UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LEO McCOY, JR. AND WILLIAM McCOY	:	
v.	:	No. 3:85cv465(EBB)
MICHAEL BELMONT, ET. AL	:	

Ruling on Defendants' Motions for a Finding of Contempt and for Clarification or Modification of the Consent Decree, Defendants' Motion for Authorization to Appoint a New Advocate and Plaintiffs' Motion for Contempt, Enforcement and Other Relief

On July 15, 2002, this Court issued its Ruling on Plaintiffs' Motion for Contempt and Defendants' Motion for Relief from Judgment [Doc. No. 423] ("2002 Ruling"). The Ruling attempted to change the untenable paradigm in place and ordered the parties to live up to the terms of the Consent Decree. The Defendants were ordered, inter alia, to take responsibility for administering all aspects of the home, to repair the downstairs bathroom, to hire such additional employees as needed to reach the minimum core-staff level of fifteen, to appoint an advocate for both Leo McCoy, Jr. ("Leo") and William McCoy ("Bill or Billy") (collectively, "the McCoy men" or "the McCoy sons"), to design a day program for Leo, and to provide a visible and accountable manager to oversee the home, adequate supervision on each shift, and competency-based training for all employees. The McCoy parents were ordered not to interfere with the Defendants and to vacate Staff House Two, and were cautioned that parental approval of staff selection shall not

be unreasonably withheld[1] and that, although they are members of the Interdisciplinary Team (IDT), that status does not permit them to exercise absolute control over training and services.[2] This Court noted in conclusion that "[i]n order for this home to function under the direction of the State, the McCoys must relinquish control and allow people whom they may not know very well to care for their sons." 2002 Ruling at 34.

Within a few months of the 2002 Ruling, the parties again found themselves at odds over the implementation of the Consent Decree. Defendants filed their Motion for a Finding of Contempt and for Clarification or Modification of the Consent Decree [Doc. No. 433] less than four months after this Court's 2002 Ruling. Plaintiffs filed a Motion for Contempt, Enforcement and Other Relief on November 26, 2002 [Doc. No. 445]. Defendants filed their Motion for the Enforcement of the July 15, 2002 Ruling Pending Appeal[3] and for a Finding of Contempt and for Clarification or Modification of the Consent Decree on June 23, 2003 [Doc. No. 450]. The parties engaged in a settlement conference with Magistrate

[1]Paragraph Three of the Consent Decree provides that "Adequate arrangements for ensuring a competent core group [of staff] shall be developed, including parental approval of staff selected for the core group."

[2]Paragraph Eleven of the Consent Decree allows the McCoy parents to "obtain the services of specific consultants" to aid in assessments, aid in developing interventions, aid in scheduling services and to provide training and on-site supervision.

[3]The McCoy's appeal of the 2002 Ruling was denied by the United States Court of Appeals for the Second Circuit in Skarnulis v. Belmont, 74 Fed. Appx. 92 (2d Cir. 2003). Thus, this Ruling will not address the arguments related to the appeal or this Court's jurisdiction during its pendency.

Judge Garfinkel in February 2004 which proved unfruitful. Finally, Defendants filed their Motion for Authorization to Appoint an Independent Advocate for Leo McCoy, Jr. and William McCoy [Doc. No. 462] on October 28, 2004. This Court granted the motion to appoint an independent advocate, no response having been filed by Plaintiffs. Plaintiffs filed a Motion to Reconsider this Court's granting of Defendants' motion for an independent advocate on February 18, 2005, and this Court granted reconsideration. Evidentiary hearings originally scheduled for the fall of 2004 were rescheduled to the spring of 2005 at the parties' request. Evidentiary hearings took place over five days on May 12-13, June 7-8 and June 14, 2005. In their post-hearing brief, Defendants again moved this Court for authorization to appoint a new advocate [Doc. No. 509]. This ruling addresses Defendants' Motions for Contempt, Clarification or Modification [Doc. Nos. 433 and 450], Defendants' Motion for Authorization to Appoint a New Advocate [Doc. No. 509] and Plaintiffs' Motion for Contempt [Doc. No. 445]. For the reasons set forth below, Defendants' Motions for Contempt, Clarification or Modification are GRANTED IN PART, Defendants' Motion to Appoint an Advocate is GRANTED, and Plaintiffs' Motion for Contempt is DENIED.

I. BACKGROUND

On September 30, 1985, Leo McCoy, Sr. and Esther McCoy ("the McCoys") filed this action under 42 U.S.C. § 1983 on behalf of

their adult sons, Leo and Bill, regarding the treatment the McCoy men received at the Southbury Training School ("Southbury" or "STS"). Shortly before this action was to have gone to trial and after numerous settlement conferences before Magistrate Judge Margolis, the Parties entered into a twelve-page Consent Decree[4] [Doc. No. 110]. The Consent Decree stipulated that, among other things, STS would provide the McCoy men with a living arrangement that would serve them alone, Staff House No. 2 ("Staff House Two"). Many controversies have arisen, numerous motions have been filed, and many bitter words have been uttered regarding the implementation of the Consent Decree. Magistrate Judge Margolis offers a detailed summary of some of the history of the litigation in this "heart-breaking case of seemingly unending difficulty"[5] in her Ruling on Plaintiffs' Motion to Vacate Referral and on Plaintiffs' Motion to Recuse [Doc. No. 378], in which she granted the Plaintiffs' request to vacate the referral to the Magistrate and transferred the case to this Judge. Familiarity with the history of this action, as outlined in Magistrate Margolis's ruling and this Judge's 2002 Ruling is assumed.

[4]The Consent Decree consists of 12 pages plus a two-page attachment – a schematic drawing of proposed renovations to SH-2 and a list entitled "Requirements for SH-2 Renovation."

[5]This is the description offered by Plaintiffs' counsel of record during the 2005 hearings.

II. FINDINGS OF FACT[6]

A. Staffing

Harassment & inappropriate conduct

The abuse and intimidation of staff by the McCoys, detailed in this Court's July 15, 2002 Ruling and many previous rulings by Magistrate Margolis, did not cease after this Court issued its July 2002 Ruling. Nor did the abuse and intimidation of staff cease after the McCoy parents moved from Staff House Two in September of 2002. Nor did the abuse and intimidation of staff cease when Mr. McCoy died. Josephine Colangelo, Staff House Two House Manager, testified that the working conditions and environment of Staff House Two have not improved at all since Mr. McCoy passed away. 6/07/05 Tr. at 84. Ginger Singletary, Program Supervisor, testified that the only difference after Mr. McCoy passed away was that disputes involved one less person. 5/13/05 Tr. at 89-90. Jo Ann Brown, R.N., testified that the McCoys tried to intimidate staff in various ways. Mr. McCoy would come up to people and "write everything down on a piece of paper, or a piece of toilet tissue or whatever he could get his hands on at the time, with a red ink pen." He would say "Oh, my lawyer would love to hear this" or "I need to write this down in case we go to court." Defendants' Exh. 13 at 11, 25, 30. When two staff members were trying to get the

[6]The Court takes into consideration testimony regarding Mr. McCoy's behavior to get an overall picture of the atmosphere at Staff House Two but will focus on the evidence of Mrs. McCoy's behavior alone in determining contempt, as Mr. McCoy passed away during the summer of 2004.

McCoy sons into the family's private van, the McCoys told them not to touch the van. Defendants' Exh. 13 at 22-23. Ms. Brown saw staff crying and with shaking hands when the McCoys were present. These staff would later quit and tell Ms. Brown they could not take the stress. Defendants' Exh. 13 at 27-28. Angela Papale had administered the McCoy program for almost four years at the time of the 2002 Ruling. Following the 2002 Ruling, she received a letter from Mr. McCoy copied to the Commissioner of the Department of Mental Retardation ("DMR") and the Hartford Courant, claiming that the move to Cottage Two[7] was "cruel" because STS was the origin of the abuse and neglect suffered by the men, and that Ms. Papale was "inhumane and incompetent." Ms. Papale was so offended by this after years of "trying to do the best [she] could" for the McCoy sons that she resigned from her position at the McCoy home in October 2002. 5/12/05 Tr. at 6-8, 20, 41.

The physical therapist, Maureen Boyd, felt very intimidated by Mrs. McCoy because Mrs. McCoy would redirect staff after Ms. Boyd had given them direction. 5/12/05 Tr. at 38.

The supervisor of the contract staff nurses, Christine Marek, testified that her nurses often felt threatened when they were at Staff House Two when the family requested them to do things that the nurses felt were not professionally acceptable. 5/12/05 Tr. at

[7]Cottage two was temporary housing necessitated by the order from this Court to Defendants in the 2002 Ruling to repair the downstairs bathroom in Staff House Two.

171-72. Although the nurses typically agreed to a 13-week term, some quit before their term was over, citing those instances or instances where they felt they were personally assaulted by the McCoys with regard to their race or sexual orientation. 5/12/05 Tr. at 173-74.

Phyllis Zimmer, occupational therapist and rehabilitation therapy supervisor, testified that Mr. McCoy was very aggressive and could be very insulting, and made things very difficult for the staff. 6/07/05 Tr. at 31-33.[8] On one occasion, Mr. McCoy hung a photograph in the living room depicting Leo, Jr. with a black eye. When she arrived at the home and saw the picture, the Nurse Supervisor at the time, Anita Shmigelsky, removed it from the wall and called the manager on duty and Mr. Harvey, then the administrator of Staff House Two. They told her to give it to Mr. McCoy when he returned. She did so, and Mr. McCoy immediately hung it on the wall again, telling her that he put it there for her and Ms. Singletary because they felt that the McCoy sons had too much and he wanted them to know why his sons had what they had.[9] 5/12/05 Tr. at 295-96.

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[8]"Mr. McCoy said to me that if Hitler had lived, you wouldn't be here right now doing this to my boys." 6/07/05 Tr. at 32-33.

[9]She testified that his comment may have stemmed from her comment to Mr. McCoy that the sons were very fortunate that they received great care from compassionate staff, and that the McCoys should be grateful for what their sons had because it was far better than what other people were able to have. 5/12/05 Tr. at 295-96.

Two staff members testified about an occasion where Mr. McCoy was driving his personal van in a reckless and erratic manner. Jo Ann Brown stated that he was speeding, driving on the wrong side of the white line at one point, failing to stop at stop signs or for an oncoming ambulance. At one point he moved the van with "the lift down, doors open and Leo in the back." Defendants' Exh. 13 at 31-45, and Exh. JB thereto at 3-6 (Written statement of Jo Ann Brown dated 9/22/02). Maize Mitchell, a direct care worker, testified that she was left with bruises from the trip because Mr. McCoy exceeded the speed limit, did not stop at stop signs and did not pull over for an emergency vehicle. She felt that because she reported the incident it made matters worse in terms of the treatment she received from Mr. McCoy. 5/12/05 Tr. at 245.

Jo Ann Brown testified about two separate incidents where Mr. McCoy intentionally bumped and pushed her, which she had documented. Defendants' Exh. 13 at 49-52. She testified that she "wanted to paint a picture of what has been going on . . . [for] whoever was going to do anything about it." She also documented the incident because she wanted it to be clear that she was doing her job, despite the fact that the McCoys told her "constantly" that she was not doing her job. Defendants' Exh. 13 at 55.

Beverly Butler, appointed as one of the administrators of Staff House Two after the 2002 Ruling, described a report she received from monitors that Mr. McCoy had shoved the director of

psychology with a privacy screen; she went to Staff House Two and told Mr. McCoy never to touch the staff. He got angry and started to say something but Mrs. McCoy told him to go home and he got up and left. 5/13/05 Tr. at 211-213.

Ms. Butler also testified that the Nurse Supervisor Anita Shmigelsky spent a lot of time coming to her office crying. On one occasion, Ms. Shmigelsky called her frantically to say Mrs. McCoy was screaming at her because one of her sons was not ready to go out for a medical appointment. Ms. Butler heard Mrs. McCoy screaming through the telephone. 5/13/05 Tr. at 206-08. Mrs. McCoy testified that she did not think she ever raised her voice to staff or confronted them over the various issues with which she disagreed. 6/14/05 Tr. at 110-11. In addition, the McCoys would give inconsistent orders to staff which left them feeling nervous and intimidated.[10]

Although the 2002 Ruling mandated the use of monitors for two months, Defendants kept monitors in the home until March of 2003. 5/12/05 Tr. at 90. Once monitors were discontinued staff reported extreme anxiety in that they felt threatened and intimidated by Mr. and Mrs. McCoy. 5/12/05 Tr. at 90. Staff told the House Manager

[10]For example, Mr. McCoy showed Ms. Brown how to brush Leo's teeth, and later when she followed that method, Mrs. McCoy told her she wasn't brushing Leo's teeth correctly. Mr. McCoy came in and said "Yes, she is. I showed her how." Mrs. McCoy got upset and left the room. Another time Mr. McCoy showed her how to hold Bill's hand so as to not restrain it. She was implementing this method when Mr. McCoy saw her and told Mrs. McCoy and the nurse supervisor Anita that Ms. Brown was restraining Bill's hand. Mrs. McCoy came into the room, looked and said that Ms. Brown's method was fine. Defendants' Exh. 13 at 29.

Donna Josephson that they were nervous to come to work and were nervous when they saw the McCoys. Ms. Josephson recounted one particular episode where a second shift staff person was attempting to feed one of the men, but Mrs. McCoy was standing right over her shoulder, commenting that she hoped he would not choke, and commenting about malpractice suits and wrongful death suits. The staff person told Ms. Josephson her blood pressure became extremely high during the episode; one of the nurses on duty took her pressure and confirmed that it was indeed very high. 5/12/05 Tr. at 100-101. After this episode was reported to her, Ms. Josephson asked to have monitors reinstated because she felt that continued tension in the home could compromise the program for both Leo and Bill and detract from the home-like environment they were trying to provide. STS reinstated the monitors in August 2003 by using a manager-on-duty ("MOD") system. 5/12/05 Tr. at 87, 90-91. Initially the program was designed so that the MOD was called if there was a problem, but this did not protect staff adequately, so STS set up a system whereby the moment either parent arrived at the home the staff would call the MOD to come to Staff House Two. The MOD would remain there until the McCoys left. 6/08/05 Tr. at 70-71. Even with the MOD system, Eugene Harvey testified that he has received reports from staff about intimidation and harassment for the last few years, and that just about every staff person has reported a problem. African American staff have complained of

prejudice, that Mrs. McCoy calls black and African American staff "you people" and that she does not use that phrase with white staff. 6/08/05 Tr. at 76-77. Maize Mitchell, who was born in Jamaica, testified that Mr. McCoy would tell her that she needed to go back where she came from. 5/12/05 Tr. at 245-46. Alicia Provonost, a direct care worker at Staff House Two, testified that she observed Mrs. McCoy treat staff badly many times: she raised her voice, she referred to African American staff as "you people" in a derogatory tone, and she belittled staff in a way that, Ms. Provonost noted, suggested that Bill and Leo were her children and no one else knew enough. 5/12/05 Tr. at 273. LPN Elisabet DaSilva testified that she felt the environment was hostile on a daily basis and that she felt abused by Mr. and Mrs. McCoy every day. 5/12/05 Tr. at 241. Mrs. McCoy referred to Ms. DaSilva as a "nobody." 5/12/05 Tr. at 241. Mental Retardation Worker Deborah Kezelevich testified that the work environment was uncomfortable and stressful, the interference by Mrs. McCoy while Ms. Kezelevich fed Billy made her feel sick to her stomach, and ninety percent of the time Mrs. McCoy came into the home she did not acknowledge that Ms. Kezelevich was even there. 5/12/05 Tr. at 197-200. On one occasion when Mrs. McCoy disagreed with the personal hygiene procedure for Billy, she raised her fist and asked Ms. Kezelevich if she wanted to fight, and said "I'm ready for a fight today." 5/12/05 Tr. at 203. Beverly Butler testified that several staff

threatened to resign because they felt they were mistreated, and she "literally begged them to stay." 6/13/05 Tr. at 223, 226.

Finally, the Defendants presented evidence that Mrs. McCoy has made a number of allegations of abuse and neglect to the Office of Protection and Advocacy when staff are following procedures and protocols put in place by the IDT with which she disagrees. Defendants perceive this as harassing. Genevieve SanAngelo, Program Manager for the STS Human Rights Office, testified that there had been 15 allegations of abuse and neglect filed pertaining to Billy or Leo from October 2002, when the McCoy men moved back into Staff House Two, until the hearings in the spring of 2005. During that same time frame, there were 100 such allegations for the entire STS population (approximately 600 residents). Ms. SanAngelo thought the number of allegations concerning Billy and Leo were high, since they were 15% of the total. 5/12/05 Tr. at 312, 315-316. None of the allegations filed by the McCoys was substantiated. 5/12/05 Tr. at 315-17. The only allegations regarding Bill or Leo that were substantiated were two filed by other staff against a nurse, Margaret Mayo, who was suspended and then terminated. 5/12/05 Tr. at 316-17; 5/14/05 Tr. at 130-31. Of the 15 allegations of abuse and neglect filed concerning Billy or Leo from October 2002 until the spring of 2005, five were classified by the Office of Protection and Advocacy ("OPA") as "Do Not Take," meaning the alleged incident gives no reasonable cause

to suspect abuse or neglect affecting the health and safety of an individual.[11] 5/12/05 Tr. at 317-18. From 1998 to the time of the hearings in the spring of 2005 there were a total of 34 allegations for the entire STS population classified as "Do Not Take" by the office of Protection and Advocacy; of that total number, almost one-third (10) have been related to Billy or Leo McCoy. 5/12/05 Tr. at 317-318; Defendants' Exh. 7a-7e.

Efforts to Hire Staff

As this Court found in its 2002 Ruling, Defendants have struggled to maintain the core staff level of 15 required under the Consent Decree. See 2002 Ruling at 3-8. As noted above, numerous employees detailed the abuse and harassment of staff meted out by the McCoys which has contributed to the difficulties in recruiting and retaining a core staff for Staff House Two. Following the 2002 Ruling, Defendants held a series of interviews and, by the time the McCoy men were moved to temporary housing at Cottage Two, eight new staff had been screened, interviewed and approved by the administration to begin working with the McCoy men. 5/12/05 Tr. at 28-29. The McCoys neither interviewed nor approved any of these candidates. At that time there were also three male staff working at STS that were interested in working with the McCoy men, but the McCoy parents refused to approve male staff, citing Leo and Billy's

[11]The reports classified as "Do Not Take" centered on claims by Mrs. McCoy or Sister Barbara Eirich of insufficient nursing, alleged restraint of Billy's hand, and claims that Bill had not received correct doses of his medication. Defendants' Exh. 7a-7e and 5/12/05 Tr. at 328-31.

history with male staff.[12] Additionally, there were two people hired who quit within two days. 5/12/05 Tr. at 29. In the fall of 2002, Eugene Harvey and Beverly Butler arranged interviews with 35 additional candidates for positions at Staff House Two. Ms. Butler and John Ayre interviewed and approved 18 of the 35 candidates; Mrs. McCoy sat in on the interviews and approved only two of the 35 candidates. 5/13/05 Tr. at 214-16. Mrs. McCoy testified that she rejected the other candidates because "in my judgment they probably weren't the type that we would need to be taking care of" Leo and Billy. 6/14/05 Tr. at 119-20. Of those two she approved, only one was available for hire. Defendants were then forced to hire employees on a temporary basis to meet the core staff requirements. In the spring of 2003 Mr. Harvey was involved in posting LPN and direct care openings for Staff House Two. When he explained the working situation to one potential applicant there was no interest. He received applications for the direct care positions from two

[12]The parties did not address the issue of hiring of male staff in their post-hearing briefs. The Court notes that Mrs. McCoy testified that Leo was sexually assaulted three times "across the street" (at STS) and although no one knows by whom, Leo has shown fear with men. 6/14/05 Tr. at 64. In Plaintiffs' brief in opposition to Defendants' 2002 motion for contempt, they argue that traditionally STS had agreed that male staff would not be hired to work with Leo because of his documented history of abuse at the hands of male staff. See Doc. No. 438 at 8. They cite a memo from Bill Ale at STS to all managers on duty from 1998 noting that only female staff may be used as "pulls" from STS to work at Staff House Two. Defendants argue that this memo is one which refers to a temporary program used during a staffing shortage whereby temporary staff were "pulled" from STS to work at Staff House Two, and that it is not evidence of any larger agreement for gender preference in hiring staff to work with Leo. Furthermore, Defendants note that Exhibits 35 and 36 from the 2001 hearings showed that sexual abuse was not substantiated. Exhibits 35 and 36 included Connecticut State Police investigations of two instances where bruising was discovered on Leo's private parts in 1991, all of which investigations concluded that sexual abuse was not substantiated, although the occurrence of the bruises was deemed suspicious.

individuals who had been working with Leo and Billy for six months temporarily and had done a good job. They were interviewed by Mr. Harvey and Mrs. McCoy but she refused to approve either applicant. She testified that she withheld approval because "I didn't think they were appropriate." At the time of the hearings in the spring of 2005, two years later, they were still working at Staff House "temporarily" because Mrs. McCoy withheld approval, and still doing a good job. 6/08/05 Tr. at 64-66; 6/14/05 Tr. at 67. To meet staffing needs, some staff were also transferred from STS on a temporary basis. 6/08/05 Tr. at 67. At the time of the hearings, Mr. Harvey testified that STS had maintained the full complement of 15 staff until recently when one staff person left. 6/08/05 Tr. at 69.

Both permanent and temporary staff were trained in the specific programs and treatments applicable to the McCoy men, but when Ms. Butler arranged for staff to attend specific training programs, the McCoys would state that staff "were just shirking their responsibilities." 6/8/05 Tr. at 69; 5/13/05 Tr. at 220.

Defendants attempted to hire nurses for Staff House Two by placing advertisements in newspapers, posting jobs on-line and through STS and other DMR agencies, and holding job fairs. 5/13/05 Tr. at 216-18; Defendants' Exh. 3. There was a shortage of nurses in Connecticut, and the nurses that Ms. Butler and Mr. Harvey interviewed were not interested in the positions, so STS used a

contract nurse agency, Code Blue. 5/13/05 Tr. at 216; 5/12/05 Tr. at 166-67. Code Blue (now Richards Health Care) nurses agreed to 13-week placements at Staff House Two which were renewable based on need. 5/12/05 Tr. at 167. As noted above, many of the contract nurses did not last through their 13-week assignments because they felt threatened by the McCoy family and were concerned that their nursing license would be in jeopardy.

In the spring of 2004, Defendants determined that, because nursing supervisors were available every night at the STS main campus, it was unnecessary to continue having nurses physically present in Staff House Two during the third shift. 6/08/05 Tr. at 69-70. Mrs. McCoy testified that she believes the Consent Decree requires nurses in Staff House Two around the clock. 6/14/05 Tr. at 64-65.

B. Interference with Program Administration and Implementation

The evidence at the hearings demonstrated excessive interference by Mr. and Mrs. McCoy with the Defendants' efforts to take responsibility for administering all aspects of the home.

Refusal to vacate home and let the McCoy men be moved

This Court's 2002 Ruling ordered that Leo and Billy be transferred from Staff House Two to another facility capable of temporarily housing them while repairs were made to the downstairs bathroom of Staff House Two and ordered the parents to vacate the home as soon as their sons moved to temporary housing. Defendants

immediately began making plans for the move of the McCoy men to temporary housing at Cottage 2, but the McCoys filed a motion to stay. That motion was denied by this Court on September 3, 2002, and Defendants then informed the McCoy parents that the move of their sons would occur on September 5, 2002. Mrs. McCoy told Angela Papale, then the administrator of the McCoy program, "I could call Judge Burns, I could call the Commissioner, I could call the President of the country, but neither she nor her boys were going to move because there were locks on the doors at Cottage 2 . . . and that Billy was not feeling well. 5/12/05 Tr. at 13-14. However, after speaking with Dr. McDonald, Ms. Papale determined the men could be moved on September 5, 2002, and the move did occur that date after some further delay by the McCoys. 5/12/05 Tr. at 13-14, 20. The McCoy parents still had some of their personal items on the second floor of Staff House Two after October 3, 2002, when the McCoy sons were moved back to Staff House Two. 5/12/05 Tr. at 21-22.[13]

Food and meal-time issues

The State presented copious evidence of the McCoys' interference with meal-time routines and Mrs. McCoy's refusal to follow protocols regarding the feeding of her sons. Following this Court's 2002 Ruling, Phyllis Zimmer developed feeding guidelines

[13]The Consent Decree does not authorize the McCoy parents to live in the home developed for the McCoy sons.

and trained all staff in feeding Bill and Leo. 5/12/05 Tr. at 12-13. She testified that, immediately after the July 2002 Ruling, she began visiting Staff House Two for all three meals to in-service the staff, but due to the constant interference from Mrs. McCoy, by September 2002 she had only been able to train four people to feed Bill and two to feed Leo. 6/07/05 Tr. at 24-25. There were no fixed routines at the house, so it was difficult to determine when meal-times would begin. Mrs. McCoy would ask her not to come, telling her the men did not have a good night, or if she came, would ask her to leave. Even after she managed to train staff, sometimes Mrs. McCoy and the staff would refuse to acknowledge completion of the in-servicing if there were only a few teaspoons of food left on a plate. 6/07/05 Tr. at 24-25. By the date of the hearings in May 2005, Ms. Zimmer had used competency-based training to train or in-service 42 staff in feeding Bill. As required in Paragraph Three of the Consent Decree, each person must show competency three times before they are deemed able to feed Bill McCoy. Once staff have been trained in feeding Bill, she monitors their work frequently, and Billy and Leo's feeding is monitored once a month by the therapist and once a month by a rehabilitation therapy assistant. 6/07/05 Tr. at 12; Defendants' Exh. 13 at 9. Ms. Zimmer personally monitored Bill and Leo's feeding about 75 times in 2003 and 2004. 6/07/05 Tr. at 12. She stopped in-servicing staff during the second shift, 3:00 p.m -

11:00 p.m, because Mrs. McCoy was always at Staff House Two during the second shift and there were a lot of "bad vibes." She testified that her attempts to in-service the staff during that shift were a "nightmare" because, due to Mrs. McCoy's interference, everything would take a long time, and the men would smell their food but not really be able to eat it. Ms. Zimmer tries to in-service second-shift staff on weekends or other times. 6/07/05 Tr. at 35.

Although Mrs. McCoy is usually at Staff House Two during the dinner hour, she normally does not have a meal with her sons when she comes. 6/08/05 Tr. at 140.

Ms. Zimmer also testified about the feeding program for Bill McCoy. The primary goals are to enhance lip closure for intake of food and drink, minimize the amount of food that goes in to assure proper swallowing with head control, and making sure his posture is upright. 6/07/05 Tr. at 8. A further challenge is keeping Bill's hand out of his mouth to assure safety and that the intake is correct. 6/07/05 Tr. at 9.

She further testified that during meals a rhythm to the intake gets established, which is what is needed for someone with an oral motor problem so that the process is safe and the person does not fatigue. Mrs. McCoy will interrupt this rhythm to discuss the temperature of the food, the consistency of the food, how much food is on the spoon, how much time is taken between spoonfuls,

positioning of the feeder, etc. 6/07/05 Tr. at 10-11. A 45-minute meal can turn into an hour and a half-long meal. 6/07/05 Tr. at 11. Mrs. McCoy would also fight with Ms. Zimmer about ice, the temperature of Leo's tea, the meal plan, etc. 6/07/05 Tr. at 29.[14]

Ms. Zimmer further testified that Leo is capable of feeding himself with various levels of assistance, and the McCoy parents have blocked her attempts to foster his independence. She opined that he has lost a lot of skills over the last couple of year, so she developed a protocol for his spoon biting, and currently Leo's feeding program includes prompts and assistance so he brings the food up to his mouth himself. 6/07/05 Tr. at 22-23.

Alicia Provonost testified that when she feeds Billy, Mrs. McCoy "is trying to give a lot of direction instead of just letting us do what we're supposed to do." The interference from Mrs. McCoy is constant. Mrs. McCoy will sometimes try to change the time dinner is served, or will complain that there is too much food on the spoon or too little, that Ms. Provonost is feeding too fast or too slow, that the food is too hot or too cold, or that there is too much food on the plate, or too little. 5/12/05 Tr. at 266-68. Maize Mitchell testified that Mr. McCoy would interfere when she was feeding Leo, Jr. On one occasion Mr. McCoy kept coming around her while she was feeding Leo, saying "Don't worry, Champ, don't

[14]"We would fight over how long Leo should be able to hold his cup and drink because shouldn't he be eating. But then if we stopped that, then we would have a discussion on why weren't we letting him drink when he wanted to." 6/07/05 Tr. at 29.

worry. Daddy's here. Everything is going to be all right. You eat up. . . . You don't need to be afraid." 5/12/05 Tr. at 246-47. Other staff testified to the "nonstop interfering" from Mrs. McCoy during mealtimes. 5/12/05 Tr. at 199-201.

When the McCoy men were moved back to Staff House Two after the repairs, in October of 2002, Mrs. McCoy wanted a cook[15] and wanted food purchased from the local grocery store rather than having the men eat food prepared at STS because she felt that her sons would choke on the food from STS. 5/12/05 Tr. at 29-30. STS decided to prepare the food for the McCoy men at the STS campus as it does for 600 other residents.

One particular area of contention is Mrs. McCoy's refusal to follow the protocol developed for giving drinks to Bill. Mrs. McCoy insists on using ice in his drinks; the Medical Director of STS, Dr. McDonald, has determined that ice in drinks is contra-indicated for someone with aspiration issues, and wrote an order to that effect. 6/07/05 Tr. at 17, 200-203. Defendants have developed a protocol to keep the drink cool and restrict the flow without risking aspiration by using a chilled martini shaker and pouring out two to three sips of cooled fluid into a nosey cup. 6/07/05 Tr. at 17-20, 201. Once the decision was made to eliminate ice from his drinks, only staff that had been personally in-

[15]Mrs. McCoy wanted a cook notwithstanding Magistrate Judge Margolis's 1995 ruling stating that the Consent Decree does not require that the McCoy men have their own in-house chef. See Ruling on Joint Statement of Disputed Provisions at 6 [Doc. No. 162].

serviced by Ms. Zimmer in how to give Bill drinks without ice were allowed to give Bill liquids. The in-servicing process occurred over a couple of weeks. 6/15/05 Tr. at 185-86.

Mrs. McCoy's view is that crushed ice in Bill's drink keeps it cool and helps regulate the flow of liquid into his mouth to aid in swallowing. 6/14/05 Tr. at 89-90. Initially she told staff that the ice was to keep the drink cold, but more recently she told staff that the ice served as a dam blocking the flow of fluid. 6/07/05 Tr. at 18. Mrs. McCoy used a Styrofoam cup with whole ice cubes, and once Staff House Two had a refrigerator equipped with an ice crusher, she used crushed ice of varying sizes. 5/12/05 Tr. at 180, 6/07/05 Tr. at 18, 200-201. Mrs. McCoy testified that she is very careful when she gives ice to Billy. 6/14/05 Tr. at 94. Mrs. McCoy told Dr. McDonald he need not worry about Bill aspirating because Bill spits out any smaller pieces of ice he gets into his mouth. 6/07/05 Tr. at 201. This did not allay Dr. McDonald's concerns regarding Bill's aspiration risk because it meant that pieces of ice were indeed getting into Bill's mouth.

Defendants presented testimony from two experts in speech language pathology and dysphagia to support their decision to eliminate ice from Bill's drinks. Both experts recommended that, due to his poor motor control and the risk of aspiration, Bill should not be given ice in his drinks, crushed or otherwise. 5/13/05 Tr. at 6, 9-10, 17, 251-252; 6/07/05 Tr. at 55-61.

Plaintiffs' expert, Dr. Leslie Rubin, testified that he thought Mrs. McCoy used the ice in Bill's drinks to thicken them to aid in swallowing. He agreed that it would not be appropriate to use crushed ice simply to keep Bill's drinks cool as there are other ways to accomplish that goal. 5/13/05 Tr. at 176. Mrs. McCoy also acknowledged that there are ways to cool drinks other than using ice. 6/14/07 Tr. at 92.

Mrs. McCoy testified that she has been concerned with how and what Defendants feed Bill, and that she feels the staff have not been properly trained to feed Bill and that, when she resided at Staff House Two, Bill was almost never hospitalized for aspiration pneumonia. It is her concern, she maintains, that prompts her to question staff during feedings. When asked on cross-examination if she had ever told anyone that Bill had no hospitalizations for aspiration pneumonia during the years the McCoys lived in Staff House Two, she replied "not intentionally," and acknowledged that he had indeed been hospitalized more than once. 6/14/05 Tr. at 140-41.

Dr. McDonald testified that during the period from January 1996 until September 2002, when the McCoy parents lived in Staff House Two, Bill had 12 hospital admissions, five of which were for pneumonia. During the same period, Bill was treated for pneumonia 10 times at STS without being sent to the hospital. 6/07/05 Tr. at 193-94 and Defendants' Exh. 10.

Mrs. McCoy also ignores the protocol for using a gel pad under Leo's plate and cup when he is dining. 5/13/05 Tr. at 69; 5/12/05 Tr. at 181-82. STS developed the protocol after a hairline fracture to Leo's arm in April of 2004. 6/07/05 Tr. at 44; 5/12/05 Tr. at 334. The STS Office of Human Rights determined that a likely cause was Leo's banging his arm much more forcefully than usual on the dining table during an argument between Mrs. McCoy and the staff, although an exact cause was not determined. 5/12/05 Tr. at 334-35. A protective services plan was developed by the Office of Protection and Advocacy which includes using a thick gel pad under his plate and cup while Leo, Jr. eats. 5/12/05 Tr. at 334-36; 6/07/05 Tr. at 45; Defendants' Exh. 6. This pad maintains a level of stability so a cup and plate can be placed upon it. 6/07/05 Tr. at 45. Elisabet DaSilva, LPN, testified that Leo bangs on the table in an angry or aggressive manner when he get upset, pounding hard enough to get his arm or wrist red. Often, this occurred when Mrs. McCoy would visit during meal-times and cause an interruption or exchange words with staff. 6/14/05 Tr. at 164-65. Ginger Singletary would remind Mrs. McCoy that she needed to use the gel pad, and other staff would have to ask the manager on duty to intercede when Mrs. McCoy was not using the gel pad because Leo was banging his arm so violently on the table they worried he would hurt himself. 5/13/05 Tr. at 69; 5/12/05 Tr. at 182. During one incident in September of 2004, Eugene Harvey, the manager-on-duty,

asked Mrs. McCoy several times to use the gel pad for Leo's protection because he was banging his hand on the table. Mrs. McCoy suggested Mr. Harvey call the police, as she refused to use the pad. Mr. Harvey asked her repeatedly to use the pad. Eventually Mrs. McCoy pulled Leo's chair away from the table so he could not reach it to bang his arm. 6/08/05 Tr. at 73-74. Mr. Harvey referred this incident to the OPA, which investigated and concluded that Mrs. McCoy's refusal to use the gel pad constituted neglect of Leo. After that incident a protective services plan was instituted whereby staff were instructed to call OPA if Mrs. McCoy refused to use the gel pad while Leo was dining at the table. There were six further occasions where Mrs. McCoy refused to use the gel pad; at the time of the hearings Mr. Harvey had not had any recent reports that she continued to refuse to use the pad. 6/08/05 Tr. at 75.

Mrs. McCoy recognizes that Leo hits his arm on the table but she took the gel pad off the table, claiming it caused Leo to spill his drinks. 6/07/05 Tr. at 45; 6/14/05 Tr. at 31-32. Mrs. McCoy testified that she felt it was more useful to just move Leo from the table when he began to hit the table hard rather than using the gel pad, and that the protocol for using the gel pad was the sort of "treatment" she had the right to refuse as guardian. 6/14/05 Tr. at 31-32. Ms. Zimmer testified that Leo did not spill his drinks any more frequently with the gel pad in place than he did

before the plan was instated. 6/14/05 Tr. at 187.

Bill's Hand-in-mouth Behavior Plan

As noted in the Consent Decree itself, Bill's hand-in-mouth behavior is a serious medical issue. Mrs. McCoy continues to oppose the behavior plan developed to lessen the frequency Bill mouths his hand. As Phyllis Zimmer noted, Bill's hand-in-mouth behavior increases during meals. Witnesses testified that he sometimes sticks his whole hand deep into his mouth and into his throat, causing gagging and choking. 5/12/05 Tr. at 218; 5/13/05 Tr. at 87; 6/08/05 Tr. at 222. Dr. McDonald explained that it can lead to increased saliva and aspiration of saliva, lacerations in the mouth, maceration of his hand, and softening of his nails with an accompanying fungal infection. 6/07/05 Tr. at 203-204.

Defendants attempted to work with Mrs. McCoy to develop a behavior plan for Bill to no avail. In October 2003, the Director of Psychology requested that George Skidd, a behavior modification program specialist, develop a plan to address the hand-in-mouth behavior. Mr. Skidd visited Staff House Two and developed a plan which he presented at the IDT meeting, which included alternative sensory experiences for Bill and getting him more directly involved in his daily routine. He met with Mrs. McCoy but she did not like some of the plan components. He reformulated the plan and submitted it again but Mrs. McCoy never approved it. 6/07/05 Tr. at 97-101. Nothing further occurred until May 2004 when the

director of psychology again asked Mr. Skidd to do something due to the deteriorating condition of Bill's hand.[16] 6/07/05 Tr. at 95, 97-101. Mr. Skidd developed a written behavior support plan, integrating sensory experiences, enhancing his social interaction with the staff and providing other pleasurable experiences with the rationale of crowding out and decreasing the frequency with which Bill places his hand in his mouth. 6/07/05 Tr. at 101-107. The plan calls for gentle redirection, choice, object cueing and praise. Defendants' Exh. 1; 6/07/05 Tr. at 103-105. Mr. Skidd perceived the hand-in-mouth behavior as primarily sensory in nature, and noted that Bill has many other types of sensory pleasures – "he loves staff attention; he likes being caressed . . . hand-holding; he likes tactile interaction, he likes water, he loves his bath." 6/07/05 Tr. at 108. The plan developed in conjunction with the ID Team was approved by Dr. Weinberg, a board-certified behavior analyst, Dr. Pollack, the head of psychology, and Dr. McDonald, the Medical Director at STS. 6/07/05 Tr. at 105-106; 6/08/05 Tr. at 37. Mrs. McCoy has not approved this plan, but it has been implemented. 6/07/05 Tr. at 106; 6/08/05 Tr. at 72. She told Mr. Skidd when they met to discuss the revised plan that it was too aggressive, and that she wanted Bill to have his hand to suck on sometimes. 6/07/05 Tr. at 106, 122. Mr. Skidd testified

[16]"[Bill's hand] was getting to the point where he could possibly need to have a restraint applied. And nobody on the team, including myself, wanted to see that happen." 6/07/05 Tr. at 101.

that, having first worked with Bill and Leo in the early 1980s, and based on his observations and experience with Bill, Bill enjoys many things other than putting his hand in his mouth, including physical contact, and that Bill feels love, and he noted that he has seen him smile and express joy under certain circumstances, such as having the wind on his face. 6/07/05 Tr. at 109-110. Plaintiffs' expert, Dr. Rubin, stated that the limitation of the hand-in-mouth behavior was appropriate if the hand was becoming injured through excess moisture. 6/13/05 Tr. at 152-53.

Mrs. McCoy allows Bill to put his hand in his mouth whenever he attempts to do so, ignoring the behavior program goal of reducing the frequency of the behavior. 6/08/05 Tr. at 72; 5/12/05 Tr. at 181. Even at times when Bill has his hand up to his wrist in his mouth while eating, Mrs. McCoy has told staff to leave the hand alone. 5/12/05 Tr. at 219. She also believes he should be allowed to put his hand in his mouth during a bowel movement, even though the nurse supervisor Ms. Frigon has found that to be counter-indicated because he then tends to stop the process once he has his hand in his mouth. 6/14/05 Tr. at 159. When she observes staff following the behavior support plan and redirecting Bill's hand, Mrs. McCoy accuses them of attempting to restrain Bill.[17]

[17]During one incident, Mrs. McCoy alleged Bill's hand was being restrained by a terrycloth towel in "the worst form of abuse that she had seen." The manager on duty, Tim Braziel, assessed the situation and tried to calm Mrs. McCoy, and reported the incident to the Human Rights Office. Though a towel had been placed over Bill's hand, no abuse or neglect or restraining was substantiated as a result of the investigation. 5/12/05 Tr. at 305-308.

5/12/05 Tr. at 272. She has filed three reports of alleged abuse with the OPA, claiming that Bill's hand was restrained. Two of those reports were classified as "Do Not Take" and the other was unsubstantiated following an investigation. 5/12/05 Tr. at 328-333; Defendants' Exh. 5, 7d, 7e. After one of these investigations, the OPA noted in its investigative report that there was a program to help Bill keep his hand out of his mouth and that the complaint "was more of a programmatic concern" and that Mrs. McCoy should pursue her concerns through the administrative process. 5/12/05 Tr. at 331; Defendants' Exh. 7d. Plaintiffs' expert, Dr. Rubin, observed the behavior support plan in action as the staff gently restrained Bill's hand, and then, when Bill overrode the restraint at times, they gently prompted him to remove the hand from his mouth. At no time did Dr. Rubin see staff pulling on the hand or otherwise handling Bill roughly. 5/13/05 Tr. at 185.

Dr. McDonald testified that although medically it would be best for Bill to not have his hand in his mouth at all, he understands and accept the behavior support plan's goals of a gradual reduction in the hand-in-mouth behavior. 6/07/05 Tr. at 236-37. As Dr. McDonald noted, a behavior program aims for a consistent response to a stimulus, and if Bill were allowed to "have his hand" on occasion as Mrs. McCoy has insisted, it would make the implementation of the plan impossible. 6/08/05 Tr. at 37-

38.

Other medical, hygiene and therapeutic issues

The state presented evidence of Mrs. McCoy's unrelenting interference with their administrative procedures and protocols which leads to medical concerns for Defendants. The evidence established that both Mr. and Mrs. McCoy argued with staff about the time medications were given, whether they were the correct medications, and whether the nurses were competent. 5/12/05 Tr. at 108. Jo Ann Brown testified that Mrs. McCoy would constantly interfere when she was preparing and giving medications to the men. Mrs. McCoy would ask to see the medications, touch them, compare them to the medication book and ask if they were the correct medications. Defendants' Exh. 13 at 14-15, 91. Ms. Brown would tell her that she should not even be in the room when medications were being prepared and given, but Mrs. McCoy would ignore her. Defendants' Exh. 13 at 90-93. Ms. Zimmer testified that Mrs. McCoy would poke around in the medication cups, sometimes with a tongue depressor and sometimes with her fingers. She would tell staff that the pills were not cut the right way, or were not the right amount, or didn't look right, or they would get into a discussion about the amount of applesauce needed to coat the pills and the time frame for giving the pills. 6/07/05 Tr. at 38-39. When STS assumed responsibility for the day-to-day administration of Staff House Two, medications were prepared in the kitchen. Donna Josephson,

administrator of Staff House Two until October 2003, attempted to lessen Mrs. McCoy's interference by asking that no one but the nurse and the individual receiving medication be in the kitchen while medications were being poured. Mrs. McCoy continued to enter the kitchen as before, so Ms. Josephson arranged for the first floor staff bathroom to be converted into a medication room. The McCoys objected to the use of the bathroom as a medication room. 5/12/05 Tr. at 91-93.

The director of staffing for Richards Health Care (formerly Code Blue), the agency which supplied contract nurses to Staff House Two, testified that she received telephone calls on many occasions from her nurses, concerned that their nursing license would be in jeopardy if they followed the McCoy parents' request. 5/12/05 Tr. at 171-72.

Defendants also presented testimony regarding the interruptions to the McCoy mens' medication schedules. The McCoys would either come to the home to take the men out on a trip without notice as to what time they would leave or return, or Mrs. McCoy would come to the home late in the evening and want to sit on the couch and visit with Leo right at the time he needed to have his medication and whirlpool treatment. Staff had to change the routines to accommodate the McCoys, and this often led to delayed medication times. Defendants' Exh. 13 at 17-18; 5/12/05 Tr. at 179-180, 269. Ms. Brown testified that she had to write medication

errors on herself because medication times would have to be pushed back. Defendants Exh. 13 at 18. Ms. DaSilva testified that the nurses would have to either rush to dispense the medications or get new orders from the doctor approving a changed dosage time. 5/12/05 Tr. at 224. When Ms. DaSilva told Mrs. McCoy that policies had to be followed, Mrs. McCoy's response was that "she was the mother and. . . she knew her sons better than anybody, and she would do what she felt was better, not what was in the procedure." 5/12/05 Tr. at 225.

Additionally, the McCoys would take either Leo or Bill out and not return with them until well after the scheduled dinner time. If only one of the men had gone out, they still had to postpone dinner as late as 8:30 p.m. for both men because Mrs. McCoy felt the men should have their dinner together. 5/12/05 Tr. at 74.

When the McCoys lived in the home, personal hygiene was performed on mats on the living room floor with privacy screens purchased by the McCoys which the staff felt were inadequate. On occasion Mr. McCoy would remove a privacy screen or place it at the door of the living room so that he could see the television set, or he would peer underneath the screen to observe what was going on. Defendants first tried to accommodate the parents' system, and supplied a larger screen and tried to work with that. However, staff felt performing personal hygiene in the living room was a significant violation of the McCoy sons' right to privacy.

Defendants decided to perform the personal hygiene duties in the bedroom instead to protect the privacy and dignity of the men and to provide better body mechanics for the staff performing those duties. The McCoys objected strenuously. 5/12/05 Tr. at 97-98; 6/07/05 Tr. at 36-38. Ms. Zimmer developed procedures for hand washing and universal precautions but the staff would not follow the precautions. Staff would not wear gloves during tooth-brushing or personal hygiene care of the men. One staff person was observed checking to see if Leo has soiled himself by using her bare hand. Staff would not wear shoes in the home because Mrs. McCoy did not want dirt in the home. When Ms. Zimmer asked staff why they were not following the protocols they stated that Mrs. McCoy told them not to.[18] 6/07/05 Tr. at 26-28.

The evidence also illustrated the confusion and difficulty Defendants have when the McCoys took their sons to outside medical consultants without prior notice, or without any notice. Difficulties arose with preparing the men for their journey on short notice, rescheduling meals and medication dosage times to accommodate them if they returned late, as noted above, and a lack of communication among the consultants, Mrs. McCoy and the medical staff at STS. Anita Shmigelsky, the nurse supervisor, testified about the difficulty in following through on medical care for the McCoy men when Mrs. McCoy refused to communicate about the care

[18]However, Mrs. McCoy wanted the staff to wear scrubs. 6/07/05 Tr. at 29.

given by outside doctors and the timing of outside medical appointments. 5/12/05 Tr. at 293, 297. Mrs. McCoy insisted on coordinating the men's outside medical care, and did not give any information regarding outside appointments to Anita Shmigelsky, the previous nurse supervisor. 5/12/05 Tr. at 293-97. The current nurse supervisor, Katie Frigon, usually does not receive advance notice about outside consultations from Mrs. McCoy and Mrs. McCoy does not permit her to communicate with the doctors consulted outside STS. 6/07/05 Tr. at 145. Dr. McDonald still does not receive reports from all of the outside medical consultants. Defendants presented medical reports from two physicians at Brigham and Women's Hospital which were addressed to a Dr. William McDonald, Southbury Training School, at "47 Evergreen Drive." The Evergreen Drive address is the McCoy parents' home address. Dr. McDonald testified that his father's name was William, and prior to the hearings when he reviewed those medical reports, he had never seen them. 6/07/05 Tr. at 177-81; Defendants' Exh. 19. Dr. McDonald testified that having had the reports at the time they were made would have helped him in coordinating care for the McCoy men. Dr. McDonald further testified that he has never received any evaluations or reports from Mrs. McCoy's expert physician, Dr. Rubin. 6/07/05 Tr. at 185; 6/08/05 Tr. at 35. Dr. Rubin testified that he had not spoken to Dr. McDonald in years and believed Mrs. McCoy had informed Dr. McDonald about his visits and had provided

his reports to him. 5/13/05 Tr. at 159, 164.

Mrs. McCoy interfered with the medical care of the men in other ways as well. She wanted a particular fungus cream to be used on Bill's fingernails, even though Dr. McDonald told her it was contra-indicated due to Bill's lung infiltration (which he believed may have been due to lipoid pneumonia, a condition caused by oils which the body cannot absorb or release). Mrs. McCoy claimed that other doctors disagreed with Dr. McDonald; once she found a water-soluble gel to use Dr. McDonald approved the regimen. 6/07/05 Tr. at 213-14. Additionally, Mrs. McCoy would give Leo an extra dose of Milk of Magnesia on occasion to get his bowels moving. When Dr. McDonald checked Leo he found he had toxic levels of magnesium in his system and told Mrs. McCoy to stop the Milk of Magnesia. She did not believe his diagnosis and wanted to continue with the regimen. 6/07/05 Tr. at 205-207. Finally, Ginger Singletary testified that one evening when the McCoys brought Bill and Leo back late from an outing, Mrs. McCoy demanded that Bill be put directly to bed after eating, notwithstanding Ms. Singletary's statement that they could not put him to bed because of Bill's aspiration precautions. Mrs. McCoy threatened to leave with Bill and lay him down at home until Ms. Singletary stated she would call the manager-on-duty because of the serious risk to Bill's health. 5/13/05 Tr. at 67-68.

Mrs. McCoy also opposes the Defendants' program for ambulating Leo while he wears shoes. Dr. McDonald felt that Leo needed to walk more for physical therapy and cardiovascular health. He had ordered that Leo be ambulated with either sneakers or shoes for safety and support reasons, but the order had not been implemented during the McCoy parents' years in Staff House Two. 6/08/05 Tr. at 18-19. Mrs. McCoy wanted Leo ambulated in his slippers or socks. 6/07/05 Tr. at 43. Once the state took over control of the house, Leo was fitted by a shoe orthotist, and Ms. Zimmer purchased a pair of sneakers and a pair of walking shoes for him. Mrs. McCoy did not like the shoes. 6/07/05 Tr. at 43-44.

Additionally, the evidence showed that Mrs. McCoy adamantly opposed Defendants' efforts to develop a new wheelchair for Bill. As Ms. Zimmer testified, Bill's then-current wheelchair was very old, unsafe, and the men at the STS wheelchair shop found it impossible to fix. The McCoys had purchased other wheelchairs over the years but they were worse than the old chair, even with all its problems. 6/07/05 Tr. at 39-40. Defendants gave Bill a new tilt space wheelchair with a custom-molded back-trunk support and removable arm rest that Ms. Zimmer stated has been working much better. 6/07/05 Tr. at 41-42. Mrs. McCoy opposed the use of the chair and told Ms. Zimmer that the Hospital for Special Care in Connecticut was working on another chair. Ms. Zimmer requested contact information for the therapists working on the new chair;

Mrs. McCoy did not provide the information but stated that she would have them contact Ms. Zimmer. No one has contacted Ms. Zimmer regarding the chair. 6/07/05 Tr. at 42.

Full-day Program for Leo

This Court's 2002 Ruling found Defendants in contempt for not providing a day program for Leo and mandated that Defendants develop such a program immediately. Defendants developed a half-day program for Leo which he began attending in October 2002. 5/12/05 Tr. at 80-81. After Leo's OPS was conducted that winter, it was recommended that the length of the program be expanded because Leo was enjoying the program. This suggestion was made to Mrs. McCoy but she said she needed time to think about it. Mrs. McCoy then opposed the full-day program, saying that Leo was either too sick or tired to attend for the full day and she wanted him home to eat lunch with his brother. 5/12/05 Tr. at 84; 5/13/05 Tr. at 85; 6/8/05 Tr. at 54-55. The ID Team decided to expand the program to a full day over her objections. 5/13/05 Tr. at 85-86.

Refusal to follow administrative protocols or participate in the IDT process

The evidence at the hearings also showed that Mrs. McCoy refuses to follow administrative protocols set up by Defendants in their efforts to effectively manage Staff House Two. Mrs. McCoy has interfered with staff when they follow the procedure for making entries in the logbooks at Staff House Two. These logs are used to provide shift-to-shift communication to ensure continuity of care.

Mrs. McCoy has asked staff not to write about incidents in which she was involved and has questioned why the staff must write about things that happen in Staff House Two that she perceives are personal. 5/12/05 Tr. at 182-83. On one occasion Mrs. McCoy was arguing loudly with a staff member about an entry in the logbook and, as the argument escalated, Leo began to get upset and bang his arm on the table. Staff have on occasion not made entries in the logbook as protocol requires because they were concerned that the McCoys would get upset. 6/07/05 Tr. at 80-81.

Mrs. McCoy raises her concerns and questions most often by directly confronting employees she feels are not doing a proper job. She has been repeatedly told by the nurse supervisor, manager-on-duty or administrators to bring her concerns to them directly. Sometimes she makes complaints after the fact to the supervisory personnel but will not give the name of the staff member about whom she is complaining. 6/08/05 Tr. at 83, 143. She has been informed by various staff and administrators of her right to appeal a programmatic decision with which she disagrees through the Program Administrative Review process (PAR). A parent applies for a meeting with the regional director through this process, and ultimately the Commissioner of the Department of Mental Retardation, at which meetings the parent can voice their opinion regarding programs they feel are not appropriate. Mrs. McCoy has never availed herself of her right to this process to resolve

programmatic disputes. 5/13/05 Tr. at 41-42; 6/07/05 Tr. at 164; 6/08/05 Tr. at 80-81; 6/14/05 Tr. at 139. She has instead gone to the Connecticut Probate Court to clarify her rights as guardian, or has filed complaints with the Office of Protection and Advocacy alleging abuse or neglect. None of the allegations made by the McCoys was substantiated. 6/14/05 Tr. at 122-26, 130, 139; 6/08/05 Tr. at 80-81, 91-92.

Mrs. McCoy did not attend any of the IDT meetings from February 2004 until October 2004. 6/14/05 Tr. at 100. The Consent Decree states that she and Mr. McCoy "shall be considered as co-members of the Interdisciplinary Team (IDT), and as such enter into decisions on behalf of their sons." She testified that the team has never accepted one idea from her, and since this Court's 2002 ruling the ID Team has not included her in any decision-making. 6/14/05 Tr. at 7-8, 44-45, 59. She understands the Consent Decree to mean that any treatment of her sons must meet her approval. 6/14/05 Tr. at 8. She testified that she sought Probate Court intervention in March 2004 to clarify her rights as guardian after STS determined "out of the blue" that Billy could no longer have crushed ice in his drinks. She complained to the nurse supervisor Katie Frigon that staff couldn't give Billy a drink without ice without being in-serviced because Billy had been accustomed to ice in his drink for the seven years Mrs. McCoy lived in Staff House Two. 6/14/05 Tr. at 9-11; 122-23, 126. As noted above, Phyllis

Zimmer personally in-serviced every care provider for Bill over a period of a few weeks after the ID Team determined that they would effectuate Dr. McDonald's order that Bill not be given ice in his drinks.

Dr. McDonald testified that he has never performed a medical procedure on Bill or Leo McCoy that required the parents' informed consent. Routine medical treatment necessary to maintain general health or prevent the spread of disease does not require informed consent. 6/08/05 Tr. at 34-35. Mr. Harvey testified that typically, under ICF/MR guidelines,[19] approval from a guardian is required for procedures or programs which involve surgery, non-routine medical treatments, restraints or other invasive or intrusive procedures. Approval is not needed for programmatic changes. 6/08/05 Tr. at 86-87, 89-90.

Donna Josephson testified that when the State assumed the daily administration of Staff House Two, she worked with Mrs. McCoy to incorporate the daily routines which Mrs. McCoy had developed for Billy and Leo. The parents' routines were incorporated into the new schedules, save Leo's bath time, which staff determined worked better in the afternoon when he had more energy, rather than in the evening, the time Mrs. McCoy favored. 5/12/05 Tr. at 69-74;

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[19] See 42 C.F.R. § 440.150 and 42 C.F.R. § 483.400 et seq. for a description of Intermediate Care Facilities for Persons with Mental Retardation ("ICF/MR").

The Court recognizes that a facility housing less than four (4) persons cannot become ICF/MR certified. See Consent Decree Paragraph Four.

6/14/05 Tr. at 167; Defendants' Exh. 17, 18. Mrs. McCoy's perception is that the Team took nothing from her routines because they changed the times of the activities. 6/14/05 Tr. at 81-87.

The staff and administration have worked to accommodate Mrs. McCoy's wishes in other ways as well. Mrs. McCoy favored the use of Depends rather than state-issued diapers for her sons, and the staff agreed to use the Depends as long as she supplies them. They also agreed to use bibs for the McCoy men at Mrs. McCoy's request. 6/14/05 Tr. at 103, 106. Dr. McDonald even agreed to measure and weigh the McCoy mens' diaper changes to accommodate Mrs. McCoy and ease disputes between staff and Mrs. McCoy as to whether her sons were having sufficient bowel movements after she and Mr. McCoy moved out of the house. Once Dr. McDonald determined that staff estimates were reliable against the evidence, the weighing of the soiled diapers was stopped. 6/07/05 Tr. at 207-09. Furthermore, there was testimony regarding weekly music sessions for Bill which the ID Team arranged after Mrs. McCoy spoke with the STS chaplain and mentioned that she thought it might be beneficial. 6/14/05 Tr. at 104-05.

Finally, Mrs. McCoy has stalled the process for realizing STS's goal of making Staff House Two ICF/MR compliant. The ID Team sought for over 1 ½ years to schedule meetings with Mrs. McCoy to develop an updated Overall Plan of Service (OPS) for Leo and Bill, but Mrs. McCoy did not make herself available to meet and

constantly put them off by saying she would have to check her calendar. 6/08/05 Tr. at 79. A current OPS is a requirement for ICF/MR compliance and certification. During the last round of hearings in this litigation, Plaintiffs complained that Staff House Two was not ICF/MR compliant.

C. Defendants' Use of the Second Floor

In their 2002 Motion for Contempt, Enforcement and Other Relief, Defendants stated their intent to begin using the second floor of Staff House Two for a nurse's office, nurse supervisor's office, records area and staff break room to effectuate the Court's order that they take control of the home. See Doc. No. 433 at 10-11. STS administrators testified that the second floor has an office with a computer for the managers and administrators of Staff House Two and a room for storing staff records, training records, policy books, and "all the things that any other cottage has." The second floor also has a staff bathroom and an area in which staff can take their breaks and have meals. 5/13/05 Tr. at 221-22; 6/08/05 Tr. at 75-76. Mr. Harvey testified that it would not be appropriate for the staff to use the McCoy son's bathroom downstairs, and Beverly Butler testified that staff couldn't have their meals in the dining room, living room or kitchen downstairs. 5/13/05 Tr. at 221. LPN Elisabet DaSilva testified that, when the McCoy parents lived in Staff House Two, staff were not allowed to eat in any other place but the basement, or on the basement stairs.

The basement housed the washing machine, heater and boiler, nothing more. 6/14/05 Tr. at 165-66.

D. Advocate

This Court's 2002 Ruling ordered Defendants to appoint an advocate for Billy and Leo McCoy. Advocacy services were secured by September 29, 2002 through a contract between OPA and the Western Connecticut Association for Human Rights ("WeCAHR"), and Dale Brown was appointed advocate. Mr. Brown served in that capacity for approximately one year. 5/12/05 Tr. at 35; 6/08/05 Tr. at 56-57, 252-54. The contract between OPA and WeCAHR states, inter alia, the following duties for the advocate: "Representation of William and Leo McCoy's interests at Interdisciplinary Team meetings, and where necessary, at other routine administrative meetings . . . When appropriate, pursuit of administrative and legal remedies, including DMR Programmatic Administrative Reviews, residency transfer hearings, and hearings to contest medication and programming practices." Defendants' Exh. 11, 12. In the fall of 2003, Mrs. McCoy asked Jean Bowen, the manager of WeCAHR, to replace Mr. Brown with Sr. Barbara Eirich, and WeCAHR did so. 6/14/05 Tr. at 126; 6/08/05 Tr. at 56, 162. Ms. Bowen testified that she had been satisfied with the performance of Mr. Brown. 6/08/05 Tr. at 260. Ms. Bowen did not notify OPA that Sr. Barbara was appointed to replace Mr. Brown as advocate for the McCoy men, nor did she discuss the decision with the Department of Mental

Retardation. 6/08/05 Tr. at 262, 266. Sr. Barbara has a Bachelor's Degree in Psychology, has been a Registered Nurse since 1951 and received a Master's Degree in Social Work in 1971. 6/08/05 Tr. at 160. Sr. Barbara had never served formally as an advocate prior to her appointment as such by WeCAHR. 6/08/05 Tr. at 205.

The head of OPA, James McGaughey, contacted Ms. Bowen when he learned of Sr. Barbara's appointment because he had concerns about "Southbury's perception of her as a previous expert witness" and their ability to see her as an independent advocate. 6/08/05 Tr. at 262. Sr. Barbara has worked as a paid consultant to the McCoy parents since the mid-1980s, and worked as a consultant for them without pay for most of the year preceding her appointment as advocate for Billy and Leo. 6/08/05 Tr. at 160-61, 206-07. She has testified on behalf of the McCoy parents over the years regarding this litigation, and gave written advice to the McCoys on how to respond to one of the motions at issue in the hearings, Defendants' 2002 Motion for Enforcement, Contempt and Clarification or Modification of the Consent Decree [Doc. No. 433].[20] 6/08/05 Tr. at 207-08; Defendants' Exh. 14. Sr. Barbara considers herself a close friend of Mrs. McCoy, eats dinner with her and stays with Mrs. McCoy when she is in town. She testified that when she became

[20]Sr. Barbara testified that this document was indeed written advice she provided to the McCoys. 6/08/05 Tr. at 207-08. However, Mrs. McCoy testified that she did not think that Sr. Barbara was advising her and that she "didn't take it that way." 6/14/05 Tr. at 129-30.

an advocate for Leo and Billy her interactions with the McCoy parents continued in the same way they always had. 6/08/05 Tr. at 207.

Members of the Interdisciplinary Team wrote a memorandum to the OPA in June of 2004 detailing various instances during which they felt Sr. Barbara's advocacy failed and requesting that she be removed from her position because her services as advocate were inadequate. The ID Team requested that a "truly independent advocate" be hired for Leo and Billy McCoy. 6/08/05 Tr. at 58-59; Defendants' Exh. 15. Mr. Harvey testified that Sr. Barbara has difficulty separating her role as a friend of Mrs. McCoy from her role as advocate. 6/08/05 Tr. at 59. The ID Team was greatly concerned with Sr. Barbara's refusal to attend the weekly Tuesday afternoon meetings with ID Team members from February 2004 until October 2004, especially when, upon her appointment as advocate, she stated to Mr. Harvey that communication was the key to trying to reduce the friction between the McCoy parents and the ID Team. 6/08/05 Tr. at 60-61; 5/13/05 Tr. at 38-39. Mrs. McCoy did not attend the weekly meetings during the same time period. 5/13/05 Tr. at 36-37. Joanne Waranowicz, the case manager for Leo and Bill, testified that the IDT meetings for Leo and Bill occur weekly to keep open the lines of communication, review Bill and Leo's needs, go over new assessments and recommendations, and follow through on implementation of the recommendations. Because of these

weekly meetings, the McCoy men do not have formal quarterly meetings. Other residents at STS only receive quarterly IDT meetings. 5/13/05 Tr. at 34-36.

Sr. Barbara stated in her affidavit and at the hearings that she did not attend the IDT meetings from February 2004 until October 2004 because she did not see any importance in being there to hear what was being discussed about the McCoy sons' care, she did not consider the weekly meetings to be formal IDT meetings, she did not think missing a few meetings would make much difference and she was waiting for clarification of the rights of the McCoy parents as guardians. 6/08/05 Tr. at 160, 216; Doc. No. 471-2 [Affidavit of Sr. Barbara Eirich]. She acknowledged that the weekly meetings with members of the ID Team, if not formal IDT meetings per her definition, were "other routine administrative meetings" as per the contract between OPA and WeCAHR. 6/08/05 Tr. at 215-16. She also stated that she believed Mrs. McCoy was being ignored at the weekly meetings and therefore it was hard to perform as the advocate when the guardian was being ignored. 6/08/05 Tr. at 160.

In August of 2004, Jean Bowen and Sr. Barbara met with James McGaughey after OPA representatives contacted Sr. Barbara to express concern regarding her lack of attendance at the weekly meetings with the members of the ID Team. Sr. Barbara agreed to start attending the meetings only after this meeting. 6/08/05 Tr.

at 217-18, 262-64.

Sr. Barbara has been present and did not act when Mrs. McCoy gave foods of the wrong consistency to Bill and when Mrs. McCoy gave Bill ice in his drink after being told Dr. McDonald ordered that he should not have ice. 6/08/05 Tr. at 61-62; 5/13/05 Tr. at 63. Ginger Singletary called the manager of WeCAHR, Ms. Bowen, to state her dismay that Sr. Barbara did not do anything to intervene when she saw Mrs. McCoy giving Bill ice against doctor's orders. 5/13/05 Tr. at 64-65. Sr. Barbara testified that she supports Mrs. McCoy's position with regard to giving ice to Billy in his drinks. 6/08/05 Tr. at 232.[21] Sr. Barbara also supported Mrs. McCoy's opposition to a full-day program for Leo. 6/08/05 Tr. at 58. She also has supported Mrs. McCoy's refusal to follow the protocol for using the gel pad while Leo is dining. 6/08/05 Tr. at 232. Additionally, Sr. Barbara has not intervened when she has seen Mrs. McCoy allow Bill to "have his hand," even when she observed that his hand was severely macerated and "raw" in the spring of 2004. 6/08/05 Tr. at 223, 231. Sr. Barbara testified that she did not believe that allowing Bill to have his hand in his mouth periodically is harmful, and that on at least one occasion she let

[21]In her Affidavit, Sr. Barbara stated that she fully agreed with the McCoy parents' decision not to approve the elimination of ice, because Bill had received fluids with ice for the 7-8 years the parents lived in Staff House Two and "did not have a single episode of aspiration pneumonia during this time," while, since the ice had been removed, he had numerous episodes of coughing and choking and 3-4 emergency room admissions for aspiration pneumonia during the year the ice was removed." Doc. No. 471-2 ¶ 7. Testimony from Dr. McDonald and Mrs. McCoy show this belief to be mistaken. Sr. Barbara did not state the basis for her belief.

Bill "have his hand for a little while" after eating. 6/08/05 Tr. at 229, 231-32. She agreed with Mrs. McCoy's position that the behavior modification program to reduce Bill's hand-in-mouth behavior was too aggressive. 6/07/05 Tr. at 121. Furthermore, she testified that the behavior modification program coupled with other programmatic changes without options might cause Bill to give up the will to live. 6/08/05 Tr. at 176-77. However, Sr. Barbara acknowledged during the hearings that, in the year since the plan had been implemented, Bill had not given up his will to live. 6/08/05 Tr. at 237.

Although Sr. Barbara disagreed with many of the programs implemented by Defendants, and voiced her objections over issues such as Defendants' decision not to staff the house with a nurse on the third shift, the hand-in-mouth behavior modification plan, Leo's ambulation with shoes and the decision to remove ice from Bill's drinks to individual staff and at some of the weekly meetings of the ID team members, no evidence was presented that she voiced her concerns through the PAR process. She testified that she has never recommended a course of action that differed from that supported by the McCoy parents, and that the only time she ever took a position contrary to Mrs. McCoy was in accepting the behavior modification plan regarding Bill's hand-in-mouth behavior, which she approved of as long as staff were sufficiently trained to understand that the program did not prohibit Bill from ever putting

his hand in his mouth. 6/08/05 Tr. at 179, 184-85, 210-13.

III. DISCUSSION

A. Defendants' Motions for Contempt

Defendants argue that this Court should find Mrs. McCoy in contempt of the 2002 Ruling with regard to: 1) Mrs. McCoy's unreasonable refusal to interview candidates for staff positions at Staff House Two or approve those candidates screened favorably by Defendants; and 2) the McCoy parents' and, after Mr. McCoy's death, Mrs. McCoy's continuing interference with Defendants' attempts to manage Staff House Two and implement programs and routines for Leo, Jr. and Bill and the unabated abuse and harassment of staff by the McCoys and Mrs. McCoy alone.

A district court has the inherent power to hold a party in civil contempt in order to enforce compliance with an order of the court. Powell v. Ward, 643 F.2d 924, 931 (2d Cir.) (per curiam), cert. denied, 454 U.S. 832 (1981). A finding of civil contempt is appropriate when "1) the order the contemnor failed to comply with is clear and unambiguous; 2) the proof of noncompliance is clear and convincing; and 3) the contemnor has not diligently attempted to comply in a reasonable manner." Paramedics Electromedicina Comercial, LTDA v. GE Medical Systems Information Technologies, Inc., 369 F.3d 645, 655 (2d Cir. 2004) (citing King v. Allied Vision, Ltd., 65 F.3d 1051, 1058 (2d Cir. 1995)). The actions of the contemnor need not be willful for the Court to find contempt.

Id. (citing Donovan v. Sovereign Sec. Ltd., 726 F.2d 55, 59 (2d Cir. 1984)).

1. Clear and Unambiguous Order[22]

This Court's 2002 Ruling ordered the Defendants to take responsibility for administering all aspects of the home, to repair the downstairs bathroom, to hire such additional employees as needed to reach the minimum core-staff level of fifteen, to appoint an advocate for both Leo and Billy, to design a day program for Leo and to provide a visible and accountable manager to oversee the home, adequate supervision on each shift, and competency-based training for all employees. The McCoy parents were ordered not to interfere with the Defendants and to vacate Staff House Two, and were cautioned that parental approval of staff selection shall not be unreasonably withheld and that their status as co-members of the Interdisciplinary Team does not permit them to exercise absolute control over training and services. This Court further ordered that "the McCoys must relinquish control and allow people whom they

[22]Plaintiffs' former counsel (Attorney Philpot) argued on their behalf that to determine whether contempt of the 2002 Ruling exists, the Court must necessarily look at the Ruling in conjunction with the Consent Decree. This Court agrees that referencing the Decree is important to a fuller understanding of the issues, but notes that the 2002 Ruling is clear and unambiguous and contempt is judged based upon the Court's Ruling and the Plaintiffs' attempts to comply with the Ruling.

Plaintiffs' other former counsel (Attorney Pattis, the attorney of record during these hearings) argued in Plaintiffs' post-hearing brief that the "lack of clarity and inherent ambiguity" in the Consent Decree with regard to who has decision-making authority about the care offered the McCoy men and how disputes are to be resolved militate against a finding of contempt. As the Court noted above, the issue before this Court is whether the McCoy parents, and now Mrs. McCoy alone, are in contempt of this Court's 2002 Ruling, not the Consent Decree.

may not know very well to care for their sons." 2002 Ruling at 34. "A clear and unambiguous order is one that leaves no uncertainty in the minds of those to whom it is addressed, . . . who must be able to ascertain from the four corners of the order precisely what acts are forbidden." King v. Allied Vision, Ltd., 65 F.3d 1051, 1058 (2d Cir. 1995) (citations and internal quotation marks omitted). The Court finds that there was no ambiguity in the orders set forth in the July 15, 2002 Ruling.

2. Clear and Convincing Proof

Defendants argue that they have put forth extensive evidence of Mrs. McCoy's contumacious behavior with regard to this Court's 2002 Ruling. Plaintiffs argue that there is no clear and convincing proof that they have violated the 2002 Ruling.[23] This Court finds that clear and convincing evidence of Mrs. McCoy's contumacious behavior was presented during the hearings.

3. Not Diligent in Compliance

Defendants argue that the McCoy parents, and Mrs. McCoy alone have not diligently attempted in a reasonable manner to comply with

[23]In Plaintiffs' Post-hearing Brief [Doc. No. 510], filed by Plaintiffs' former attorney Mr. Pattis, Plaintiffs argue that no evidence was presented that Plaintiffs are in contempt of the Consent Decree, and that Mrs. McCoy cannot have been said to have failed to use reasonable diligence to comply with the terms of the Decree. In Plaintiffs' opposition to Defendants' 2002 Motion for Contempt and Plaintiffs' opposition to Defendants' 2003 Motion for Contempt, filed by Plaintiffs' other former attorney Mr. Philpot, Plaintiffs argue against a finding that the McCoys are in contempt of the 2002 Ruling. This Court assumes that the arguments in Plaintiffs' most recent briefing, arguing against a finding of contempt of the Consent Decree, were typographical errors or perhaps confusion due to the multiplicity of attorneys who have worked for the McCoys and that Plaintiffs meant to reference the 2002 Ruling.

this Court's 2002 Ruling. Mrs. McCoy argues that her actions are reasonable in light of the facts.

a. Abuse and Intimidation/Staffing

Defendants argue that Mrs. McCoy's continued abuse and intimidation of staff has led to retention problems and low morale, and that she has unreasonably withheld approval of staff selected for hire by Defendants. Mrs. McCoy argues that Plaintiffs are not the cause of the low morale in Staff House Two. Furthermore, she argues in her post-hearing brief that she should not be found in contempt because her conduct causes no harm to the McCoy sons or the Defendants since "there is no evidence to suggest that the house is understaffed, save for the defendants' decision to deprive the men of nursing coverage during the third shift". See Doc. No. 510 at 13.

Extensive evidence presented at the hearings belies Mrs. McCoy's assertions that she is not the cause of the low morale in Staff House Two. Mrs. McCoy is remarkably obtuse when it comes to understanding the effects of her and her husband's interference and treatment of staff at Staff House Two, even after this Court's 2002 Ruling and numerous rulings from Magistrate Margolis detailed specific instances of abusive and unacceptable conduct.[24] For

[24]Magistrate Margolis detailed the abusive manner in which the McCoys had treated staff as far back as 1993. See Certification of Contempt [Doc. No. 187] at 35-42, 92-96. In 1996, Magistrate Margolis warned the McCoys that the staff were not their personal slaves. See Ruling on Remedies Following Certification of Contempt [Doc. No. 195] at 2-5.

example, testimony established that the contract nurses hired for Staff House Two often quit before their 13-week assignment ended, reporting to their supervisor that they felt threatened and pressured to do things by the McCoy parents that were not in keeping with nursing protocol and felt that their license would be in jeopardy if they followed the McCoys' requests. Mrs. McCoy's counterpoint to this is to argue through counsel that, if nurses or other staff quit before their contract ended, it only reflects poorly on that person's professionalism and the judgment of the administration at STS who had chosen that person for the job. See Doc. No. 453 at 6. She offers no reasonable explanation for her poor and disrespectful treatment of staff or her interference with their professional duties in violation of this Court's order. Although testimony established that many of the most inappropriate incidents of coarse conduct and abuse were carried out by the late Mr. McCoy, numerous staff members and administrators attested to the intimidating and abusive behavior meted out by Mrs. McCoy, including screaming at staff, redirecting staff after professionals had given them orders, commenting about malpractice and wrongful death suits while staff fed one of her sons, referring to African American staff as "you people," and raising her fist and stating that she was ready for a fight because she disagreed with a procedure being carried out by a staff person. The Court heard testimony from the staff that they felt abused every day and that

staff have quit because they cannot take the stress. From October 2002 until the time of the hearings in the spring of 2005, the McCoys filed numerous allegations of abuse and neglect against staff at Staff House Two. One third of all the allegations concerning Billy or Leo were classified as "Do Not Take" by OPA, and none of the allegations made by the McCoys was substantiated. Reports concerning only Billy or Leo made up 15% of the total reports at STS, which had a population of approximately 600 residents. Staff perceive these reports as harassing, and in some cases OPA noted that the report involved programmatic disputes which should be handled through the PAR process. The Court finds Mrs. McCoy has continued to harass and intimidate staff, which compounds Defendants' difficulties in hiring and retaining a core staff for Staff House Two.

Furthermore, the evidence bears out Defendants' assertions that Mrs. McCoy has unreasonably withheld parental approval of staff selected by Defendants for hire. Defendants presented evidence that, since this Court's 2002 Ruling, they had interviewed and approved a total of 26 staff to work in Staff House Two; Mrs. McCoy approved only two. Mrs. McCoy argues that she was ill for a while in 2002 and could not participate in interviews. She further argues that she had not been consulted about hiring staff for 3 years, although she acknowledges in her hearing testimony that, along with Mr. Harvey, she did interview the two people from STS

who had applied in the spring of 2003. Her only explanation for not giving approval for the hiring of those two individuals was that she "didn't think they were appropriate." 6/14/05 Tr. at 68. Mr. Harvey attested then and attested at the hearings that those two individuals, who are still "temporarily" working at Staff House Two, were then and are now doing a good job.

Mrs. McCoy argues that there is no permanent staff in the house, "resulting in poorly trained and unskilled personnel caring for her sons' special needs." See Plaintiffs' Post-hearing Brief at 10 [Doc. No. 510]. This claim is not borne out by the evidence. In fact, the evidence shows that Mrs. McCoy accuses staff of "shirking their responsibilities" when they participate in training regimens, unreasonably refuses to approve the hiring of permanent staff approved by STS and, when staff are indeed trained, she orders them to disregard protocols and procedures and take instruction from her. In sum, this Court finds Mrs. McCoy has not demonstrated a diligent attempt to comply with this Court's order that parental approval of staff selection not be unreasonably withheld. Defendants' Motions for Contempt are GRANTED with respect to Mrs. McCoy's unreasonable withholding of her approval of staff selected for hire by Defendants.

b. Interference with Program Implementation and Administration

The 2002 Ruling was clear: the McCoys were ordered to relinquish control and not to interfere with the Defendants. The

gist of Mrs. McCoy's argument is that she is a parent and guardian attempting to exercise her parental rights to determine what methods are the best for caring for her sons, and her actions in consulting with Dr. Rubin and other providers and in opposing some of the actions of the ID Team were reasonable given 1) her many decades of experience in caring for her sons; 2) that medical opinions can differ with regard to treatment and it is therefore not unreasonable for her to follow the advice of a consultant which may differ from the recommendations of the STS staff; and 3) that under the Consent Decree she has the right to make final determinations regarding all aspects of her sons' care. She argues that "the intent of the Consent Decree was to include and fully integrate the McCoys into the daily regime of the McCoy men. Hence, when issues relating to the care, safety and overall psychological and/or physical well-being of the McCoy men are concerned, notwithstanding the Court's directive that they 'not interfere,' the McCoys have every right under the Consent Decree to let their sons' voices be heard so that their interests, if not fully protected, are at least clearly articulated." See Plaintiffs' Opposition to Defendants' Motion for Contempt at 2 [Doc. No. 453].

This Court stated in its July 2002 Ruling that "the Consent Decree calls for the McCoys' enhanced involvement in the lives of their sons; however it does not allow them to wield absolute

control over the lives of their sons." 2002 Ruling at 31. This Court directed the McCoys that they must not interfere and must let the State and its employees to do their jobs. Notwithstanding Mrs. McCoy's belief that she should have veto power regarding every situation (which she does not, see below), she could have ascertained from the four corners of the 2002 Ruling that her actions constituted interference, and that such interference was forbidden. The Consent Decree does not give her the right to defy this Court's orders.

This Court finds that Mrs. McCoy has been unwilling to loosen her hold and that her interference pervades every aspect of the care Defendants attempt to provide. If Mrs. McCoy wishes to "clearly articulate" her sons' interests, the appropriate avenue is the PAR process, the Interdisciplinary Team meetings or other administrative remedies, not defiance of this Court's orders. She has never used the PAR process, preferring instead to call the OPA, petition the Probate Court or simply state to staff when refusing to follow a protocol or procedure that "she was the mother . . . and would do what she felt was better, not what was in the procedure." This Court finds this unacceptable.

Mrs. McCoy argues that her main concern regarding the routines and procedures implemented for Billy and Leo in the wake of this Court's 2002 Ruling is that "the McCoy men's waking hours are now being spent by and large in bed," and that the men are

unable to distinguish day from night because they no longer have their personal hygiene performed on mats in the living room, as was the procedure when the parents lived in Staff House Two. See Plaintiffs' Opposition to Defendants' Motion for Contempt at 8 (¶ 17) [Doc. No. 453]. This does not explain her refusal to support a full-day program for Leo, Jr., her refusal to support the behavior program to decrease the frequency with which Billy mouths his hand, her objection to the use of shoes and sneakers when Leo is ambulating, her refusal to follow the protocol for using a gel pad while Leo dines or the protocol for eliminating ice in Billy's drinks, or her refusal to support the use of a new wheelchair for Billy. Nor does it explain why she pokes her fingers or a tongue depressor into the cups holding her sons' medications and quizzes the nurses as to the appropriateness of the dosage, or why she gives orders to nurses or therapists that are not in keeping with medical protocol, or why she orders to staff at Staff House Two to disregard universal precautions when helping her sons with their hygiene. Furthermore, it is evident that due to the extensive scheduling and programming implemented by the staff and administration, the McCoy men are not largely spending their waking hours in bed.

Furthermore, her alleged reliance on outside doctors, particularly Dr. Rubin, also fails to explain her resistance to just about every program and procedure developed by defendants.

She argues that the state needs to be flexible when extenuating circumstances make it impractical or insensitive to adhere to the schedule, but testimony established that, since July 2002, the extenuating circumstances have been largely caused by the McCoy parents. Mrs. McCoy believes that it is reasonable for her to rely upon the advice of Dr. Rubin in making decisions or going against decisions made by Defendants, and that it is reasonable to assume she knows best how to care for her sons, having done so for more than 50 years.[25] This is evident when the Court reviews one of the greatest sources of friction between the McCoys and Defendants – meal-times and the feeding regimens developed by Defendants for the McCoy men. Mrs. McCoy argues that the quality of the medical care provided, particularly to Billy, has not been very good since the parents were ordered out of the house, and she notes Billy's hospitalizations for pneumonia after October 2002. She also argued that she feels staff are not properly trained to feed Billy. The evidence shows her claims to be patently untrue. When asked on cross-examination if she had ever told anyone Billy had not been hospitalized with pneumonia while she lived in Staff House Two, she responded "not intentionally" and acknowledged that Billy had suffered a couple of episodes of pneumonia while she and her

[25]Only Dr. Rubin testified on Mrs. McCoy's behalf; none of the other doctors she references in her post-hearing brief on whom she allegedly relied in forming her opinions or to whom she vaguely referred during the hearings were present to testify and be cross-examined, so this Court can only consider the reasonableness of her actions in light of Dr. Rubin's testimony.

husband lived at Staff House Two. 6/14/05 Tr. at 140-41. Dr. McDonald testified that during the period from January 1996 until September 2002, during which time the McCoy parents resided at Staff House Two, Billy had five hospital admissions for pneumonia and, additionally, during this same period was treated for pneumonia 10 times at STS without being sent to the hospital. Thus, in the 6 ½ years the McCoy parents were in the residence, Billy was treated for aspiration pneumonia at least 15 times. Therefore, it is unreasonable for Mrs. McCoy to interfere with feeding routines, eating regimens and training for the feeding of Billy and then argue that her efforts (i.e. interference) are meant to stem the episodes of aspiration pneumonia endured by her son when such episodes occurred, on average, twice per year when she and her husband were in control of the home. Furthermore, Defendants put forth much evidence on the careful manner in which they have approached the training and in-servicing of staff regarding the feeding of both men.

Additionally, because civil contempt is a sanction to enforce compliance with an order of the Court, Mrs. McCoy's alleged reliance on outside medical consultants is irrelevant, as "it matters not with what intent [Mrs. McCoy] did the prohibited act." McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949). "An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently." Id.

Additionally, her refusal to comply because she believed her rights as guardian trumped this Court's order not to interfere cannot be justified because "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." Paramedics Electro., 369 F.3d at 656.[26]

Mrs. McCoy argues that disagreements with staff and the administration at STS are largely Defendants' "passive aggressive struggles for control" as she tries to prevent her sons from being returned to some form of institutional care.[27] There really is no place for a struggle for control: the McCoy parents voluntarily placed their sons in the care of the Department of Mental Retardation many years ago. Under the Connecticut General Statutes, they ceded day-to-day decision-making regarding their sons' routine care to the State, which has the right and legal obligation to provide programmatic and other services to the individuals "placed or treated under the direction of the Commissioner of Mental Retardation." See CONN. GEN. STAT. § 17a-

[26]And, this Court's 2002 Ruling was affirmed. See Skarnulis v. Belmont, 74 Fed. Appx. 92 (2d Cir. 2003).

[27]The Court notes the subtext underlying all of Mrs. McCoys arguments for why she should not be found to have failed to comply with the Court's order in a diligent manner: her allusions to the sexual abuse Leo allegedly suffered at STS. As noted above in footnote 12, investigations conducted after suspicious bruising of Leo's private parts did not find criminal activity or sexual abuse, although the bruising was deemed suspicious. Even if Leo, Jr. was abused, this alone is not enough to explain why Mrs. McCoy disapproves of virtually every program or procedure instituted for the care of her sons.

238(b).[28] CONN. GEN. STAT. § 45a-677(i) provides that a plenary or limited guardian of a person with mental retardation "shall be the *primary decision maker* with respect to programs needed by such person and policies and practices affecting the well-being of such person within the authority granted by the court pursuant to this section, *provided any such decision does not conflict with the requirements of section 17a*-238." CONN. GEN. STAT. § 45a-677(i) (emphasis added). Section 17a-238(f) provides in relevant part as follows:

> The Commissioner of Mental Retardation shall require the attending physician of any person placed or treated under the direction of the commissioner to obtain informed written consent from the following persons prior to authorizing any surgical procedure or any medical treatment, *excluding routine medical treatment which is necessary to maintain the general health of a resident or to prevent the spread of any communicable disease*:. . . (3) the legal guardian or conservator of a resident of any age who is adjudicated unable to make informed decisions about matters relating to such resident's medical care. The person whose consent is required shall be informed of the nature and consequences of the particular treatment or surgical procedure, the reasonable risks, benefits and purpose of such treatment or surgical procedure and any alternative treatment or surgical procedures which are available.

CONN. GEN. STAT. § 17a-238(f) (emphasis added).

Dr. McDonald testified that he has never performed a procedure on either McCoy son which required informed consent. As for the

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[28]"Each person placed or treated under the direction of the Commissioner of Mental Retardation in any public or private facility shall be protected from harm and receive humane and dignified treatment which is adequate for such person's needs and for the development of such person's full potential at all times, with full respect for such person's personal dignity and right to privacy consistent wit such person's treatment plan as determined by the commissioner. CONN. GEN. STAT. § 17a-238(b).

programming and protocols developed by Defendants under orders from this Court to take responsibility for administering all aspects of the home, parents or guardians need not be consulted for routine matters or programming (including, but not limited to, the daily schedules, meal-time routines including the gel pad protocol for Leo, the order to eliminate ice from Billy's drinks and the temperature and consistency of the food served, the behavioral support plan to decrease the frequency of Billy's hand-in-mouth behavior, recreational trips, the use of shoes when Leo is ambulating, food being prepared at the STS main facility and then being brought over to Staff House Two.) CONN. GEN. STAT. § 17a-238(f). The Consent Decree does not override the statutes; it simply provides a framework within which, as co-members of the Interdisciplinary Team, the McCoys can be *involved* in decision-making regarding the care Defendants provide for their sons. If Mrs. McCoy disagrees with a particular program or protocol approved by the ID Team, she can proceed through the PAR process and the State can still continue to provide the services as it is legally charged to do, Leo and Billy having been placed in the care of the Department of Mental Retardation, under the custody and control of the director of STS.

Although Staff House Two cannot become ICF/MR certified because it houses less than four persons, Defendants have sought to make it compliant with the ICF/MR regulations as contemplated by

the parties in the Consent Decree. The regulations for Intermediate Care Facilities for Persons with Mental Retardation governing the conditions of participation by State facilities for the mentally retarded state the following:

> (a) Standard: Protection of clients' rights. The facility must ensure the rights of all clients. Therefore, the facility must--
> (2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment.

42 C.F.R. § 483.420(a)(2).

The Interpretive Guidelines issued by the Centers for Medicare and Medicaid Services for this subsection note that

> The term "attendant risks of treatment" refers to all treatment, including medical treatment. An individual who refuses a particular treatment (e.g., a behavior control, seizure control medication or a particular intervention strategy) must be offered information about acceptable alternatives to the treatment being refused, if acceptable alternatives are available. The *individual's preference about alternatives should be elicited and considered* in deciding on the course of treatment. *If the individual also refuses the alternative treatment, or if no alternative exists to the treatment refused, the facility must consider the effect this refusal may have on other individuals, the individual himself or herself and the facility, and if it can continue to treat the individual consistent with these regulations*. Thus, every effort must be made to assist the individual to understand and cooperate in the legitimate exercise of the IPP.

Centers for Medicare and Medicaid Services, State Operations Manual, Appendix J - Guidance to Surveyors: Intermediate Care Facilities for Persons With Mental Retardation (2004), http://www.cms.hhs.gov/Manuals/IOM/list.asp (emphasis added).

Even with regard to an invasive or non-routine matter, these regulations do not give absolute decision-making power to a

guardian. Furthermore, with regard to parent participation, the ICF/MR regulations state:

> The facility must--
> (1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate.

42 C.F.R. § 483.420(c)(1)

The Interpretive Guidelines state as follows:

> "Unobtainable," as used in this standard, means that the facility has made a bonafide effort to seek parental or guardian participation in the process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate or may prove unwilling or unable to participate).
> "Inappropriate" as used in this standard means that the parent or legal guardian's behavior is so disruptive or uncooperative that others cannot effectively participate; the individual does not wish his or her parent to participate, and the individual is competent to make this decision; or there is strong evidence that the parent or guardian is not acting on the individual's behalf or in the individual's best interest.

Centers for Medicare and Medicaid Services, State Operations Manual, Appendix J - Guidance to Surveyors: Intermediate Care Facilities for Persons With Mental Retardation (2004), http://www.cms.hhs.gov/Manuals/IOM/list.asp (emphasis added).

Defendants argue that Mrs. McCoy meets the definition of "inappropriate" under these guidelines. Clearly, Mrs. McCoy's behavior is uncooperative and she has been unwilling to participate in the process at times.[29] However, the ID Team's consideration of Mrs. McCoy's preferences with regard to routine programming and care of her sons is in keeping with the letter and spirit of the regulations covering the care of individuals with mental

[29]This Court declines to opine as to whether she acts in her sons' best interests, and leaves that determination to the Probate Court.

retardation.

In sum, Mrs. McCoy had not demonstrated a diligent attempt to comply in a reasonable manner with the Court's order that the McCoy parents not interfere with Defendants' attempts to administer all aspects of the home. Defendants' Motions for Contempt are GRANTED with respect to Mrs. McCoy's interference with Defendants attempts to administer all aspects of Staff House Two.

B. Plaintiffs' Motion for Contempt

Plaintiffs argue that this Court should find Defendants in contempt of the Consent Decree 1) because nurse staffing appears inadequate and Defendants have decided to eliminate nurses on the third shift, and 2) because Defendants' use of the second floor of Staff House Two violates the Consent Decree.

Although consent decrees are judicial orders, because they "embody a compromise between parties who have waived their rights to litigation, 'they should be construed basically as contracts.'" United States v. Broadcast Music, Inc., 275 F.3d 168, 175 (2d Cir. 2001) (quoting United States v. ITT Cont'l Baking Co., 420 U.S. 223, 236 (1975)). It is well established that "the language of a consent decree must dictate what a party is required to do and what it must refrain from doing." Perez v. Danbury Hospital, 347 F.3d 419, 424 (2d Cir. 2003). "The scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." United

States v. Armour & Co., 402 U.S. 673, 682 (1971). Additionally, "a court may not replace the terms of a consent decree with its own, no matter how much of an improvement it would make in effectuating the decree's goals." Perez, 347 F.3d at 424 (citation and internal quotation marks omitted).

As noted in Section III. A. above, a finding of civil contempt is appropriate when 1) the order that allegedly was not complied with is clear and unambiguous; 2) the proof of noncompliance is clear and convincing; and 3) the party has not diligently attempted in a reasonable manner to comply. 369 F.3d at 655.

Nursing Services

Mrs. McCoy argues in her Motion for Contempt that Defendants "do not appear to be pursuing, in good faith, the hiring of competent, qualified nurses." The evidence presented to this Court established that Defendants have spent an inordinate amount of time advertising and recruiting for nurses for the core staff at Staff House Two, and have had to resort to the use of contract nurses to keep the home adequately staffed. Even using contract nurses has been fraught with difficulty for Defendants, as many contract nurses quit before their 13-week contract ended, citing threats from Mrs. McCoy and concern that their nursing license would be in jeopardy if they acceded to her requests. This Court finds that Defendants have diligently attempted to comply in a reasonable manner with the Consent Decree's mandate regarding the hiring of

nurses for the core staff. Additionally, Mrs. McCoy argues that Defendants' refusal to provide nurses for the third shift is a "convenient reading of the [Consent Decree]" which is "but another example of the war of attrition waged by the staff to undo the decree." See Plaintiffs' Post-hearing Brief at 16 [Doc. No. 510]. Defendants' decision is a diligent attempt to comply in a reasonable manner with the requirements of the Consent Decree in light of the fact that Magistrate Margolis ruled in *1995* that, under the Consent Decree, nurses were required to be available, not necessarily present. See Ruling on Joint Statement of Disputed Provisions at 7 [Doc. No. 162].[30] The evidence showed that nurses were available during the third shift on the STS main campus. Thus, Plaintiffs' motion for contempt is DENIED with regard to nursing services.

Defendants' Use of the Second Floor of Staff House Two

Mrs. McCoy argues in her Motion for Contempt that Defendants have recklessly disregarded the Consent Decree by using the second floor of Staff House Two. Mrs. McCoy's argument has shifted somewhat from her assertions in Plaintiffs' 2002 Motion for Contempt that the "intent of the prohibition against the use of the second floor was to avoid unnecessary maligering within the house"

[30]"[T]he Consent Decree provides that '[n]ursing services . . . be available,' not that nurses be present at all times. To the greatest extent possible, defendants shall, however, attempt to have nurses in the house during the daytime shifts." Ruling on Joint Statement of Disputed Provisions at 7 [Doc. No. 162].

and in which she asserted that the Consent Decree's provisions confer permanent entitlements to the Plaintiffs, including that the second floor would be closed off to staff. Her evidence for this is her affidavit to Plaintiffs' Motion in Opposition to Defendants' 2002 Motion for Contempt [Doc. No. 438, Exhibit A, ¶ 11] in which she avers, "[i]n agreeing to the Consent Decree in March of 1992, the parties specifically discussed and ultimately the defendants acquiesced, to our reasonable request that the second floor be sealed off to all staff working within Staff House No. 2." However, in her post-hearing brief Mrs. McCoy asserts that Defendants' use of the second floor "frustrates the purpose of the Consent Decree" because, she intimates, by staff taking breaks on the second floor and using the second floor for an office area, the one to one coverage mandated by the Decree suffers and the likelihood that an untoward medical event will occur increases. It is not clear whether the McCoys object only to the use of the second floor for staff breaks, or also to the fact that staff indeed take breaks. Mrs. McCoy asked rhetorically through counsel "[w]ill staff be said to [be] attending the men's needs when they are upstairs taking a break or doing clerical work?" State labor laws mandate staff breaks, and Ms. DaSilva testified at the hearings that staff took breaks when the McCoys lived in Staff House Two but they had to sit outside or in the basement.

Defendants argue that no agreement was ever reached with the McCoys concerning the prohibition of staff on the second floor of Staff House Two. They argue that the reference to closing off the second floor was to prevent the McCoy sons from trying to navigate the stairs to the second floor.

The parol evidence rule generally prohibits admission of "extrinsic evidence of prior or contemporaneous oral agreements to explain the meaning of a contract that parties have reduced to unambiguous integrated writing. Such extrinsic evidence may not be used to modify, explain, vary or supplement the written integrated contract." Gualandi v. Adams, 385 F.3d 236, 240 (2d Cir. 2004). And, "deference is to be paid to the plain meaning of the language of a decree and the normal usage of the terms selected." Broadcast Music, 275 F.3d at 175. Thus, this Court examines the provisions of the writing itself with regard to the second floor of Staff House Two.

Paragraph Two of the Consent Decree provides that "[t]he renovations and repairs listed on exhibit A shall be made." Exhibit A consists of a diagram of the layout of Staff House Two labeled "SH-2 Renovation" with various handwritten notations regarding the renovations, and a typed list entitled "Requirements for SH-2 Renovation" with various proposed improvements listed and hand-written notes modifying items on the typed list. The list is clearly not one of "permanent entitlements" as characterized by

Mrs. McCoy, and includes items such as "Laundry room requested" and "Bedrooms: Need (2) bedrooms, would like to see plan for building of same. Requesting Patio Door installed for exit." Additionally, it states "Access to second floor closed off." It does not elaborate.

This Court finds that the Consent Decree does not forbid the Defendants' use of the second floor to aid in the administration of the home. A reasonable interpretation of the Consent Decree's terms, discerned from within its four corners, is that the notation "Access to second floor closed off" meant that during the renovation process something had to be done so as to effectively circumscribe the movements of the McCoy sons, who cannot safely negotiate stairs. There are no references in Exhibit A or indeed anywhere in the Consent Decree to areas of the house which would be off limits to STS staff. The McCoy parents themselves lived on the second floor during their years at Staff House Two, something they could not have done had access indeed been closed off for anyone other than Billy or Leo. Thus, Defendants are not in violation of the terms of the Consent Decree with regard to their use of the second floor of Staff House Two to support the administration of the home, and Plaintiffs' Motion for Contempt is DENIED as to this ground.

C. Modification or Clarification of the Consent Decree Due to Changed Circumstances/Extraordinary Circumstances

In their post-hearing brief, Defendants argue that two of

their requests for relief would require modification of the Consent Decree: precluding Mrs. McCoy from visiting Staff House Two during meal-times (currently 7:30 a.m. - 8:30 a.m., 12:00 p.m - 1:30 p.m, and 5:00 p.m. - 6:30 p.m.) conflicts with Paragraph Eighteen of the Decree, which states "[t]he parents shall have the right to visit any residence developed for the plaintiffs under this Consent Decree at any time, unannounced;" and removing Mrs. McCoy from the process of hiring staff conflicts with Paragraph Three, which states "[a]dequate arrangements for ensuring a competent core group shall be developed, including parental approval of staff selected for the core group." Defendants argue that, under Federal Rule of Civil Procedure 60(b)(5), "changed circumstances" would warrant modification of the Consent Decree, or alternatively that the "extraordinary circumstances" in this case justify modification of the Decree under Rule 60(b)(6).

Under Rule 60(b), "upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) . . . it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. " FED. R. CIV. P. 60(b). In Rufo v. Inmates of Suffolk County Jail, the Supreme Court declared that under Rule 60(b)(5), relief from judgment is appropriate "when 'it is no longer equitable that the judgment should have

prospective application,' not when it is no longer convenient to live with the terms of a consent decree." 502 U.S. 367, 383 (1992). "[A] party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree." Id. Modification of a consent decree is appropriate 1) "when changed factual conditions make compliance with the decree substantially more onerous;" 2) "when a decree proves to be unworkable because of unforseen obstacles;" or 3) "when enforcement of the decree without modification would be detrimental to the public interest." Id. at 384. Additionally, emphasizing the need for a flexible standard because consent decrees remain in effect for extended periods of time, the Court noted that "[l]itigants are not required to anticipate every exigency that could conceivably arise during the life of a consent decree." Id. at 380, 385. Once a court has determined that the moving party has met its burden, the court should consider whether the proposed modification is suitably tailored to the changed circumstance. Id. at 383. A proposed modification 1) "must not create or perpetuate a constitutional violation;" and 2) "should not strive to rewrite a consent decree so that it conforms to the constitutional floor." Id. at 391. Finally, the district court should "defer to local government administrators . . . to resolve the intricacies of implementing a decree modification." Id. at 392.

Defendants argue that Mrs. McCoy's unyielding interference and intimidation were not envisioned when the Decree was signed, and continue to impede the full effectiveness of the Consent Decree. Thus, they argue, relief under Rule 60(b)(5) is appropriate. Alternatively, if relief is not warranted under Rule 60(b)(5), Defendants argue that the Court should grant modification of the Consent Decree under FED. R. CIV. P. 60(b)(6) due to the "extraordinary circumstances" in this case. Rule 60(b)(6) "grants federal courts broad authority to relieve a party from a final judgment upon such terms as are just, provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5)." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863-64 (1988) (internal quotation marks omitted). Such relief should ordinarily be applied only in "extraordinary circumstances." Id. at 864 (quoting Ackermann v. United States, 340 U.S. 193, 199 (1950)). This Court agrees that Mrs. McCoy's interference and attempts at wielding absolute control over the lives of her sons is extraordinary. However, because this Court believes the Consent Decree as it stands has proven to be unworkable due to unforseen obstacles, relief is appropriate under Rule 60(b)(5) and therefore this Court cannot and need not explore relief under Rule 60(b)(6).

This Court finds modification of the Consent Decree is appropriate under Rule 60(b)(5) because Defendants have met their

burden in establishing a "significant change in circumstances." Defendants complied with this Court's 2002 Ruling to live up to the terms of the Consent Decree and take control of Staff House Two. They have struggled to maintain control even as Mrs. McCoy has flouted this Court's order not to interfere with Defendants. Furthermore, this Court finds that Defendants' proposed modifications are suitably "tailored to resolve the problems created by the change in circumstances." 502 U.S. at 391. However, "the standard [] set forth [only] applies when a party seeks modification of a term of a consent decree that arguably relates to the vindication of a constitutional right. Such a showing is not necessary to implement minor changes in extraneous details that may have been included in a decree . . . but are unrelated to remedying the underlying constitutional violation. Ordinarily, the parties should consent to modifying a decree to allow such changes. If a party refuses to consent and the moving party has a reasonable basis for its request, the court should modify the decree." Id. at 383 n.7. Although relief is appropriate under FED. R. CIV. P. 60(b)(5), this Court finds that Defendants' proposed modifications to the Consent Decree involve details that are unrelated to remedying the underlying constitutional violation. Modification of the Consent Decree to preclude Mrs. McCoy from visiting Staff House Two during her sons' meal-times and removing her from the staff selection process does

not implicate constitutional rights, and this Court will order such modifications. Furthermore, the Court finds, sua sponte, other modifications are necessary, also unrelated to remedying the underlying constitutional violation, to effectuate the intent of the Decree and make it workable. See Section IV. below.

D. Motion for Authorization to Appoint a New Advocate

Defendants put forth sufficient evidence for this Court to conclude that it is in the best interests of Leo and Bill McCoy that an advocate be appointed other than Sr. Barbara Eirich. Sr. Barbara stated in her affidavit that her failure to attend the ID Team meetings from February 2004 until October 2004 "did not sit well," with Defendants, which of course it would not because she was under contract to attend IDT meetings and "other routine administrative meetings." As advocate she would have known that the ID Team met weekly to discuss Leo and Billy's programming, rather than quarterly as it would for other residents at STS. To state, as she did at the hearings, that she did not consider the weekly meetings to be IDT meetings and that she did not see any importance in being there to hear what was being discussed is extraordinary considering that her contract required her to attend such meetings as the advocate for the McCoy sons, irrespective of what legal avenues were being explored by Mrs. McCoy with regard to her guardianship rights.

As Mrs. McCoy alleged in her post-hearing brief, when she met with staff to discuss concerns about the treatment of her sons, "she was largely ignored, as was her advocate" (Sr. Barbara). Sr. Barbara has provided advice to the McCoys on how to respond to one of the motions for contempt at issue in this ruling, she has testified on behalf of the McCoy parents over the years regarding this litigation, and she worked as an unpaid consultant to the McCoys for most of the year preceding her appointment as advocate to the McCoy sons.

Plaintiffs argue that Sr. Barbara is not Mrs. McCoy's "alter ego" and has in fact disagreed with her. The only evidence of this is her testimony that she supports the behavior modification plan for Bill's hand-in-mouth behavior as long as staff are trained to realize the plan does not mean he cannot ever put his hand in his mouth. However, in practice, any time Mrs. McCoy wanted Billy to "have his hand" Sr. Barbara thought it was fine. There was no evidence that Sr. Barbara was interested in having Billy actually modify his behavior, and she told staff he might lose the will to live if he was not allowed his hand whenever he wanted it. In her affidavit, Sr. Barbara chides the care-givers at Staff House Two by noting, inter alia, the "closed-mindedness" of the ID Team, "most of whom received their education more than 20 years ago." Sr. Barbara has been a Registered Nurse since 1951 and received her Master's Degree in 1971. She has not intervened when Mrs. McCoy

fails to follow the gel pad protocol for Leo, or when Mrs. McCoy gives Billy ice in his drinks against Dr. McDonald's orders. Her advocacy seems to center on supporting Mrs. McCoy's misguided belief that she is the primary decision-maker with regard to the "care, safety and overall psychological and/or physical well-being of the McCoy men." As this Court noted above, the State is responsible for the routine treatment and programming concerning the McCoy men, and an advocate for the men must be charged with protecting the rights of the men within this framework, independently of both the McCoy parents and the State, to assure that the McCoy men receive "services including assistance and guidance from staff who are trained to administer services adequately, skillfully, safely and humanely" and that "the plaintiffs [are] treated with dignity and respect at all times." See Consent Decree ¶ 5, 22. Sr. Barbara is not that advocate. Accordingly, although Plaintiffs' Motion for Reconsideration was granted, see Doc. No. 470, the relief requested is DENIED, and Defendants' Motion for Authorization to Appoint a New Advocate [Doc. No. 509] is GRANTED.

IV. REMEDIES

This Judge's initial inclination after reviewing the evidence was to declare the Consent Decree unworkable and void. However, Defendants have lived up to their end of the bargain following this Court's 2002 Ruling, investing a great amount of time, resources

and care in developing the living arrangements for Bill and Leo McCoy and this Court seeks to preserve their current living situation if at all possible. Defendants had previously sought and this Court had previously declined to impose a family-directed model on the McCoys in light of their opposition. Defendants do not now seek to impose such a model, and the Court is loathe to change the current model of service. However, having previously cautioned the McCoys that the consent decree does not allow for them to wield absolute control over the lives of their sons, and finding such caution to have been ineffective, this Court hesitates to only caution Mrs. McCoy again. The Decree as it was written has proven to be unworkable due to the extraordinary level of Mrs. McCoy's interference and attempts at micro-management. As Eugene Harvey noted, if STS had to devote as much time and effort to managing the concerns of all the parents and guardians of the residents of STS as has been done with the McCoy parents, the institution would be "crippled." This Court is aware, obviously, that it is only Bill and Leo, Jr. who have a consent decree specifically designed to meet their needs in a safe and appropriate way with dignity and respect, but the Consent Decree does not override the statutory rights and responsibilities shouldered by Defendants in having Bill and Leo placed in their care voluntarily by the McCoy parents. Because the Consent Decree as it stands is unworkable, this Court believes that a few carefully tailored

modifications to the Decree in conjunction with the orders set forth in this section will resolve the problems caused by Mrs. McCoy's contumacious behavior. If they do not, this Court may revisit the issue of appropriate sanctions against Mrs. McCoy, or of vacating the Consent Decree.

Paragraph Three of the Consent Decree is hereby modified to delete the following phrase: "including parental approval of staff selected for the core group." Mrs. McCoy is hereby removed from the staff selection process, as Defendants have spent an inordinate amount of time and resources struggling to meet the core staffing level of 15 and Mrs. McCoy was not diligent in reasonably attempting to comply with this Court's order that parental approval of staff selection shall not be unreasonably withheld.

Paragraph Nine of the Consent Decree is hereby modified as follows: "The parents shall have the right to remove the advocate if he/she does not adequately discharge his/her duties under this Decree subject to approval by the Commissioner of the Department of Mental Retardation." This Court was given no reasonable explanation for why Dale Brown was removed as advocate and Sr. Barbara appointed in his place, and there was no discussion between the contracting agency (WeCAHR) and OPA when the change occurred. The Court believes it is very important for the McCoy men to have advocacy services independent of both Defendants and Mrs. McCoy.

Paragraph Fourteen of the Consent Decree is hereby modified to include the following two sentences after the last sentence in Paragraph Fourteen: Mrs. McCoy must inform the Medical Director at STS at least 48 hours in advance of any medical procedure to be completed outside of Southbury Training School for William and Leo McCoy, Jr., and must give STS administrators at least twenty-four hours notice of her intention to bring her sons to medical appointments. In addition, the administrators of Staff House Two must know the specific location of the medical appointment before staff and the McCoy men leave Southbury Training School.

Paragraph Eighteen of the Consent Decree is modified as follows: The parents shall have the right to visit any residence developed for the plaintiffs under this Consent Decree at any time, unannounced, other than during plaintiffs' meal-times, i.e. other than 7:30 a.m. - 8:30 a.m., 12:00 p.m. - 1:30 p.m. and 5:00 p.m - 6:30 p.m. If meal-times are delayed, for whatever reason, or changed due to scheduling needs of the McCoy men, then Mrs. McCoy shall not be present during meal-times, whenever they may occur.

It is not appropriate for Mrs. McCoy to be present when staff are preparing or dispensing medications to her sons, and she is not to be present or to interfere when these processes occur.

Furthermore, Mrs. McCoy is not to be present in the bathroom or bedroom when staff are providing personal hygienic care to William or Leo, Jr.

Mrs. McCoy, having given over the day-to-day care of her sons to the state, must not interfere with procedures, protocols and routines established for the care of her sons. This includes, but is not limited to, the daily schedules, dietary restrictions, meal-time protocols, the behavioral support plan to decrease the frequency of Billy's hand-in-mouth behavior, recreational trips, the use of shoes when Leo is ambulating, Leo's full day program, etc. If she has concerns regarding the quality of care, she must follow proper administrative procedures, and bring her concerns immediately to the staff person in charge of the shift or the Manager on Duty. If she has programmatic concerns, she must discuss her concerns in the Interdisciplinary Team meetings or pursue the Program Administrative Review process.

If Mrs. McCoy plans to take her sons on a recreational trip, she must give STS staff at least 24 hours notice of the location of the trip.

Finally, Defendants are directed to arrange, through the Office of Protection and Advocacy, for the appointment of an advocate for Bill and Leo, Jr. independent of both Defendants and Mrs. McCoy.

CONCLUSION

For the foregoing reasons, Defendants' Motion for a Finding of Contempt and for Clarification or Modification of the Consent Decree [Doc. No. 433] is GRANTED in PART, Defendants' Motion for

the Enforcement of the July 15, 2002 Ruling Pending Appeal and for a Finding of Contempt and for Clarification or Modification of the Consent Decree [Doc. No. 450] is GRANTED IN PART, Defendants' Motion for Authorization to Appoint a New Advocate [Doc. No. 509] is GRANTED, and Plaintiffs' Motion for Contempt, Enforcement and Other Relief [Doc. No. 445] is DENIED.[31]

SO ORDERED.

_____
ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut, this ___ day of July, 2007.

[31]Defendants' 2002 Motion [Doc. No. 433] also sought permission for the placement of video cameras in Staff House Two. The issue was not briefed in either party's post-hearing memoranda and did not arise at the hearings, so the Court finds the issue abandoned. Furthermore, Defendants' 2003 Motion [Doc. No. 450] also sought to enforce this Court's 2002 Ruling pending the McCoys' appeal; this Court's 2002 Ruling was upheld on appeal, so that issue is now moot.