



6042330

ENDORSED
FILED
ALAMEDA COUNTY

AUG 04 2011

CLERK OF THE SUPERIOR COURT

By PAM WILLIAMS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MARGARET FARRELL,

Plaintiff,

v.

MATTHEW CATE,

Defendant.

) Case No. RG03-079344

)
) **ORDER GRANTING MOTION TO**
) **ENFORCE COURT-ORDERED**
) **REMEDIAL PLANS AND TO SHOW**
) **CAUSE WHY DEFENDANT SHOULD**
) **NOT BE HELD IN CONTEMPT OF**
) **COURT**

) Date: October 27, 2011

) Time: 9:30 a.m.

) Dept: 15

This matter came before the court on July 7, 2011 in Department 15 for hearing on Plaintiff's Motion to Enforce Court-Ordered Remedial Plans And To Show Cause Why Defendant Should Not Be Held in Contempt of Court. Having considered the parties' pleadings and evidence and the arguments of counsel, and good cause appearing, the court now rules as follows:

Failure to Comply With Education Remedial Plan

1. The Consent Decree grants the court the power "to enforce the terms of this Decree" and "to order compliance with any of the remedial plans or specific performance with the terms of this Decree as permitted by law." (Consent Decree, November 19, 2004, at 19.) The court has broad equitable power to fashion a remedy to address violations. (*Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331; *Hirshfield v. Schwartz* (2001) 91 Cal. App.4th

1 749, 770-71; 13 Witkin, Summary of California Law (10th ed. 2005) Ch. XIX Equity, § 3, at
2 284-85.) Specifically, “the jurisdiction of a court of equity to enforce its decrees is coextensive
3 with its jurisdiction to determine the rights of the parties, and it has power to enforce its decrees
4 as a necessary incident to its jurisdiction.” (*Ecker Bros. v. Jones* (1960) 186 Cal. App.2d 775,
5 786 [citations omitted].)

6 2. In 2005, the court ordered DJJ to comply with its clear legal duty to provide
7 mandated special education services to youth who require them and 240 minutes of school each
8 day to all eligible students. (Education Remedial Plan, attached to Defendants’ Notice of Filing
9 of California Youth Authority’s Education Remedial Plan, March 1, 2005, at 3, 27, 31; Order,
10 March 17, 2005.) In 2008, the court found DJJ in violation of these orders and warned that
11 further relief might be necessary should defendant fail to cure the violations. (Order, October 27,
12 2008, at 10-13.)

13 3. The evidence shows that DJJ remains in violation of its obligations, and DJJ does
14 not seriously contend otherwise. Special education youth in the high schools at three DJJ
15 institutions “do not receive the full continuum of segments and services that are required in their
16 Individual Educational Programs.” (Letter from Nancy Campbell to Sara Norman, May 20,
17 2011, attached as Exhibit A to Declaration of Sara Norman in Support of Plaintiff’s Motion to
18 Enforce Court-Ordered Remedial Plans and Order to Show Cause on Contempt [Norman Decl.],
19 at 1.) The reason for this failure is the lack of credentialed teachers. (*Id.* at 1-2.) At Ventura
20 Youth Correctional Facility, special and regular education youth in restricted programs are
21 deprived of 240 minutes per day of school because of deficits in staffing and space. (*Id.* at 2-4;
22 *see also* Office of Audits and Court Compliance, Review of the Office of Special Master’s
23 Identified Concerns, March 25, 2011, attached as Exhibit B to Norman Decl., at 7.) Further
24 relief is therefore warranted to enforce the Education Remedial Plan.

25 **Failure to Comply with Safety And Welfare Remedial Plan**

4. The court has ordered defendant to end the practice of isolation and provide
specific levels of programming for youth by specific dates. The Consent Decree requires
defendant to come into compliance with legal mandates by “develop[ing] and implement[ing]
detailed remedial plans,” each with a “schedule for implementation.” (Consent Decree,

1 November 19, 2004, at 5.) Pursuant to that directive, defendant filed the Safety & Welfare
2 Remedial Plan on July 10, 2005, and a schedule for implementation on October 31, 2006. The
3 court ordered defendant to implement the plan. (Order Directing DJJ to Implement the Safety
4 and Welfare Remedial Plan, July 31, 2006.)

5 5. The Safety & Welfare Remedial Plan requires the conversion of restricted
6 program units to Behavioral Treatment Programs (BTP) that will “maximize out of room time
7 and . . . ensure structured activity based on evidence-based principles for 40 to 70 percent of
8 waking hours. . . .” (Safety & Welfare Remedial Plan, Exhibit A to Defendant’s Notice of Filing
9 DJJ’s Safety and Welfare Remedial Plan, July 10, 2006 [Safety & Welfare Plan], at 57.) Youth
10 housed in the general population or “core” units must be “constructively active during most of
11 their waking hours.” (Safety & Welfare Plan at 44-45.) Thus, DJJ must ensure that BTP youth
12 have maximum possible out-of-cell time, of which 40 to 70 percent of waking hours must be
13 spent on structured, evidence-based activities, and youth in the core units must be engaged in
14 constructive activities for at least eight hours daily. The deadline for implementation was March
15 31, 2009. (Order, February 20, 2009, at 2.)

16 6. Defendant has full knowledge of these orders: both the Safety & Welfare Plan and
17 the reset deadlines were court orders adopting his own filings.

18 7. Defendant has previously assured the court that he has the ability to comply with
19 the court’s orders, and the court finds that he does, in fact, have that ability. In 2008, DJJ argued
20 strenuously that it was capable of instituting the reforms required in the court-ordered remedial
21 plans without the need for the court to appoint a receiver (which the court was then considering)
22 or other intervention. (*See* Defendant’s Response to Order to Show Cause Re: Appointment of
23 Receiver and Compliance with Consent Decree and Remedial Plans, March 19, 2008, at 1
24 [“With the experience DJJ has acquired over the past three years, and the consultants DJJ has
25 retained to assist in planning and project management, DJJ is poised to accomplish the work that
remains to be done”]; *id.* at 36 [“DJJ’s accomplishments to date, even if they took longer
than originally envisioned, do not show a lack of desire, commitment, and ability”]; *id.* at 40
[“no one knows better than DJJ’s management team, its staff, and its consultants, what needs to
be done and how to do it”].) Defendant argued at the 2008 hearing that “the principal reason the

1 State had failed to accomplish more of the reforms required by the Consent Decree was its lack
2 of project management personnel and planning, and that the State had now addressed these
3 deficits by promoting experienced personnel and hiring qualified consultants.” (Order, October
4 27, 2008, at 3.)

5 8. Although defendant now attempts to blame his current non-compliance on a lack
6 of financial resources – notwithstanding his earlier assurances that he had the ability to comply
7 with the court’s orders – this argument is not supported by the evidence. As the court has
8 previously observed, DJJ spends substantially more than \$200,000 per youth annually to house
9 its wards (*see, e.g.*, Legislative Analysts’ Office, 2009-10 Budget Analysis Series: Criminal
10 Justice Realignment, January 27, 2009¹), and it has never accounted for that money in a way that
11 shows true inability to comply with the court’s orders. The simple fact is that DJJ has not shown
12 that its existing resources, spent appropriately, are inadequate.² The Legislature has appropriated
13 sufficient funds to defendant to operate DJJ; it is defendant’s responsibility to do so in
14 accordance with the law. (*See, e.g., Board of Supervisors v. Superior Court* (1995) 33
15 Cal.App.4th 1724, 1744 [given that sheriff was provided with adequate funds to operate
16 detention facility, he must do so in accordance with consent decree setting limits on population].)

17 9. The court finds that defendant has willfully disobeyed the court’s orders. He
18 submitted the Safety & Welfare Plan himself and set the deadlines for implementation; he has
19 now missed those deadlines by more than two years, and remains in violation of the court’s
20 original orders.

21 ¹ See, e.g., Sixteenth Report of the Special Master (Nov. 19, 2010) at 11. In that document, it
22 was reported that the Division of Juvenile Justice (“DJJ”) had 1,527 wards as of December 31,
23 2009 (*id.* at 6), and that DJJ’s 2009-10 operating budget was \$435 million. (*Id.* at 11.) This
24 equates to total costs of \$284,872 per ward. While more recently published information suggests
25 that the amount spent per ward may have declined (*see, e.g.*, “CDCR’s Budget for Fiscal Year
2011-2012,” website of the California Department of Corrections and Rehabilitation,
http://www.cdcr.ca.gov/Budget/Budget_Overview.html), the fundamental point remains the
same.

² It is not clear that a claim of inadequate funding could ever justify the conditions of
incarceration that led to the filing of this motion, but it is unnecessary for the court to resolve that
issue now.

1 THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

2 a. Defendant shall, within 90 days of the date of this order, hire adequate staff to
3 provide the general and special education services mandated in the Education Remedial Plan for
4 youth in general population and restricted programs in DJJ.

5 b. Defendant shall, within 150 days of the date of this order, secure and begin to use
6 adequate and appropriate programming space to provide the general and special education
7 services mandated in the Education Remedial Plan for youth in restricted programs in DJJ.

8 c. Defendant is hereby ordered to show cause, on October 27, 2011 at 9:30 a.m. in
9 Department 15 of the above-entitled court, why the court should not hold him in contempt for
10 failure to comply with the court's orders as set forth above in paragraphs 4-9.

11 IT IS SO ORDERED.

12 DATED: August 4, 2011

ALAMEDA COUNTY SUPERIOR COURT

13 By: _____


14 JUDGE JON S. TIGAR

(RCD-11/00)

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk in Dept. 15 of the Superior Court of California, County of Alameda and not a party to this cause. I served the **ORDER GRANTING MOTION TO ENFORCE COURT-ORDERED REMEDIAL PLANS AND TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

CASE NAME: FARRELL vs. CATE
ACTION NO.: RG03-079344

Donald Specter
Sara Norman
PRISON LAW OFFICE
1917 5th Street
Berkeley, CA 94710
(510) 280-2704 facsimile


Nancy M. Campbell
Special Master
56 East Road
Tacoma, WA 98406

Todd Darrow Irby
Van Kamberian
OFFICE OF THE ATTORNEY GENERAL
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 324-5205 facsimile

William C. Kwong
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5843 facsimile

August 4, 2011

Pat Sweeten
Executive Officer/Clerk of the Superior Court

By 
Pam Williams
Clerk, Dept. 15