDS] involved children and the improved services it

[7]Pursuant to DCF's policy manual, "a child/youth with a developmental disorder or mental retardation, as defined in the DSM-IV, shall only be eligible [for the voluntary services program] if the child/youth also has an emotional, behavioral or substance abuse disorder and the alleviation of such is the primary purpose of the request for voluntary services." DCF Policy Manual, Voluntary Services § 37-3.

would provide these children, the answer to your question is yes. This is merely tacit recognition of the historic fact that these children and others so situated are already clients of DMR, which is best approved to meet their needs." The Monitor apparently did not consult the court or the plaintiffs before answering the Commissioner's letter. His letter does, however, contain a notation indicating that the court and plaintiffs' counsel were copied.

Three weeks before this exchange of letters, the Reallocation Option was apparently discussed at a DCF task force[8] meeting. A summary of that meeting indicates that "it was agreed that the legal issues [posed by the Option] need to be resolved with [the court] through [the Monitor]." The issue, however, apparently was never presented to the court by either the defendants or the Monitor.

At that time, the Monitor was operating under the terms of the Revised Monitoring Order dated December 31, 2003. That order provided that "[t]he parties shall have an opportunity to be heard by the Trial Judge concerning any modification request." In addition, the 2004 Revised Exit Plan, which was then in effect, provided that after July 1, 2004, the Monitor would have no right to modify procedures to be used to determine compliance with any Outcome Measure and that "there shall be no changes except as may be ordered by the court."

After the Reallocation Option took effect, children and youth between the ages of eight and eighteen with emotional, behavioral or mental health needs as well as intellectual disorders or a DSM-IV diagnosis of mental retardation who had been receiving voluntary services from

[8]In October 2003, by stipulation of the parties, a transition task force was established to assume all decision-making authority for issues that substantially affect the safety and welfare of the Juan F. class. It was comprised of the Commissioner, the Secretary of the Office of Policy & Management and the Monitor.

DCF were transferred to DDS's Voluntary Services Program. All such children and youth who thereafter sought voluntary services from DCF would receive them from DDS.[9]

II. Discussion

As a threshold matter, this Court has jurisdiction to interpret the Consent Decree. Normally, when a case has concluded, courts no longer may intervene or supervise the parties unless "[e]nforcement of the settlement . . . is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction." Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 378 (1994). Since a consent decree was entered at the conclusion of the original lawsuit, this Court retained jurisdiction over the Consent Decree. Therefore, at the request of both parties, this Court can properly examine and interpret the Consent Decree in this instance.

The defendants maintain that the children who receive voluntary services under either DCF's Voluntary Services Program or DDS's Voluntary Services Program are not, and were never intended to be members of the Juan F. class, primarily because such children have never been found to be "at-risk" of abuse, neglect or abandonment and because DDS is not a party to this action and is not subject to the Consent Decree. These claims, as well as the other arguments they advance in support of their position, are based on an incorrect and impermissibly narrow interpretation of the Consent Decree. To the contrary, the scope and plain, unambiguous

[9]For these children to receive voluntary services, the parent or guardian must make a request by calling DCF's hotline and advising that the child or youth is a DDS client and providing his or her DDS number and the name of his or her case manager. After the application is completed and returned to DCF and the child or youth is accepted into the voluntary services program, DCF transfers the child to DDS for such services.

language of the Consent Decree, Manual, and Exit Plan establish that the parties intended to include at-risk children who receive voluntary services from DCF as members of the class of children who are covered and protected by the Consent Decree. This conclusion is informed by well-established principles of contract construction. See Berger v. Heckler 771 F.2d 1566, 1567-68 (2d Cir. 1985) (noting that consent decrees are a hybrid in the sense that they are construed as contracts, but are enforced as court orders).

Specifically, the scope and intent of the Consent Decree is discerned within its four corners and not by reference to what might satisfy the purposes of one of the parties to it. It is construed as written and not as it might have been written. United States v. Armour & Co., 402 U.S. 673, 681-82 (1977) ("Consent decrees are entered into by parties to a case after careful negotiation has produced agreement of their precise terms."); United States v. ITT Cont'l Baking Co., 420 U.S. 223 (1975). Extrinsic evidence, including the subsequent conduct of the parties that purports to show their practical construction of the agreement, cannot be considered in determining the parties' intent unless the court finds the language to be ambiguous. SEC v. Levine, 881 F.2d 1165, 1179 (2d Cir. 1989); Portsmouth Baseball Corp. v. Frick, 278 F.2d 395, 400 (2d Cir. 1960). An ambiguity does not exist merely because the parties argue different interpretations. Ward Co. v. Stamford Ridgeway Ass'n, 761 F.2d 117, 120 (2d Cir. 1985).

Adherence to the so-called four corners rule is important so that defendants can sign consent decrees with the confidence that they will not be extended beyond their terms. United States v. ASCAP, 331 F.2d 117, 123-24 (2d Cir. 1964). Nonetheless, application of the four corners rule does not prevent the court from using certain aids to construction when necessary. Those aids include the circumstances surrounding the formation of the consent decree, any

technical or specialized meaning that the words used may have had to the parties and any documents expressly incorporated in the decree. ITT Cont'l Baking Co., 420 U.S. at 238.

Great deference is given to the explicit language used. Berger v. Heckler, 771 F.2d at 1568. Specific and exact terms are given greater weight than general language. Id. If the words are clear and unambiguous, they are given their plain and ordinary meaning without resort to extrinsic evidence. Ward Co., 761 F.2d at 120. The plain meaning of a term is the "meaning derived from [it] by a reasonably intelligent person acquainted with the contemporary circumstances." Travelers Cas. & Sur. of Am. v. United States, 74 Fed. Cl. 75, 88 (Fed. Cl. 2006).

Further, a consent decree is construed as a whole and in such manner as to give effect to every provision, if reasonably possible. Peter-Michael, Inc. v. Sea Shell Assoc., 244 Conn. 269, 275, 709 A.2d 558 (1998). An interpretation that gives a reasonable meaning to all of its parts is preferred to one that leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous or achieves a "weird and whimsical" result**.** United Aluminum Corp. .v. Boc Group, Inc., No. 08cv977(JCH), 2009 WL 2589486 (D. Conn. Aug. 21, 2009)**.** When the intent of the parties is clear a contract cannot be modified, enlarged or narrowed in the guise of clarification or construction. Crumpton v. Bridgeport Educ. Ass'n, 993 F.2d 1023, 1028-29 (2d Cir. 1993); Wilder v. Bernstein, 153 F.R.D. 524, 534 (S.D.N.Y. 1994).

With this interpretive guidance, the court begins the task of construing the Consent Decree by examining the actual words used by the parties as the manifestation of their intent with regard to the children who are included as members of the Juan F. class. See Tallmadge Bros., Inc. v. Iroquois Gas Transmission Sys., L.P., 252 Conn. 479, 499-500 (2000).

The actual words used in the Consent Decree to define the members of the certified class show that recipients of voluntary services through DCF are within the class definition. The Consent Decree defines the class to consist of:

> "(a) All children who are now, or will be, in the care, custody, or supervision of the Commissioner of [DCF] as a result of being abused, neglected or abandoned or being found at risk of such maltreatment; and (b) All children about whom the Department knows, or should know by virtue of a report to the Department, who are now, or will be abused, neglected or abandoned, or who are now, or will be at serious risk of such maltreatment."

Consent Decree, § II(13). The Exit Plan contains the identical class definition.

A. Recipients of Voluntary Services through DCF are Members of Class

The plain language of these two paragraphs identify different subclasses of children whom the parties intended to include in the class. Specifically, paragraph (a) describes a class of children who are or will be "in the care, custody, or supervision" of DCF because they are (1) "abused, neglected or abandoned" or (2) "found *at risk of* such maltreatment" (emphasis added).

The parties do not dispute that children identified in this paragraph are those who are the subject of a substantiated report of actual or imminent abuse or neglect and those who, after a report of abuse or neglect and an investigation, are found to be at moderate to high risk of maltreatment and that such children are members of the Juan F. class. In practice, the "care, custody, or supervision" of these children can be either mandatory or voluntary. Children who are found to be abused or neglected are placed in the custody of DCF's child protective services for intervention. In that event, protective services custody is mandatory in that the parent must

accept services from DCF or it will initiate proceedings to have the child committed to the custody of DCF. For children found to be at moderate to high risk of maltreatment, DCF seeks to have them voluntarily placed in the custody of its child protective services for intervention.

Children receiving voluntary services administered through DCF also clearly fall within the plain language of paragraph (a). DCF's Voluntary Services Program is specifically tailored to children who are "at risk of" maltreatment, not just those who require protective services involvement. DCF's Agency Regulations describe the program as a service to children requiring community or residential treatment or placement "who might otherwise be committed as neglected, uncared for, or dependent." DCF Agency Regulations § 17a-11-4, Civil Action No. 89cv859, Plaintiffs' Supplemental Brief in Support of Motion for Temporary Restraining Order and Request for Injunction, Dkt. # 596, Ex. A. Furthermore, the settlement appears to have specifically contemplated that class members would receive voluntary services through DCF. The Consent Decree established a Voluntary Services Unit Manual, which noted that the voluntary services were to allow "an eligible family or youth [to] receive assistance from DCYS."[10] DCYS Voluntary Services Unit Manual § I.A , Civil Action No. 89cv859, Plaintiffs' Supplemental Brief in Support of Motion for Temporary Restraining Order and Request for Injunction, Dkt. # 596, Ex. C.

Furthermore, this conclusion is also supported by the Consent Decree's definition of the term "case." The settlement defines "case" in reference to "a family under protective services

[10] DCF was originally established as the Department of Children and Youth Services (DCYS), before adopting its current name on July 1, 1993. See Connecticut State Library, Department of Children and Families, Agency History, online source available http://www.cslib.org/agencies/ChildrenandFamilies.htm.

investigation; a child and his family receiving services at home or a child out-of-home under a court order; or a child or family receiving services provided on a voluntary basis." Consent Decree, § III(2). If the parties did not intend to include in the class the children or families who receive voluntary services, then the last portion in this definition of the word "case" would be superfluous. This definition is further evidence that voluntary services, specifically those provided through DCF, were intended by the parties to be within the class definition in the Consent Decree.

Finally, many of the agreed-upon Outcome Measures indicate that the parties intended that children receiving voluntary services through DCF would be members of the Juan F. class. For example, OM 16 provides that "DCF shall visit at least 85% of all out-home children at least once a month, except for probate, interstate, or *voluntary* cases" (emphasis added) and OM 17 requires that "DCF shall visit at least 85% of all in-home family cases at least twice a month, except for probate, interstate, or *voluntary* cases" (emphasis added). See Plaintiffs' Motion for Temporary Restraining Order and Permanent Injunction, Civil Action No. 2:89-cv-859, Dkt. 585, Ex. E, p. 29-30. Though not included in these specific benchmark calculation, OM 16 and OM 17 show that the parties referenced DCF voluntary service cases within the exit plan in such a way that the recipients of those services were intended to be members of the class. Furthermore, OM 18 requires that DCF social workers have no more than 20 individual children assigned to their supervision at any given time, a number which "includes *voluntary* placements" (emphasis added). See Plaintiffs' Motion for Temporary Restraining Order and Permanent Injunction, Civil Action No. 2:89-cv-859, Dkt. 585, Ex. E, p. 31. The specific references to DCF voluntary cases show that the parties intended children who receive voluntary

services through DCF to be included within the Juan F. class.

B. Some Recipients of Voluntary Services through DDS are Members of Class

In contrast to paragraph (a) of the class definition, paragraph (b) does not contain the requirement that children be in the "care, custody, or supervision" of DCF, nor does it contain the requirement that children be "found at risk of such maltreatment." However, unlike paragraph (a), paragraph (b) includes a knowledge element. It describes class members as children about whom the Department (1) knows, or (2) "should know by virtue of a report to the Department,"[11] are abused, neglected or abandoned. Further, unlike paragraph (a), the last clause of paragraph (b) includes children "at serious risk of such maltreatment" without requiring them to be found at risk. The word "found" connotes a determination or ascertainment of fact by a judge, jury or administrative agency after a trial or a hearing. Black's Law Dictionary (9th Ed. 1999). "Risk" means a possibility of or exposure to injury, harm, danger or loss. Id.

As discussed above, since voluntary services through DCF are specifically tailored to children who are at risk of abuse, neglect or abandonment, children receiving those services are within the definition of the Juan F. class under section (a). In addition, the fact that DCF knows that children receiving its voluntary services are at risk of such maltreatment means that children receiving voluntary services through DCF would also be included within the class under section

[11]The only reasonable construction of the independent clause "or should know by virtue of a report," which is set off by commas and introduced by the word "or," is to read "by virtue of a report" as referring only to "should know." This is consistent with general rules of grammar and punctuation, which albeit not controlling, are permissible aids to construction.

(b). However, the issue of whether children receiving voluntary services through DDS are within the class is not as clear. As a preliminary matter, this class of children has not been subject to DCF conclusions as to risk of "abuse, neglect, or abandonment," and are not necessarily within the "care, custody, or supervision" of the Department. Therefore, the children receiving DDS services are not categorically within the definition of section (a) of the Juan F. class definition. Similarly, not all children receiving voluntary services through DDS are known by DCF to be "abused, neglected or abandoned, or . . . at serious risk of such maltreatment." Therefore, this undivided group of children does not meet the knowledge requirement of section (b) of the class definition. Accordingly, the question of whether these children are within the class must be made on a case-by-case basis.

Since section (a) of the Juan F. class definition requires a finding on the part of DCF, children receiving voluntary services only through DDS would not necessarily qualify as members of the class under that section. The plain language of section (b) purports to include all children that DCF either knows or should know are being abused, neglected, abandoned, or at serious risk of such maltreatment. In fact, some children receiving voluntary services through DDS might be the subject of a DCF report or other form of notice that indicates actual or potential mistreatment. Any such child would fall within the Juan F. class definition under section (b). However, based on the class as it is defined in the consent decree, the entire class of children receiving voluntary services from DDS cannot be said to satisfy the requirements of the Juan F. class definition. As such, a factual determination as to whether DCF knows or should know about actual or potential mistreatment of a child receiving voluntary services through DDS is necessary to determine whether that child is a member of the Juan F. class.

Although the Outcome Measures set forth in the Revised Exit Plan contain repeated and express references to "voluntary services," these references do not support an interpretation that includes both DCF and DDS voluntary service participants in the Juan F. class definition. For example, OM 18 required that "[o]ut-of-[h]ome treatment workers shall have no more than 20 individual children assigned to them . . . includ[ing] voluntary placements." 2006 Revised Exit Plan, Civil Action No. 89cv859, Plaintiffs' Supplemental Brief in Support of Motion for Temporary Restraining Order and Request for Injunction, Dkt. # 596, Ex. M. Likewise, OM 3 and OM 15 both refer to a directional guide which states that voluntary cases are to be included in the benchmark calculations. See id. By using "voluntary services" without reference to both DCF and DDS, the parties to these subsequent agreements did not clarify their intentions as to whether DDS voluntary service participants were included within the original Juan F. class. Furthermore, the Revised Exit Plan was formulated in the aftermath of the Consent Decree. As a result, the language employed by the parties in structuring a plan for terminating class oversight can not form the basis for including a group of children who were not intended to be within the original class definition.

Finally, it is inevitable that devoted and well-intentioned parents of a child with a developmental disability may call the DCF hotline seeking advice and assistance. The above analysis should not imply that the simple act of inquiring with DCF, on its own, would bring a child receiving voluntary services through DDS within the definition of the Juan F. class. Instead, that child might come within the class definition if an overall assessment of the child's disabilities and family situation indicated that he or she was at risk of potential abuse or neglect. As such, a DDS voluntary service recipient will be included in the Juan F. class definition if a

call, report, or other type of notice, indicates that the child is being abused, neglected, abandoned, or is seriously at risk of such mistreatment. While the category of DCF voluntary service recipients was included within the Juan F. class, children receiving voluntary services through DDS must be evaluated on a case-by-case basis to determine whether they fall within the definition of section (b) of the class definition in the Consent Decree.

C. Sirry Letter Did Not Alter or Modify the Consent Decree

The Consent Decree expressly provides that it may be modified, amended or changed by the court only upon appropriate motion filed by a party or the Monitor. As a legal matter, a consent decree cannot be validly modified by consent unless the parties mutually assent to the meaning and conditions of the modification. Lar-Rob Bus Corp. v. Town of Fairfield, 170 Conn. 397 (1976). A court may only modify a consent decree on motion of one party if that party establishes that a modification is warranted by a significant change in circumstances that was not anticipated at the time it entered into the decree. If the moving party meets its heavy burden of proof, the court must consider whether the proposed modification is suitably tailored to the changed circumstances. Crumpton v. Bridgeport Educ. Ass'n, 993 F.2d 1023, 1029 (2d Cir. 1993).

Moreover, the court finds no merit to the defendants' argument that the plaintiffs' failure to object to the Commissioner's request to exempt children receiving voluntary services from the DDS and the Monitor's purported assent to exempt them for purposes of compliance with the Consent Decree and Exit Plan Outcome Measures is evidence that they never considered or intended those children to be in the Juan F. class. First, it is far from clear that the plaintiffs

received one or both letters or that they even knew of the Commissioner's desire to exempt children from or otherwise modify the Juan F. class by exempting these children. Second, such a practical construction argument constitutes extrinsic evidence that may only be considered by the court if it finds ambiguity in the parties manifestation of intent. Portsmouth Baseball Corp., 278 F.2d at 400.

III. Conclusion

For the foregoing reasons, this court has jurisdiction to hear the plaintiffs' motion for injunctive relief. The motion for temporary injunction and permanent injunction [Dkt. # 585] is GRANTED in part and DENIED in part, in accordance with this opinion.

So ordered this 17th day of August 2010 at Hartford, Connecticut.

/s/ Christopher F. Droney
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE