United States District Court
Western District Of North Carolina
Charlotte Division

WILLIE M., et al,

Plaintiff(s),

vs.

JAMES B. HUNT, JR., et al,

Defendant(s).

JUDGMENT IN A CIVIL CASE

3:79-CV-294-MU

DECISION BY COURT. This action having come before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is hereby entered in accordance with the Court's 1/22/98 Order.

January 22, 1998

FRANK G. JOHNS, CLERK

By: _____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:79-CV-294-MU

WILLIE M., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
JAMES B. HUNT, JR., et al.,	)	
	)	
Defendants.	)	

This matter is before the Court upon Defendants' "Motion to Terminate Class Action Pursuant to Fed. R. Civ. P. 60(b)", filed February 14, 1997.

I. Factual and Procedural History.

A. Introduction.

This class action was originally filed on October 5, 1979, in an attempt to reduce the institutionalization of violent and assaultive youths in North Carolina. Its history is long and complex and has been set out in detail many times. An accurate summary of the history of the case may be found at pages 1 through 7 of Defendants' memorandum in support of the motion to terminate ("Memorandum"), and the Court will not attempt to improve on that summary here.

Of relevance to the instant motion, the parties agreed in September of 1980 that the sources of the rights of the plaintiff class to appropriate treatment, education, and habilitation were as follows:

> 4. Plaintiffs have the right to appropriate treatment as provided by the Fourteenth Amendment to the United States Constitution.
>
> 5. Plaintiffs committed to the custody of the Division of Youth Services pursuant to Article 7A of the General Statutes of North Carolina have a right to appropriate treatment under N.C.G.S. § 134A-20.
>
> 6. Plaintiffs who are residents of a treatment facility as defined by N.C.G.S. § 122-36(g) [State mental health facilities] have a right to appropriate treatment under N.C.G.S. § 122-56.
>
> 7. Plaintiffs have a right to free appropriate public education in the least restrictive environment as provided for and defined in the Education for All Handicapped Children Act, 20 U.S.C. § 1411, *et seq.*, and implementing regulations, 45 C.F.R. 121A.1, *et seq.*
>
> 8. Plaintiffs have a right to free appropriate public education in the least restrictive environment as provided for by and defined in N.C.G.S. § 115-363, *et seq.*, and implementing regulations, 16 N.C.A.C. 2E.1500, *et seq.* . . .

Memorandum at 3 (quoting the parties' Second Set of Stipulations at ¶¶ 4-8.

Furthermore, the parties also reached agreement in 1980 that the scope of Defendants' obligation to the plaintiff class was as follows:

> (A) Each plaintiff shall be provided habilitation, including medical treatment, education, training and care, suited to his needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Such habilitation shall create a reasonable expectation of progress toward the goal of independent community living. Defendants do not guarantee each plaintiff a "cure," but do guarantee each plaintiff a program of habilitation which is a good faith effort to accomplish the goals set forth herein.
>
> (B) Each plaintiff shall be provided with the least restrictive, i.e., most normal, living conditions appropriate for that person. Among the factors to be considered in determining the least restrictive

> living conditions appropriate for the individual are the need to minimize institutionalization and the need to minimize the possibility of harm to the individual and society.
>
> (C) The goal of habilitation shall be to enable each plaintiff, as appropriate for that individual, to move from:
>
> > (1) Living and programming segregated from the community to living and programming integrated with the community;
> >
> > (2) More structured living to less structured living;
> >
> > (3) Group residences to individual residences; and
> >
> > (4) Dependent living to independent living.
>
> (D) Each plaintiff shall be provided such placements and services as are actually needed as determined by an individualized habilitation plan rather than such placements and services as are currently available. If placements and services actually needed are not available, the person shall be entitled to have them developed and implemented within a reasonable period. Prior to development and implementation of needed placements and services, the person shall be entitled to placement and services which meet as nearly as possible his actual needs.

Second Set of Stipulations at ¶ 9.

B. Defendants' Motion to Terminate.

On June 13, 1985, the Court administratively closed this case, noting that the case was settled by a "Notice of Settlement" and Consent Decree filed December 7, 1981, and that the Court had approved the settlement on February 24, 1982. Thereafter, the parties endeavored to agree upon a compliance plan (the "Plan") to implement the consent decree.

In January of 1995, the parties submitted a joint letter to the Court "requesting resolution

of the only remaining provision of the compliance plan remaining in dispute--the provision relating to availability of costs and fees to attorneys who represent class members and potential class members in the advocacy process proposed as a part of the compliance plan." Plaintiffs' Letter of January 24, 1995. Both parties agreed that the attorneys' fees issue was the only obstacle to approving the Plan and proceeding with the remaining tasks of: "[R]eaching agreement as to standards for determining when compliance is reached and as to terms for ending direct court oversight upon the achievement of compliance." Id.

As a result of these representations from the parties, the Court was of the understanding that resolution of the attorneys' fees issue would result in termination of the class action. Thus, by order of January 9, 1997, upon the Court's denial of Plaintiffs' motion to have the Court adopt their fee proposal, the Court ordered the following: "The parties are directed to submit for the Court's approval a final, updated copy of the compliance plan by February 14, 1997. Also by February 14, 1997, the parties are to file their proposals regarding termination of the Willie M. Review Panel and of the case itself." Order of January 9, 1997, at 6.

In response to the Court's order of January 9th, the parties provided the Court with a final copy of the Plan and also filed submissions regarding termination of the Willie M. case and of the Willie M. Review Panel. Plaintiffs' submission was styled as a proposal, while Defendants' submission was in the form of the instant motion to terminate the class action pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. After reviewing said submissions, as well as input from the Review Panel, the Court concluded, by order of February 24, 1997, that an evidentiary hearing would be necessary at which Defendants would bear the burden of demonstrating that they are sufficiently in compliance with their obligations under the consent decree to justify

termination of the class action. This order also set out a briefing schedule regarding Defendants' motion.

Pursuant to the briefing schedule, Plaintiffs filed a response to Defendants' motion to terminate ("Plaintiffs' Response") on May 9, 1997, and Defendants filed a brief in response to Plaintiffs' proposals ("Defendants' Response"). On May 30, 1997, the parties each filed reply briefs ("Plaintiffs' Reply" and "Defendants' Reply"). After reviewing these documents, the Court determined that the scope of the evidentiary hearing would be whether Defendants can demonstrate that termination is warranted under either Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), or Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237 (1991). The Court conducted the evidentiary hearing on September 24-25, 1997.

II. Legal Arguments.

A. Defendants' Memorandum in Support of the Motion to Terminate.

1. Introduction.

After summarizing the history of the case, Defendants set out to describe the development of the State's Willie M. Program, the current Willie M. Service Delivery System, and the extent to which they have complied in good faith with the stipulations in this action. See Memorandum at 7-20. Based upon such demonstrated compliance, Defendants argue that, "[p]ursuant to Fed. R. Civ. P. 60(b), equity now requires termination of this class action which has been administratively closed for almost twelve years." Memorandum at 20.

Defendants, citing Alexander v. Britt, 89 F.3d 194 (4th Cir. 1996), note that Rule 60(b) is the appropriate vehicle for ending institutional reform litigation and that the Rufo and Dowell

standards articulated by the Supreme Court are variations of a single theme by which such litigation may be terminated. Defendants invoke both standards and argue that under either one or both the Court should grant the motion to terminate this litigation.

2. Rufo Argument.

Defendants state that in Rufo the Supreme Court "held that institutional reform decrees may be modified or terminated when it is established that there has been a 'significant change in factual conditions or in law.'" Memorandum at 21 (quoting Rufo, 502 U.S. at 384). Relying on this standard, Defendants contend that termination of the class action is appropriate here because the law has changed in at least four respects, all in Defendants' favor, since the time the parties agreed to the Second Set of Stipulations and because such changes warrant termination of the case. The changes in the law cited by Defendants are:

(1) The Eleventh Amendment precludes the Court from continued jurisdiction over the Plaintiffs' rights based on state law and those state law rights are the heart of the Plaintiffs' rights;

(2) The constitutional due process rights of the Plaintiffs to habilitation are limited (citing Youngberg v. Romeo, 457 U.S. 307 (1982));

(3) The due process right to habilitation identified in Youngberg extends only to class members involuntarily in the state's custody; and,

(4) The State is only liable when it is the moving force behind constitutional deprivations.

a. Eleventh Amendment.

Defendants note that three of Plaintiffs' five rights under paragraphs 4-8 of the Second Set of Stipulations are founded entirely on state law and argue that "those rights, appropriate treatment and appropriate education, lay at the heart of the lawsuit since its inception [but that,] [s]ince those stipulations were made, the law has crystallized to make it plain that the Court is barred by the 11th Amendment from enforcing those rights." Memorandum at 22-23. Defendants argue that the case of Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984), represents this crystallization of the law. In Pennhurst, the Supreme Court held:

> [N]either pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment. A federal court must examine each claim in a case to see if the court's jurisdiction is barred by the Eleventh Amendment. We concluded above that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment. . . . We now hold that this principle applies as well to state-law claims brought into court under pendent jurisdiction.

465 U.S. at 121 (citations omitted). Defendants assert that Pennhurst's bar to pendent jurisdiction over state law claims otherwise protected by the Eleventh Amendment also applies to jurisdiction conferred by consent. Memorandum at 23 (citing Lelsz v. Kavanaugh, 807 F.2d 1243 (5th Cir. 1987)). Defendants contend that the state-law claims asserted by Plaintiffs here, arguably the heart of Plaintiffs' case, are claims that state officials violated state law, just as were the claims at issue in Pennhurst, and are therefore similarly protected by the Eleventh Amendment. Thus, Defendants argue that the Court cannot exercise jurisdiction over such claims.

b. Limited Constitutional Right to Habilitation.

Defendants contend that the treatment obligations the State agreed to undertake, set out in paragraph 9 of the Second Set of Stipulations above, are no longer mandated by the Fourteenth Amendment. Defendants cite the case of Youngberg v. Romeo, 457 U.S. 307 (1982) for the proposition that a state is not constitutionally required to provide any particular substantive services to its citizens and need only provide those individuals involuntarily committed to the state's custody with minimally adequate training to ensure safety and freedom from undue restraint. Defendants also cite a Second Circuit opinion applying Youngberg to an institutional reform class action for the proposition that there is no due process right to a specific type of treatment or training beyond that geared toward safeguarding basic liberty interests. Memorandum at 25-26 (quoting Society of Good Will to Retarded Children v. Cuomo, 737 F.2d 1239, 1250 (2nd Cir. 1984), as follows: "Where the state does not provide treatment designed to improve a mentally retarded individual's condition, it deprives the individual of nothing guaranteed by the Constitution; it simply fails to grant a benefit of optimal treatment that it is under no constitutional obligation to grant."). Defendants argue that Youngberg and its progeny represent a significant change in the law from that in force at the time the parties agreed to the obligations in paragraph 9 and that such change should bring about a modification of Defendants' requirements to the extent they are based on a constitutional right to habilitation.

c. Youngberg Habilitation Rights Extend Only to Those in Custody.

Defendants cite the case of DeShaney v. Winnebago County Department of Social Services, et al., 489 U.S. 189 (1989), in support of the argument that the due process right to

habilitation in Youngberg extends only to class members involuntarily in the State's custody (i.e., that children who are not in custody have no due process liberty interest in appropriate habilitation). Memorandum at 26-27 (quoting DeShaney, 489 U.S. at 200, in pertinent part, as follows: "[I]t is the State's affirmative act of restraining the individual's freedom to act on his own behalf . . . which is the 'deprivation of liberty' triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means."). Defendants contend that the vast majority of Willie M. class members are not involuntarily in the State's custody and, therefore, the DeShaney limitation is another significant change in the law from that in effect at the time Defendants agreed to the habilitation obligations in paragraph 9.

d. The State Was Not the Moving Force Behind Constitutional Deprivations.

Relying on Kentucky v. Graham, 473 U.S. 159 (1985), Defendants assert that a cause of action for constitutional deprivations by individuals acting in their official capacity on behalf of the State will only lie against the State if it was the moving force behind the deprivations by policy or custom. Defendants maintain that they entered into the stipulations to ensure that the rights of the class members were protected and not to remedy systemic constitutional deprivations. Thus, because there was and is no policy or custom of the State to deprive Willie M. class members of their constitutional rights, Defendants argue that the class cannot maintain a cause of action against the State for any such alleged deprivations.

e. Summary of Rufo Argument.

Defendants summarize as follows their argument that the Court, pursuant to Rufo, should terminate the class action:

> [S]ince 1981 the law has crystallized in four respects, all of which require that this class action now be dismissed. The heart of the plaintiffs' rights under the second set of stipulations arise from State law which this Court no longer has jurisdiction to enforce. The constitutional and federal statutory rights which are applicable to the class members, have been severely restricted by subsequent case law. The State does not by "policy or custom" violate these rights. Instead, the State has implemented a system of services, both habilitative and educational, that far exceed those constitutional minimums. The State is and has been for a substantial period of time in compliance with the Court's order in this action.

Memorandum at 28-29.

3. Dowell Argument.

As an alternative basis for dismissal of this case, Defendants rely on the case of Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237 (1991), as follows:

> The Court in Dowell found that ongoing institutional reform litigation may be modified or terminated when the State can show (1) it had "complied in good faith with the . . . decree", (2) its compliance has lasted for a reasonable period of time and (3) "the vestiges of past discrimination had been eliminated to the extent practicable." Id. at 248-250. . . . Defendants have met all parts of this test and this action should be terminated.

Memorandum at 29 (also citing Alexander v. Britt, 89 F.3d 194, 198 (4th Cir. 1996)).

Defendants then set out a detailed explanation of their good faith efforts to comply with their obligation to provide class members with appropriate treatment and education, the duration

of their compliance, and the extent to which their compliance has eliminated past discrimination. Specifically, Defendants note that the State has spent over half a billion dollars to develop and implement the Willie M. Program and argue that the program is a model one and has been so for many years. Defendants note that "[t]he General Assembly and the Department of Human Resources have codified into law and regulation the safeguards necessary to protect [the Willie M. class]" and contend that "[t]he State Office of Administrative Hearings and State Courts of Law are now the appropriate forum for protecting these rights." Memorandum at 33. Finally, Defendants maintain that the State is not required to develop an optimal program but that it has done so anyway and that "[i]njunctive relief in institutional reform litigation, whether entered by the consent of the parties or after a Court decision on the merits, is intended only to remedy a constitutional violation, not to displace local decision making and control forever." Memorandum at 31 (citing Dowell, 498 U.S. at 248, and Missouri v. Jenkins, 115 S.Ct. 2038 (1995)).

B. Plaintiffs' Response.

1. Introduction.

Plaintiffs oppose termination of the class action because:

> [D]efendants' obligation under the Consent Decree is to provide the required "appropriate services" to all class members; [and] in order to terminate the Consent Decree, defendants must show that they have provided the required appropriate services to all class members and will be able to sustain such delivery of services; and . . . defendants cannot make such a showing at this time.

Response at 1. Plaintiffs emphasize that Defendants agreed to provide *all* class members with

appropriate services; therefore, a good faith effort at actual compliance is insufficient to justify termination under Dowell. Furthermore, Plaintiffs assert that Defendants' Rufo argument ignores that the law permits litigants to agree to do more than the Constitution requires, and, in any event, termination under Rufo requires, at the time of the consent decree, a misunderstanding of the governing law that did not take place here.

2. Plaintiffs' Refutation of Rufo Argument.

Plaintiffs argue that, in a consent decree, defendants may agree to do more than a judicially imposed injunction could have required and, as long as the decree still relates to an alleged violation of federal law, the parties should be held to their bargain. Response at 5 (citing Alexander v. Britt, 89 F.3d 194, 200 (4th Cir. 1996)). Plaintiffs rely on the Rufo case itself in support of their position that Defendants should be held to their agreement, quoting the Rufo Court as follows: "[T]o hold that a clarification in the law automatically opens the door for relitigation of every affected consent decree would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements in institutional reform litigation." Response at 6 (quoting Rufo, 502 U.S. at 389). Plaintiffs argue that a modification or termination of a consent decree under Rufo requires that the parties based their agreement on a misunderstanding of the governing law, a showing that Defendants cannot make here. Response at 6 (citing Rufo, 502 U.S. at 390).

Furthermore, even if Defendants are able to seek a modification or termination under Rufo, Plaintiffs assert that Defendants are unable to meet the Rufo standard, defined by the Supreme Court as a three-pronged test: " (1) that there be a significant change in facts or law, (2)

that warrants revision of the decree, and (3) that the proposed modification be suitably tailored to the changed circumstances." Memorandum at 6 (citing Rufo, 502 U.S. at 583). First, Plaintiffs take issue with Defendants' Eleventh Amendment argument and with the characterization of Plaintiffs' state law claims as the "heart" of Plaintiffs' rights. Plaintiffs contend that the two federal claims standing alone provide ample basis for the consent decree, and, even if that were not so, Defendants expressly stipulated to the Court's jurisdiction over the state law claims, constituting a waiver of Eleventh Amendment immunity. Response at 6-7 (stating that the Supreme Court in Pennhurst recognized the long-established rule that a state can waive Eleventh Amendment immunity).

Second, Plaintiffs claim that Defendants' education law obligations pursuant to federal statute have not changed. Though the Education for All Handicapped Children's Act changed its name to The Individuals with Disabilities Education Act ("IDEA") in 1990, Plaintiffs argue that their entitlements under the statute are at least as strong as they were in 1980. Plaintiffs maintain that IDEA requires an individualized education program, including therapy and special equipment or transportation, as well as a transitional component regarding post-school outcomes. Plaintiffs assert that 89% of Willie M. class members are eligible for special education pursuant to the IDEA and that there has been no change in Defendants' obligations to provide such education to warrant termination under Rufo.

Third, Plaintiffs argue that the Willie M. entitlements in paragraph 9 are consistent with current federal constitutional law on the right to treatment and habilitation, citing Youngberg and two 4th Circuit cases, and, because the entitlements are "related" to an alleged violation of federal law within the meaning of Alexander v. Britt, supra, they can go beyond constitutional

requirements and still be the basis for a proper agreement in a consent decree. Plaintiffs disagree that DeShaney has any effect on the right of the Willie M. class to habilitation, arguing that the class definition includes those who are or will be "in custody" and that many current class members are "in custody" within the meaning of DeShaney.

Fourth, Plaintiffs maintain that the alleged changes in the law relied on by Defendants are Supreme Court cases decided between 1982 and 1989. Because Defendants did not assert until 1997 that any post-settlement changes in the law altered their obligations in any way, Plaintiffs argue that such a delay should bar Defendants' Rufo argument under equitable principles such as laches and estoppel and under the terms of Rule 60(b) itself, which requires motions to be made "within a reasonable time." Finally, Plaintiffs contend that Defendants' attempt to terminate a settlement, rather than seek a modification, is a remedy not justified under Rufo where the alleged changes in the law relate to one of the several underpinnings for relief.

3. Plaintiffs' Refutation of Dowell Argument.

Plaintiffs contend that Defendants are not entitled to termination under Dowell because they cannot satisfy the first prong of the Dowell test, that they are in actual compliance with the bargain they struck with Plaintiffs. Plaintiffs note that the funds expended and system of service delivery established by Defendants are worthy and necessary efforts but do not establish compliance in that the goals of the consent decree have not been achieved and sustained over time. Plaintiffs cite numerous cases for the proposition that a district court should retain jurisdiction over a consent decree until the defendants demonstrate actual and sustained compliance.

Plaintiffs, noting that "good faith" is not a substitute for actual compliance, go on to delineate statistics allegedly proving that Defendants are not in compliance with their obligations. Response at 13-14 (citing Alexander, 89 F.3d at 202). Plaintiffs contend that Defendants are behind schedule with respect to the provision of certain agreed-upon monitoring and evaluation functions. Regarding the monitoring and evaluation that has taken place, Plaintiffs argue that various "appropriateness reviews" indicate that, depending upon the source of review, only between 32% and 82% of class members are receiving appropriate services.

To demonstrate compliance, Plaintiffs assert that Defendants and independent reviewers must complete agreed-upon monitoring and evaluation, arguing that, "[b]efore the court is in a position to rule on whether defendants have complied with the Consent Decree, defendants should complete enough of the agreed monitoring and evaluation to provide comprehensive, validated information." Response at 22. Furthermore, Plaintiffs contend that Defendants' validated appropriateness reviews should show that "substantially all" of the Willie M. Class is in fact receiving appropriate services for a reasonable period of time. In an earlier submission to the Court, Plaintiffs indicated that provision of appropriate services to 85% of the class is "a realistic and attainable minimum." Plaintiffs' Proposals Regarding the Review Panel and Termination of Case, filed February 14, 1997, at 9 (concurring with the proposal of the Willie M. Review Panel in a letter to the Court dated January 2, 1997). Plaintiffs further indicate that a reasonable period of sustained compliance with the 85% standard would be three years. Id. at 10 (also concurring with a Review Panel proposal).

C. Defendants' Response.

Defendants respond to Plaintiffs' Proposals Regarding the Review Panel and Termination of the Case by arguing that the 85% standard for compliance is not the standard for compliance intended by the parties and is neither a workable nor reasonable standard. Defendants contend that the Supreme Court has rejected such quantitative benchmarks for provision of services in institutional reform litigation. Defendants' Response at 2-3 (citing Missouri v. Jenkins, 115 S.Ct. 2038 (1995)). Instead, Defendants assert that the Supreme Court advocates examination of the following three factors in determining whether a court should withdraw supervision over a consent decree:

> (1) whether there has been compliance with the decree in those aspects of the system where federal supervision is to be withdrawn; (2) whether retention of judicial control is necessary or practicable to achieve compliance in other facets of the system and (3) whether the defendant has demonstrated its good-faith commitment to the whole of the decree and to those federal statutes and constitutional provisions that were the predicate for the intervention in the first place.

Defendants' Response at 3 (citing Freeman v. Pitts, 503 U.S. 467 (1992)). Defendants argue that they have surpassed the Freeman measure of compliance.

Defendants also argue that the appropriateness review success standard proposed by Plaintiffs should be rejected because it is neither workable nor reasonable for determining compliance with the consent order. Defendants point out that the "yes" or "no" format of the reviews provides only a snapshot evaluation at one moment in time and also leads to incomplete and misleading answers. Defendants provide data of widely varying reviews of the same class members by different reviewers as evidence of their point.

Finally, Defendants contend that the Willie M. Review Panel has fulfilled its duties and that the Panel should now be dissolved. Defendants argue that the Panel's efforts have become duplicative of the State's functions and are now superfluous.

D. Plaintiffs' Reply.

Plaintiffs argue that Defendants mischaracterized Plaintiffs' position regarding the 85% standard. Plaintiffs state that Defendants continue to ignore their obligation to provide "all" class members with appropriate services and that Plaintiffs do not contend that this case should be dismissed simply if Defendants attain 85% on appropriateness reviews. Instead, Plaintiffs state that: "Plaintiffs' position is that this case should be terminated only when defendants demonstrate that appropriate services are being provided to 'all' or 'substantially all' class members, when this showing has been independently validated, and when compliance has been sustained for a reasonable period." Plaintiffs' Reply at 1-2.

Plaintiffs further argue that Defendants' reliance on Missouri v. Jenkins is misplaced in that the Jenkins Court did not reject quantitative measures but rather the relevance of standardized test results as a measure of compliance in that case. Plaintiffs also state that Defendants rely on an inquiry "whether the vestiges of past discrimination have been eliminated to the extent practicable" that is only relevant to desegregation cases and not here.

As to Defendants' complaints about the appropriateness reviews themselves, Plaintiffs state that such "arguments lack support and are inconsistent with the terms of the Consent Decree and the parties' negotiated agreement." Plaintiffs' Reply at 3. Plaintiffs assert that the reviews are indeed workable and reasonable, even in the opinion of Defendants' expert Richard Swanson,

and that Defendants either designed the reviews or agreed to them after negotiation and have not proposed an alternative for fear of protracted future negotiation. Plaintiffs argue that "Defendants' doubts as to the efficacy of [the reviews] may disappear if the review process is administered with the frequency and consistency agreed in the 1995 Plan." Plaintiffs' Reply at 12.

E. Defendants' Reply.

1. Introduction.

Defendants argue, in their reply to Plaintiffs' Response, that Plaintiffs misinterpreted Defendants' argument under Rufo and also misinterpreted the compliance requirements of Dowell.

2. Rufo Argument..

Defendants clarify their argument under Rufo as follows:

> Contrary to plaintiffs' arguments, the defendants do not invoke Rufo for the purpose of obtaining modification of the decree to relieve them of any obligations. Rather, defendants rely on Rufo for the principle that their compliance with the consent order should be measured under the law as it now is and not under the law as it was. Significant changes in the case law, subsequent to the entry of the stipulations, have clarified that the defendants are in compliance with all federal statutory and constitutional requirements and that this Court no longer has jurisdiction over the State law claims constituting the heart of plaintiffs' action.

Reply at 1.

Defendants maintain that Pennhurst holds that the Eleventh Amendment forecloses

federal jurisdiction over state law claims, that the parties' stipulation to jurisdiction is void because parties cannot consent to jurisdiction if none exists, and that they could not have waived their Eleventh Amendment immunity if they did not know such defense was available at the time of the agreement. Defendants argue that termination is proper because Plaintiffs have failed to allege any continuing systemic or programmatic violations by Defendants of either Youngberg or the IDEA, conceded by Plaintiffs as the only federal rights implicated in this action, and because the Court is foreclosed by Pennhurst from enforcing the remaining State law claims.

Defendants next contend that they have provided appropriate services to Willie M. class members pursuant to the IDEA and have done so for many years. Defendants state that "[i]t is unrefuted that of the thousands of class members defendants have educated only two have ever invoked the State's elaborate IDEA administrative complaint process and that both of those complaints were quickly resolved to the satisfaction of the class members' parents or guardians." Reply at 3. Defendants maintain that Plaintiffs' evidence that a number of class members are not receiving appropriate services does not equate to a violation of any material requirement of the IDEA. Defendants conclude that they agreed to comply with the IDEA but not with the opinions and expectations of Plaintiffs or the Review Panel.

Defendants then reiterate their contention that Youngberg[1] and Pennhurst were significant changes in the law and that, as a result, several other circuits have modified consent decrees and injunctions in institutional reform cases. See, e.g., P.C. v. McLaughlin, 913 F.2d 1033 (2nd Cir.

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[1]Defendants also reiterate their argument that DeShaney holds that, unless the State takes a person into custody, there is no corresponding constitutional duty to provide for the individual's safety, well-being, and habilitation.

1990); Lelsz v. Cavanaugh, 807 F.2d 1243 (5th Cir. 1987); Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239 (2nd Cir. 1984); New York State Association of Retarded Children v. Carey, 706 F.2d 956 (2nd Cir. 1983), cert. denied, 464 U.S. 915 (1983). Defendants argue that termination is similarly appropriate in the instant case.

Finally, Defendants contend that Plaintiffs' laches and estoppel argument is inconsistent with Rufo and Dowell. Defendants maintain that Plaintiffs' arguments under these equitable principles and under Rule 60(b)'s reasonableness requirement are unavailable to Plaintiffs because they have not shown that they have been prejudiced by the delay.

3. Dowell Argument.

Defendants maintain that Plaintiffs mistakenly equated actual compliance with full compliance and that the cases cited by Plaintiffs do not support their argument that full compliance is required. Instead, Defendants argue, relevant case law indicates that such factors as good faith and the underlying goals of the consent decree should guide the Court in determining whether continued supervision is necessary.

Defendants contend that, "[i]n determining compliance, and ultimately, termination, 'a proper rule must be based on the necessity to find a feasible remedy that insures system-wide compliance with the court decree and that is directed to curing the effects of the specific violation.'" Defendants' Reply at 8 (quoting Freeman v. Pitts, 503 U.S. 467, 497 (1992)). To that end, Defendants argue that they have "gone beyond federal constitutional and statutory requirements and have created a state of the art program to deliver appropriate services to class members." Defendants' Reply at 9. Defendants assert that "termination of the Court's oversight

is not likely to result in the defendants abandoning a program which is the model for the nation" and then go on to describe the "model" program, emphasizing the thoroughness of the monitoring system. Id.

Finally, Defendants argue that they have achieved sustained compliance. Defendants state that "Dowell merely requires compliance for a reasonable period of time, but in any event, for no longer period than is necessary to remedy the effects of past intentional discrimination." Id. at 12. Defendants maintain that they have met that standard, remedying the effects of past constitutional and statutory violations with continual progress since 1984.

F. Evidentiary Hearing.

1. Defendants' Additional Argument.

Defendants assert that the court should determine whether it remains equitable for the judgment at issue to apply prospectively and, if not, to relieve the parties of some or all of the burdens of that judgment on such terms as are just. Defendants further contend that if Defendants can show they have complied in good faith with the decree for a reasonable period of time to the point that the conditions that offended the Constitution have been eliminated to the extent practicable, then termination of the decree is appropriate. Defendants note that nothing indicates when this action is to come to a close. Defendants state that the 1995 plan that the Court requested that the parties draft does not indicate what is to happen once the plan is implemented or how to determine whether it should be terminated.

Defendants contend that the underlying goals of the consent decree have been accomplished. Defendants assert that they presented evidence showing that the state has

developed and implemented a comprehensive system to address the needs of this very difficult class. There is now available an extensive array of services that is coordinated under a case management system.

Defendants maintain that the state has shown compliance as well as good faith. The state demonstrates good faith through its financial commitment as well as the personnel it has assembled to implement the Willie M. program. The fact that only 30 of 1507 class members remain institutionalized also shows both good faith and compliance, according to Defendants. Furthermore, because state and federal statutes and rules now protect Plaintiff's rights, there is limited efficacy to be gained from continuing the consent decree's enforcement.

Defendants contend that the fact that the state has not produced a certain percentage of appropriateness reviews does not indicate that further monitoring under the consent decree is necessary. Defendants assert that the reviews were never intended to measure compliance with the consent decree or the 1995 plan to the court.

2. Plaintiffs' Additional Argument.

Focusing on Alexander v. Britt, 89 F.3d 194 (4th Cir. 1996), Plaintiffs urge that the motion to dismiss not be granted because Defendants cannot show that they have complied with core provisions of the parties' agreement and that Defendants cannot show that they have sustained their compliance for some period of time. Plaintiffs note that both the state and the review panel testified that delivery of services to substantially all of the class members at any one time is a realistic goal. The parties developed an instrument for monitoring delivery of appropriate services, and, Plaintiffs noted, had reached agreement about what data the court

needed to see in order to make a decision under Alexander as to whether Defendants had complied with their obligation. Plaintiffs assert that if Defendants had complied with the plan developed by the parties, there would exist two state monitorings of the entire class and independent reviews of those state monitorings. Plaintiffs assert that without this data, the court cannot make the finding under Alexander necessary to dismiss this case. Plaintiffs also state that the availability of other state and federal statutory remedies should class members not feel that they are receiving adequate services do not relieve Defendants of the burden of complying with the decree entered in this case.

III. Applicable Law.

A. Motions Pursuant to Rule 60(b) and the Rufo and Dowell Standards.

1. Introduction.

Rule 60(b) of the Federal Rules of Civil Procedure states, in relevant part, that:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or 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. The motion shall be made within a reasonable time . . . .

In Rufo and Dowell, supra, the Supreme Court articulated two different standards by which a party may, pursuant to Rule 60(b), seek termination or modification of a judgment that has prospective effect.

2. The Rufo Standard.

In Rufo, the Court stated that a party seeking modification of a consent decree pursuant to Rule 60(b) "must establish that a significant change in facts or law warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." Rufo, 502 U.S. at 393. This is the Rufo standard. The Court also held:

> A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law. But modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent.

Id. at 388.

However, the Rufo Court noted the following caveat: "To hold that a clarification in the law automatically opens the door for relitigation of the merits of every affected consent decree would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements in institutional reform litigation." Id. at 389. Instead, "a consent decree is a final judgment that may be reopened only to the extent that equity requires." Id. at 391.

Despite these limitations, the Rufo Court determined that:

> Within these constraints, the public interest and "[c]onsiderations based on the allocation of powers within our federal system" . . . require that the district court defer to local government administrators, who have the "primary responsibility for elucidating, assessing, and solving" the problems of institutional reform, to resolve the intricacies of implementing a decree modification.

Id. at 391 (quoting Dowell, 498 U.S. at 248; Brown v. Board of Education, 349 U.S. 294, 299 (1955)) (citations omitted).

3. The Dowell Standard.

The Dowell standard may be stated as follows:

> In the context of deciding whether to "modify or dissolve a desegregation decree," the Supreme Court directed that Rule 60(b) relief should be granted if the local authority could establish that (1) it had "complied in good faith with the . . . decree" (2) its compliance had lasted for a "reasonable period of time" and (3) "the vestiges of past discrimination had been eliminated to the extent practicable."

Alexander v. Britt, 89 F.3d 194, 198 (4th Cir. 1996) (quoting Dowell, 498 U.S. at 249-50).

In a later case, the Supreme Court later set out some of the factors a court should consider in determining whether a party has met the Dowell standard, holding:

> Among the factors which must inform the sound discretion of the court in [a Dowell analysis] are the following: whether there has been compliance with the decree in those aspects of the system where [federal] supervision is to be withdrawn; whether retention of judicial control is necessary or practicable to achieve compliance in other facets of the . . . system; and whether the [defendant] has demonstrated . . . its good-faith commitment to the whole of the . . . decree and to those provisions of [federal] law and the Constitution that were the predicate for judicial intervention in the first instance.

Freeman v. Pitts, 503 U.S. 467, 491 (1992). In 1995, the Supreme Court, in another school desegregation case, referred to Dowell and Freeman and concluded that this three-part test from Freeman is the proper test for a district court to apply in deciding whether a defendant has complied with its obligations under a consent decree. Missouri v. Jenkins, 515 U.S. 70, 101 (1995).

4. Fourth Circuit Interpretation of Dowell and Rufo.

The Court of Appeals for the Fourth Circuit, in Alexander v. Britt, reconciled the differences between the Dowell and Rufo standards and, in the process, provided guidance for district courts considering motions under Rule 60(b). The Alexander court stated:

> The standards employed in Dowell and Rufo are but variations on a single theme. Both are grounded in the established general equity powers of the federal courts. Those powers, now formalized in Rule 60(b), which provided the basis for the motions made in Dowell, Rufo, and the case at hand, permit courts to grant parties relief from final judgments that have prospective effect. . . . Accordingly, when confronted with any motion invoking this rule, a district court's task is to determine whether it remains equitable for the judgment at issue to apply prospectively and, if not, to relieve the parties of some or all of the burdens of that judgment on "such terms as are just."

89 F.3d 194, 197 (4th Cir. 1996).

The Alexander court determined that, although Dowell and Rufo set out different standards, the Supreme Court's approach was the same in both cases: "In both, the Court analyzed a number of factors to determine whether the movants were entitled to Rule 60(b) relief. In both, the Court focused not on the remedy requested [termination versus modification] but on the changed equities of the situation and the nature of the injunctions involved." Id. at 198. Thus, the Alexander court concluded that a moving party may invoke either standard pursuant to Rule 60(b) regardless of whether the remedy sought is modification or termination, stating:

> Indeed, Dowell itself makes clear that a party can invoke the standard it sets forth to terminate or modify a decree. . . . Similarly, if a party can demonstrate a significant, unforeseen change in the facts or law, it may invoke Rufo to move for modification and even, if the unforeseen change in circumstances is particularly dramatic, termination.

Id. at 199.

With respect to the meeting of either standard, the Alexander court noted that it may be more difficult to modify or terminate a consent decree, in which the parties forego litigation and compromise their respective positions, than to modify or terminate a court imposed-injunction. The court stated:

> In the latter [i.e., court-imposed injunction], defendants can only be required to address ongoing illegal activity or the past effects of illegal activity--i.e., violations of substantive federal law. But, in a consent decree, defendants may agree, within limits, to do more than a judicially imposed injunction could have required. . . . The consent decree must, of course, still relate to an alleged violation of federal law, . . . but, if it does, the parties should be held to their bargain.

Id. at 199-200 (citing Rufo, 502 U.S. at 389; Plyler v. Evatt, 924 F.2d 1321, 1327 (4th Cir. 1991)).

However, the 4th Circuit did not definitively resolve the question of whether the Dowell standard can be invoked when a party seeks to terminate or modify a consent decree when the decree's purpose is to ensure ongoing and future compliance with federal law and not to remedy the effects of past illegal activity. The Alexander court noted that the Dowell standard may be inapplicable to consent decrees in which the parties agree to cease ongoing illegal activity because it is difficult to establish that the decree has fulfilled that purpose; instead, the Rufo standard may be more relevant in such cases. Id. at 200. The court did not answer the question one way or the other because it found that the defendant administrators did not and could not satisfy the Dowell standard even if it did apply to the case at issue, a case involving an agreement to cease ongoing illegal activity (i.e., school segregation). Id.

B. Limitations on Constitutional Right to Habilitation.

In Youngberg v. Romeo, supra, the Supreme Court, in 1982, considered the issue of whether an individual involuntarily committed to a state institution for the mentally retarded has a substantive right to training or "habilitation"[2] under the Due Process Clause of the Fourteenth Amendment. Noting that "[a]s a general matter, a State is under no constitutional duty to provide substantive services for those within its border," the Youngberg Court nevertheless recognized that a State does owe a duty to provide certain services and care when a person is institutionalized. 457 U.S. at 317. The Supreme Court then "conclude[d] that respondent's liberty interests require the State to provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint." Id. at 319. The Youngberg Court also held that "[i]n determining what is 'reasonable'--in this and in any case presenting a claim for training by a State--we emphasize that courts must show deference to the judgment exercised by a qualified professional," thereby limiting interference by the federal judiciary with the internal operations of state institutions. Id. at 322.

In DeShaney, supra, the Supreme Court expounded upon the limited constitutional right to training it identified in Youngberg. The DeShaney Court stated that "our cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." 489 U.S. 189, 196 (citing, e.g.,

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[2]The Supreme Court stated that the term "habilitation," when used in the context of psychiatry, refers to training and development of needed skills. 457 U.S. at 317.

Youngberg, 457 U.S. at 317). The Court recognized that:

> [I]n certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals . . . [, noting the Youngberg] holding that the substantive component of the Fourteenth Amendment's Due Process Clause requires the State to provide involuntarily committed mental patients with such services as are necessary to ensure their "reasonable safety" from themselves and others.

489 U.S. at 198.

However, the DeShaney Court, in determining that the constitutional rights identified in Youngberg did not apply to the DeShaney petitioners because the petitioners were not in the custody of the State, concluded that Youngberg and its progeny "stand only for the proposition that when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." Id. at 199-200. In support of this conclusion, the Supreme Court reasoned:

> In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf--through incarceration, institutionalization, or other similar restraint of personal liberty--which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.

Id. at 200. Thus, DeShaney makes clear that an individual has no substantive due process rights to receive services from the State unless the State has taken affirmative steps to restrain the personal liberty of the individual.

C. Requirements Under the IDEA.

Plaintiffs summarized the relevant portions of the Individuals with Disabilities Education Act, 20 U.S.C. § 1411, *et seq.*, as follows:

> IDEA . . . requires an individualized education program based on his individual needs and drafted by a team of professionals. 20 U.S.C. §§ 1401(a)(20), 1414(a)(5). . . . IDEA also requires related services which are necessary to facilitate learning. These can include physical or occupational therapy, special equipment or transportation, or whatever is required by the individual needs of the student. 20 U.S.C. § 1401(a)(17); 34 C.F.R. § 300.13. IDEA also requires a transitional component, beginning no later than age 16, regarding post-school outcomes such as employment, post-secondary education, adult services, independent living, and community participation. 20 U.S.C. § 1401(a)(19).

Plaintiffs' Response at 7.

D. Pennhurst and Eleventh Amendment Immunity.

In Pennhurst, supra, the Supreme Court reviewed the law regarding a State's immunity from suit in federal court pursuant to the Eleventh Amendment. The Court stated that "[i]t is clear . . . that in the absence of consent a suit [in federal court] in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment . . . [and that] [t]his jurisdictional bar applies regardless of the nature of the relief sought." 465 U.S. 89, 100 (citations omitted). The Pennhurst Court further noted that this bar also applies to suits brought only against state officials. Id. at 101 (stating that "the general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter") (citation omitted). However, the Court recognized exceptions to the jurisdictional bar for suits challenging the constitutionality of a state official's action (citing Ex parte Young, 209 U.S. 123 (1908)) and for suits against state officials for violation of federal law which resulted in

injunctive relief governing the officials' future conduct (citing Edelman v. Jordan, 415 U.S. 651 (1974)). 465 U.S. at 102-03.

With these principles in mind, the Court turned to the question of whether a claim that a state official violated state law is one against the State and therefore barred by the Eleventh Amendment.[3] The Pennhurst Court concluded that Young and Edelman are inapplicable in a suit against state officials on the basis of state law, noting that:

> A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts with the principles of federalism that underlie the Eleventh Amendment.

Id. at 106.

Furthermore, the Supreme Court concluded that, even if a state law claim would otherwise properly be before a federal court on the basis of pendent (now, supplemental) jurisdiction or some other basis of jurisdiction, such jurisdictional grounds are trumped by the Eleventh Amendment. The Court held:

> [N]either pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment. . . . A federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh Amendment. We concluded above that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is

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[3]The Court did not decide whether a district court would have jurisdiction to grant prospective relief on the basis of federal law but did note that "the scope of any such relief would be constrained by principles of comity and federalism." 465 U.S. at 104 n.13 (further noting that federal courts must be constantly mindful of "the delicate adjustment to be preserved between federal equitable power and State administration of its own law") (citation omitted).

> protected by the Eleventh Amendment. . . . We now hold that this principle applies as well to state-law claims brought into federal court under pendent jurisdiction.

Id. at 121 (citations omitted).

IV. Analysis.

A. Introduction.

As stated above, the Court's review of the many briefs submitted by the parties leads the Court to conclude that the focus of its analysis is whether termination of the class action is warranted under Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), or Board of Education of Oklahoma City Public Schools v. Dowell, 498 U.S. 237 (1991). After another review of the briefs and of the arguments raised at the evidentiary hearing, the Court finds that termination of the case is appropriate for the following reasons:

(1) The limitation on the constitutional right to habilitation, set out in Youngberg and DeShaney, represents a significant change in the law such that modification of the consent decree is justified under Rufo to the extent that the decree was based on a constitutional right to habilitation;

(2) Pursuant to the Dowell standard, Defendants have demonstrated sustained compliance with their obligations to Plaintiffs under the IDEA such that court supervision over IDEA requirements is no longer warranted; and,

(3) Because the Court no longer exercises jurisdiction over Plaintiffs' claims under federal constitutional and statutory law, the Court, pursuant to Pennhurst and the Eleventh Amendment, may no longer exercise jurisdiction over Plaintiffs' remaining state law claims.

B. Constitutional Right to Habilitation.

One of the five predicates for the consent decree in this case was the parties' agreement that "plaintiffs have the right to appropriate treatment as provided by the Fourteenth Amendment to the United States Constitution." Second Set of Stipulations at ¶ 4. Based in large part on this assumption that the plaintiff class had a constitutional right to appropriate treatment, the parties agreed that Defendant would provide each plaintiff with an "individualized habilitation plan" which would include the least restrictive living conditions appropriate for that person, as well as:

> [M]edical treatment, education, training and care, suited to his needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency.

Id. at ¶ 9.

However, as Youngberg and DeShaney make clear, the Willie M. Plaintiffs do not have a constitutional right to any of these services. Instead, it is only those members of the plaintiff class who are involuntarily in the custody of the State who have any constitutional right to governmental aid at all, and, even then only possess the right to "minimally adequate or reasonable training to ensure safety and freedom from undue restraint." Youngberg, 457 U.S. at 319.

The Court finds that this limitation on the constitutional right to habilitation represents, within the meaning of Rufo, a significant, unforeseen change in the law from the law in effect at the time of the parties' agreement. Regardless of whether Willie M. class members are in the custody of the State, the rights available to them under the Constitution are very different than

the rights contemplated by the parties at the time they agreed to the Second Set of Stipulations.

It is true that the 4th Circuit in Alexander stated that defendants may agree to do more than the Constitution requires, if the agreement still relates to an alleged violation of the Constitution, and that the Rufo Court cautioned district courts from modifying consent decrees whenever there is a clarification in the law. However, that a party may agree to do more than is required by law does not mean that a district court must maintain jurisdiction over that agreement if the court finds circumstances have changed such that it is no longer just to do so. Such is the case here. Furthermore, the change in the law represented by Youngberg and DeShaney is more than a mere clarification in the law; it fundamentally altered the primary basis for federal jurisdiction over this case.

Therefore, the principles of equity and federalism cited by the Rufo Court as the most important considerations in this type of Rule 60(b) motion guide this Court to the conclusion that it should no longer exercise jurisdiction over the consent decree to the extent the decree is based upon the Plaintiffs' constitutional rights. Since the parties entered into the consent decree, the Supreme Court has limited the constitutional right to habilitation to the degree that it is no longer equitable for this Court to enforce obligations based upon such a right. Additionally, Defendants have instituted a comprehensive system of services for the Willie M. class that is codified in state law and regulation, and it is not the place of this Court to tell the State how to administer its own laws when there is no longer an overriding constitutional predicate for those laws. See Rufo, 502 U.S. at 391 (requiring that a district court defer to local government administrators with respect to solving problems of institutional reform because of the public interest and considerations of the allocation of powers within our federal system).

Thus, pursuant to Rufo and its progeny, the Court hereby modifies the consent decree at issue in this case such that there is no longer a basis for federal jurisdiction pursuant to the Fourteenth Amendment to the United States Constitution. See, e.g., Alexander, 89 F.3d at 197 (stating that a district court's task in analyzing these kinds of Rule 60(b) motions "is to determine whether it remains equitable for the judgment at issue to apply prospectively and, if not, to relieve the parties of some or all of the burdens of that judgment on 'such terms as are just'") (citation omitted).

C. Rights Under Federal Statutory Law.

The second and last federal law predicate for the consent decree was the Plaintiffs' "right to free appropriate education in the least restrictive environment as provided for and defined in the Education for All Handicapped Children Act [now IDEA] . . . ." Second Set of Stipulations at ¶ 7. Plaintiffs argue that: there has been no substantive change in Defendants' obligations under the statute since the time of the agreement; 89% of the class is eligible for special education under the statute; the IDEA requires an individualized education program for eligible members; and, Defendants have not demonstrated full compliance with their obligations under the statute. Plaintiffs also contend that the full remedy of the consent decree is adequately grounded in these federal education statutes. In seeking termination of the class action, Defendants argue that they have been in compliance with their requirements under the IDEA for many years, stating: "It is unrefuted that of the thousands of class members defendants have educated only two have ever invoked the State's elaborate IDEA administrative complaint process and that both of those complaints were quickly resolved to the satisfaction of the class

members' parents or guardians." Reply at 3.

Though Defendants state the issue in terms of *termination* of the case, the Court finds that the proper issue is whether Defendants are sufficiently in compliance with the IDEA to meet the Dowell standard and justify *modification* of the consent decree. Therefore, what is at stake is Defendants' measure of compliance with the federal statute, IDEA, not their measure of compliance with the consent decree as represented by percentages of class members appropriately served pursuant to "appropriate reviews" or some other standard. That being said, it is clear to the Court that Defendants have met the Dowell standard with respect to their obligations under the IDEA.[4]

Dowell permits modification of a consent decree if a defendant can establish good faith compliance with a decree for a reasonable period of time such that the vestiges of past discrimination have been eliminated to the extent practicable. The Supreme Court in Freeman identified several factors that bear upon a district court's Dowell analysis, including: whether there has been compliance with the decree in those aspects of the system where federal court supervision is to be withdrawn and whether the defendant has demonstrated a good-faith commitment to the whole of the decree and to those provisions of federal law that were the predicate for judicial intervention. 503 U.S. at 491.

Here, Defendants have presented unchallenged evidence of their long-term compliance

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[4]The Court notes the 4th Circuit's reluctance in Alexander to apply the Dowell standard in cases such as this one where the purpose of the decree at issue is to ensure compliance with federal law and not to remedy the effects of past illegal activity. However, the Alexander court did not definitively resolve the question, and this Court finds that principles of equity and federalism are sufficiently in favor of Defendants' position in this case to overcome any doubt in the wisdom of applying the Dowell standard here.

with that aspect of the Willie M. system from which withdrawal of federal supervision is contemplated: the IDEA. Pursuant to the IDEA, Defendants have implemented the Individualized Education Program for Children with Disabilities, which includes related services, a transition component, and effectiveness monitoring. The State's participation in the IDEA is codified at N.C.G.S. § 115C-106 *et seq.*, first enacted in 1973, and has been implemented through regulations codified at N.C.A.C. tit. 16, r. 2C.1500 *et seq.*, first effective in 1978.

To the extent that jurisdiction over the consent decree is predicated on the IDEA, it is appropriate to modify the decree. Maintaining federal jurisdiction would be either duplicative or destructive to Congressional intent as expressed in the IDEA. Under that statute, a plaintiff must seek state administrative review before he or she brings a claim to federal court. Plaintiffs at bar do not contest that only two class members have ever challenged their educational services or that both cases were settled prior to hearing. An individual's membership in the Willie M. class should not enable that person to circumvent the provisions of IDEA and seek a federal remedy before proceeding through appropriate, adequate state channels.

Furthermore, Defendants have complied with the instant decree to the extent practicable. Although Plaintiffs focus on the fact that Defendants have not produced two full sets of appropriateness reviews to support their contention that Defendants have not shown actual compliance, these reviews are not the only way to prove compliance with the consent decree. The state has in other ways shown compliance to the extent feasible. The state has devoted ample resources to this program. The state has installed a team of dedicated professionals who have developed a program for dealing with Willie M. children that are emulated by other states. These professionals coordinate and oversee a statewide effort under which the services provided

to class members are updated not only when formal reviews are performed but when the state's professionals discover through informal channels that adjustments are necessary. Because this is a population whose needs can change unforeseeably and rapidly, accumulating static evaluations that indicate that every class member is receiving appropriate treatment at every time is not a realistic goal. Rather, it requires that the Willie M. program divert resources to excessive record keeping for the sake of record keeping when there is constantly work to be done on the front lines of servicing this population.

Indeed, through the testimony of Dr. Eric Vance, a practicing psychiatrist and the chief clinical consultant for the Willie M. program, the state has indicated that it even now continues to take steps to innovate and is on the cutting edge of treating class members. Dr. Vance explained that Willie M. class members have an average of 15 out of 30 known psychosocial risk factors that have been identified for high risk children. These risk factors range from a history of abuse to poverty to having an emotional disorder. The presence of four or five risk factors in a child is known to be a significant cutoff for poor psychosocial outcomes in life, such as developing substance abuse problems or serving time in prison.

After a review of a large range of literature on violent children and high-risk children in general, the Willie M. team has during the last several years begun to identify protective factors in these children. Protective factors are characteristics of individuals who have survived high risk situations. The Willie M. staff has begun to attempt to surround high- risk children with protective factors. Dr. Vance testified that identifying both risk and protective factors not only predicts how a child might function over the long term but also provides a basis for developing a treatment plan.

Thus, it is clear that Defendants, in good faith, have demonstrated a long-standing commitment to, and compliance with, the requirements of the IDEA, the only provision of federal statutory law that was a predicate for judicial intervention in this case, as well as the decree. Plaintiffs' evidence of Defendants' insufficient compliance with the decree is largely irrelevant and refers mostly to standards of appropriateness and to monitoring requirements that are not part of the IDEA and that are simply not practicable. The evidence and testimony at the evidentiary hearing establish that, over a period of time, all class members are provided with appropriate Willie M. services. Plaintiffs' primary objection is Defendant's inability to furnish forms that satisfy the Plaintiffs. Plaintiffs' objections as to form cannot shackle Defendants to continuing federal oversight in light of the extensive services that Defendants already provide to each class member and the comprehensive appeal system already available under IDEA. Given Defendants' accomplishments, their only additional response to further federal oversight might be to entreat, "My soul is also sore vexed: but thou, O Lord, how long?" Psalms 6:3.

As with the previous Rufo analysis, the Court here finds that the principles of equity and federalism inherent in Dowell militate in favor of modifying the consent decree to the extent it is founded upon the requirements of the IDEA. First, because of Defendants' long history of meeting those requirements, the Court finds that it is no longer equitable for it to exercise jurisdiction over Plaintiffs' IDEA-based claims. Second, without any federal law basis for the Court's supervision of the consent decree, the Court concludes that it is inappropriate for a federal court to second-guess the effectiveness of the State's program or the professional judgment of State officials. See, e.g., Pennhurst, 465 U.S. at 104 n.13 (stating that a federal court's granting of prospective relief against state officials on the basis of federal law should be

constrained by principles of comity and federalism).

D. Eleventh Amendment Immunity and its Effect on Continued Federal Jurisdiction.

The Court has concluded above that it is no longer equitable for the Court to exercise jurisdiction over the consent decree to the extent the agreement is based upon a constitutional right to habilitation or upon federal statutory rights under the IDEA. As a result, neither of the federal law predicates for the parties' agreement remain as a valid basis for the Court's continued supervision of the decree. Thus, the final issue before the Court is whether the Court may continue to exercise jurisdiction over this case on the basis of Plaintiffs' claims under state law. Upon review of the controlling law, the Court finds that it is barred by the Eleventh Amendment and Pennhurst from exercising such jurisdiction.

Given that the neither the Constitution nor the IDEA can provide a basis for federal jurisdiction over this case, the three remaining predicates for the consent decree are:

> 5. Plaintiffs committed to the custody of the Division of Youth Services pursuant to Article 7A of the General Statutes of North Carolina have a right to appropriate treatment under N.C.G.S. § 134A-20.
>
> 6. Plaintiffs who are residents of a treatment facility as defined by N.C.G.S. § 122-36(g) [State mental health facilities] have a right to appropriate treatment under N.C.G.S. § 122-56.
>
> . . .
>
> 8. Plaintiffs have a right to free appropriate public education in the least restrictive environment as provided for by and defined in N.C.G.S. § 115-363, *et seq.*, and implementing regulations, 16 N.C.A.C. 2E.1500, *et seq.* . . .

Second Set of Stipulations at ¶ 5-8. These three predicates arise from claims that state officials

were violating state law.

The Supreme Court in Pennhurst could not have been clearer in holding "that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment." 465 U.S. at 121. In support of its holding, the Pennhurst Court noted how strongly considerations of federalism weighed in favor of barring federal court jurisdiction over claims that state officials violated state law, stating:

> A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts with the principles of federalism that underlie the Eleventh Amendment.

Id. at 106. These same principles require that this Court may not exercise jurisdiction over Plaintiffs' remaining state law claims and, therefore, that the Court terminate its oversight of this class action.

V. Conclusion.

Based upon the foregoing, the Court **ORDERS** that Defendants' Motion to Terminate Class Action Pursuant to Fed. R. Civ. P. 60(b) is **GRANTED** and that this case is therefore **DISMISSED.** With respect to the Willie M. Review Panel, the Court **ORDERS** that:

(1) the Panel is hereby relieved of its duties with the thanks of the Court;

(2) the Panel's staff may continue to work for up to 120 days from entry of this order for the purpose of preparing the Panel's records for retention by the State Archives;

(3) counsel for the Panel shall inform the Court when the staff's work preparing

the records is complete; and,

(4) to the extent the Court has the authority to so order, the State Archives retain the Panel's records in the manner agreed to by the Panel, the State Archives, and counsel for Defendants.

The Clerk is directed to send copies of this order to counsel for both parties and counsel for the Willie M. Review Panel.

This 21st day of January, 1998.

UNITED STATES DISTRICT JUDGE
GRAHAM C. MULLEN