

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOY EVANS, <u>et al.</u> ,)	
Plaintiffs,)	
)	
and)	
)	
UNITED STATES OF AMERICA,)	
Plaintiff-Intervenor,)	Civ. No. 76-293 (SSH)
)	
)	
v.)	
)	
)	
ANTHONY WILLIAMS, <u>et al.</u> ,)	
Defendants.)	
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)	
)	

SETTLEMENT AGREEMENT

Pursuant to the attached Consent Order, the parties and the Quality Trust for Individuals with Disabilities, Inc., (hereinafter the "Quality Trust" or "QT"), hereby agree to the following:

I. Structure of the Quality Trust

- A. The bylaws of the Quality Trust shall provide that the Quality Trust will have an independent Board of Directors and a body of non-voting members. The Mayor shall appoint the initial board from a list of nominees jointly developed by Defendants, Plaintiffs and Plaintiff-Intervenor. Each nominee on the list of proposed board members shall be agreed to by all parties. The Board shall thereafter be self-perpetuating. Specifically:
 - 1. The composition and responsibilities of the Board will be established by the organization's bylaws and will include the following:
 - a. Each director shall be a natural person of adult age. A director need not be a citizen of the United States. At least eight members of the Board must be residents of the District of Columbia.
 - b. The initial Board of Directors shall consist of the directors named in the Quality Trust's

Articles of Incorporation and shall hold office until their successors have been duly appointed and qualified.

- c. At all times following the appointment of the first full thirteen member Board of Directors, the full Board of Directors shall consist of thirteen adult persons designated as follows:
 - i. Two family members of people with mental retardation and/or developmental disabilities. The initial terms of family members shall be two years, and all subsequent terms shall be three years;
 - ii. Two non-legal advocates for persons who have mental retardation and/or developmental disabilities. The initial terms of the non-legal advocate members shall be two years, and all subsequent terms shall be three years;
 - iii. Three persons who have mental retardation and/or developmental disabilities. The initial terms of these members shall be one year, and all subsequent terms shall be three years;
 - iv. Two professionals with at least ten years background in a service delivery system for people who have mental retardation and/or developmental disabilities. The initial terms of professional members shall be three years and all subsequent terms shall be three years;
 - v. Two attorneys licensed to practice law. The initial terms of attorney members shall be three years, and all subsequent terms shall be three years; and

vi. Two citizens residing in the District of Columbia. The initial terms of citizen members shall be one year, and all subsequent terms shall be three years.

d. Following the initial term of each Board Member, the remaining Board Members, whose terms are not ending, will vote to replace the departing Board Member. A majority vote of those remaining Board Members is required to fill a vacancy. Further, the Board Member must replace a departing Board Member with an adult person who fits the designated category (e.g., family member, non-legal advocate, person with mental retardation and/or other developmental disability, professional with ten years experience, attorney, citizen residing in the District of Columbia) of the departing Board Member. A Board Member may succeed himself or herself. A Board Member may resign prior to the expiration of the full term. If a Board Member resigns prior to the expiration of the full term, the other Board Members shall replace that Board Member for the remainder of the unexpired term through the voting process outlined in this section. Votes regarding the appointment, removal, or replacement of a member of the Board of Directors may not be delegated to a committee of the Board.

2. The Quality Trust will be a member organization with non-voting members. The non-voting members shall be individuals with mental retardation, as well as people with other developmental disabilities, who are applicants for or are receiving protections, supports and services in the District of Columbia's developmental disabilities service delivery system, and all Evans class members.

B. The Quality Trust's scope of activities shall include review of services to all Evans class members, as well as non-class members who are applicants for or are receiving protections, supports and services in the District of Columbia's developmental disabilities service delivery system.¹ Pursuant to the attached Consent Order and this Settlement Agreement, the Quality Trust will monitor the protections,

¹ The extension of the Quality Trust functions to class members and non-class members does not extend the Court's jurisdiction to non-class members.

services and supports provided to these individuals and offer legal services and provide lay advocacy services to these "consumers." The term "consumers" refers to all recipients and applicants for services from the District of Columbia's service delivery system for individuals with mental retardation and developmental disabilities. The Evans class members (i.e., those individuals who have at one time resided at Forest Haven) comprise a subset of this overall group of consumers.

II. Control and Use of the Quality Trust Fund

- A. The investment fund, created with the eleven million dollars paid by the Defendants and/or District of Columbia pursuant to the attached Consent Order, shall be controlled by the Quality Trust. The Quality Trust shall invest the fund in a reasonable and prudent manner. The Quality Trust shall make reasonable efforts to increase its assets, raise funds and/or find additional resources in order to increase the principal and income of the fund.
- B. From the outset, the earnings from the fund shall be reinvested to increase the principal. The earnings of this fund shall not be used to support the operations of the Quality Trust until October 1, 2006. The Quality Trust shall not use the principal to carry out its functions and operations prior to October 1, 2011. After October 1, 2011, the Quality Trust, by a vote of three-quarters of its Board Members, may utilize a reasonable portion of the principal to support its mission.
- C. Nothing in this Settlement Agreement shall preclude the Quality Trust, in accordance with applicable law, from creating a separate corporate entity, consistent with the Quality Trust's mission, to achieve the Quality Trust's operational goals.

III. Obligations of the Quality Trust

In general, the Quality Trust shall: advance the individual and collective interests of consumers with developmental disabilities, and in particular Evans class members; monitor the health, safety and welfare of these consumers; and monitor the protections, services and supports provided to these consumers. The Quality Trust also shall provide for individual and/or collective legal services and lay advocacy services for consumers as set forth in greater detail below. The Board of Directors shall periodically determine how to apportion its resources among monitoring, legal representation services and lay advocacy or other strategies, consistent with the Quality Trust's mission and functions, to advance the individual and/or collective interests of consumers with developmental disabilities, and in particular Evans class members. This process shall be informed by the Defendants' and/or the District of Columbia's level of compliance with the Evans 2001 Plan.

A. Monitoring

The Quality Trust shall create a Monitoring Unit which shall:

1. Develop an annual monitoring plan with input from the parties, consumers, families, providers and advocates.
2. Monitor the adequacy, safety and quality of consumers' residential and habilitation programs and supports.
3. Receive and review with regard to consumers from the District's Mental Retardation and Developmental Disabilities Administration ("MRDDA") or its successor, all of MRDDA's serious incident reports and investigation reports of serious incidents, including deaths, and aggregate information regarding all incidents.
4. Write annual reports, and, in addition, such other periodic reports as the Quality Trust may determine to be necessary. Such reports are to be made public and provided to: (A) the Special Master and the parties' counsel of record (until this case is no longer subject to Court supervision); (B) the Defendants and/or the branches of the District of Columbia, including the Departments of Human Services and Health (or their successors), the Chief Financial Officer and the Mayor; and (C) the District of Columbia Council. The reports

shall make observations with regard to the adequacy of the protections, services, and supports provided to consumers and offer recommendations for any needed improvements. The Defendants and/or the District of Columbia shall respond promptly to these reports in writing, including specific corrective action steps they will implement or have implemented, along with timelines if the actions have not been implemented, to address current problems.

5. Receive and review information with regard to the District of Columbia budget requests for MRDDA or its successor sufficient to permit its timely monitoring and comment about District of Columbia budget decisions affecting consumers.
6. Annually inform the Defendants and/or the District of Columbia of the consumer needs, based on information collected during monitoring activities, in a timely manner, to permit such information to be considered in developing the District of Columbia's proposed budget for the service delivery system for individuals with developmental disabilities for the following Fiscal Year.
7. Apply at least the following standards in its monitoring and reviews: (A) the specific outcome criteria developed as part of the Evans 2001 Plan; (B) certification and private accreditation standards; (C) the District of Columbia's own standards including licensing requirements; (D) Medicaid and Medicare regulations and conditions of participation; and (E) the District of Columbia's performance standards in private provider contracts.
8. Be physically co-located with the Evans Independent Court Monitor so as to enhance communication regarding monitoring activities in order to avoid redundancy, until the Evans case is no longer subject to regular Court supervision. The Independent Court Monitor shall remain directly responsible to the Court, and not to the Quality Trust. As each Evans Order is vacated by the Court, monitoring of corresponding operations shall be transferred from the Independent Court Monitor to the Quality Trust, and shall no longer be subject to Court supervision.

B. Legal Services

1. The Quality Trust shall work to raise the level of advocacy among court-appointed attorneys by, for example, providing training, drafting model pleadings and developing in-house appellate advocacy capacity. The Quality Trust's legal representatives will supplement (not replace) the existing pool of attorneys appointed by Superior Court and will seek to be appointed in cases of consumers who have heretofore been deprived competent representation.
2. The Quality Trust shall contract with or otherwise arrange for legal representation services for consumers. The scope and content of the contract shall be negotiated by the Quality Trust and the provider. The Quality Trust will oversee the performance of the provider under this contract to ensure that the consumers are getting the legal representation services they require.
3. The Quality Trust shall not provide direct legal representation to any individual but may contract or make other arrangements for direct representation from other independent legal services providers. Nothing herein shall preclude lay advocates from assisting consumers in administrative proceedings.

C. Lay Advocacy Services

Because some of the advocacy needs of the consumers do not require the services of an attorney and can be provided more effectively and less expensively through the availability of lay advocates, the Quality Trust will create a Lay Advocacy Program which shall provide the following services:

1. Attend Individual Support Plan ("ISP") and other team meetings for consumers for whom they are responsible and advocate for the needs and choices of the consumers at these meetings. The advocates will attempt at all times to facilitate the consumers' self-expression, or in the alternative, will consult with duly appointed representatives or surrogate decision-makers, where appropriate.
2. Regularly interact with the case managers of the consumers on their caseloads to keep abreast of any issues impacting on the protections, services and supports provided to consumers.

3. Receive and review serious incident reports and investigation reports for consumers for whom they are responsible, and advocate for the consumers' safety and well-being in the course of such investigations.
4. Receive and review all monitoring reports related to the consumers on their caseloads and follow up to ensure that necessary corrective action is taken.
5. Periodically visit consumers receiving residential and day treatment services to ensure that consumers are safe and satisfied with the services and supports they are receiving and that the services and supports are adequate to meet the individualized needs of the consumers.
6. Advocate on behalf of individuals and/or groups of consumers to ensure that their complaints are investigated in a timely fashion and that the consumers are satisfied with the resolution. In the event that the time frames required for resolution are not complied with or that the proposed resolution is otherwise unsatisfactory, the advocate shall consult with the consumer(s), or other appropriate decision-maker, to determine the appropriate course of action.
 - a. The Lay Advocacy Program and the Legal Services component shall establish a program to facilitate the immediate referral and coordination of cases requiring the assistance of an attorney.
 - b. Consumers may seek immediate referral to the Legal Services component from the Lay Advocacy Program.

7. Attend court hearings for the consumers on their caseloads and work with the assigned attorneys in ensuring that consumers' needs for protections, services and supports are met.
8. Some consumers will have family members, guardians or friends who will serve as their advocates while others will rely on the services of paid lay advocates. The advocacy program will provide training not only to the lay advocates, but also to such volunteer advocates.
9. This advocacy unit will supplement (not replace) the existing pool of advocates acting on behalf of family, friends, or those appointed by Superior Court or appointed pursuant to existing Orders in this case. The Lay Advocacy Program will prioritize cases of consumers who heretofore have not received advocacy services.

IV. Quality Trust's Right to Access and Information

- A. The employees, contractors and consultants retained by the Quality Trust shall have full access to information that the Quality Trust deems reasonably necessary and appropriate in performing the monitoring and lay advocacy duties described in the Settlement Agreement. More specifically, the employees, contractors and consultants retained by the Quality Trust shall have full access to consumers, and their residences, facilities, buildings, programs, services, documents, records (including medical and departmental) and other materials that the Quality Trust deems reasonably necessary and appropriate in performing the duties of the Quality Trust's monitoring and lay advocacy functions. The Quality Trust may obtain copies of the aforementioned documents, records, and other materials. The Defendants and/or the District of Columbia shall provide the Quality Trust with information upon request relevant to individual supports and services provided in the District of Columbia's service delivery system and the Quality Trust may request written responses from the Defendants and/or the District of Columbia in this regard. Advance notice of any visit or inspection by the Quality Trust shall not be required. Representatives of the Quality Trust may conduct private interviews and meetings with any individual including employees, contractors or agents of the District of Columbia, as well as all provider staff. The Defendants and/or the District of Columbia shall require its employees, contractors, agents, as well as provider staff, to cooperate

with the Quality Trust representatives.

- B. Attorneys who provide direct legal representation of consumers under a contract or other arrangements with the Quality Trust shall have the right to access their clients' records and any and all information regarding their clients that flow from their attorney-client relationship. In litigation involving the Defendants and/or the District of Columbia, attorneys shall comply with the applicable rules of discovery and procedure.
- C. The Quality Trust shall safeguard the information obtained pursuant to paragraph IV.A., as required by all applicable laws and Court Orders protecting the confidentiality of such information.
- D. The Defendants and/or the District of Columbia shall keep the Quality Trust informed in a timely fashion of relevant budgetary information regarding MRDDA or its successor. The areas about which the Defendants and/or the District of Columbia shall provide information to the Quality Trust include the following:
 - 1. The portions of the budget that address specific consumer needs for residential and day program services, equipment, medical and clinical care, etc.;
 - 2. The portions of the budget that address system needs for managing, monitoring, and overseeing the system of services for consumers;
 - 3. The portions of the budget that address any capital appropriations that may be required to meet the needs of the consumers (e.g., for construction or renovation of program sites or residences);
 - 4. The amount of the appropriation being requested by the Mayor from the City Council to meet consumer needs;
 - 5. The final appropriation; and

6. The District of Columbia Department of Health's proposed and actual budgets which include the District of Columbia's share of payments to Medicaid providers.

V. Legislative Principles

The Plaintiffs and the Defendants agree that if the appropriate legislative body does not enact legislation to implement the Legislative Principles (attached to the Evans 2001 Plan), before the end of the 2001 legislative session, the parties will accomplish the objectives of the Principles through alternative means. The United States does not take a position with regard to such proposed and/or pending legislation or to the Legislative Principles attached to the Plan.

VI. Judicial Review

Until the Evans case is dismissed, this Court shall retain jurisdiction to enforce the Settlement Agreement as to class members only, with remedies available to the parties to the Settlement Agreement under applicable contract law. Upon dismissal of this action, the Settlement Agreement shall be enforceable as a contract in the Superior Court of the District of Columbia.

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Respectfully submitted,

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FOR THE PLAINTIFF-INTERVENOR:

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Dated: _____, 2001