

DCS gains 15 months to devise strategy

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By ROB JOHNSON
Staff Writer

The state Department of Children's Services has been granted 15 extra months to get a new improvement plan running as the beleaguered agency tries to transform itself under a court-approved settlement agreement.

The state had been facing a crucial hearing Friday in U.S. District Court. The plaintiffs' attorneys in the "Brian A." lawsuit were preparing to ask a judge to hold the state in contempt for failing to abide by a 2001 agreement that calls for an overhaul of Tennessee's foster-care programs.

For now, that step has been avoided. A critical issue was whether the state could show the court it was achieving adequate progress in remaking itself.

Under the settlement agreement, DCS had 54 months to turn itself into a more effective agency on behalf of Tennessee's 10,000 foster children. In recent months, though, it became obvious that it could not show it had a plan to better itself — much less show any significant progress. A court monitor's report in November found the state still out of compliance on 84 of 136 agreement provisions.

Yesterday the state agreed to come up with an implementation plan in concert with a committee of nationally recognized experts — a "technical assistance committee." Children's Rights Inc., the advocacy group that brought the lawsuit, has agreed to the extension, but has insisted on timetables to force DCS to make up for lost time.

For now, monitoring functions will be incorporated into the work of the technical assistance committee. It will have the authority to track the agency's progress and suggest ways for it to improve, said plaintiffs' attorney David Raybin.

Previously the court monitor and the committee worked independently of each other, sometimes at cross purposes, Raybin said.

Yesterday's agreement caps a stormy two months for the department. First Gov. Phil Bredesen asked for the resignation of his DCS commissioner and then came the hiring, two days before Christmas, of Viola Miller, who held a similar in post in Kentucky.

Bredesen cited his displeasure with previous commissioner Michael Miller's inability to provide DCS with the "cultural change" that the governor believed the agency needed to fulfill its "Brian A." obligations.

Immediately after being sworn in last week, Viola Miller flew to Baltimore to participate in mediated talks. The negotiations included plaintiffs' attorneys, DCS officials and state Attorney General Paul Summers.

The incoming commissioner said she was eager to avoid a contempt-of-court hearing.

"Think about starting my job testifying in the federal court," the new DCS chief said. "I mean, do you want to do that? My preference is always to sit down and negotiate a settlement that everybody can feel good about and then give us a chance to move from there."

Yesterday's agreement gives her more than a year to develop and implement the new plan to get DCS back on track.

"The 15-month extension is fine with me, but I intend to move on as aggressive a timetable as we can possibly move on," Viola Miller said. "Look, kids are in danger."

Children's Rights executive director Marcia Robinson Lowry laments the lost time, but she hopes that a new commissioner — and a new court-approved plan — will be constructive.

"The state started to make progress, and then it stopped," she said, referring to last January's change from Gov. Don Sundquist's administration to Bredesen's.

"It makes me sick to know that we have lost a year," Lowry said, "but the question is what do you do about it now?"

The expert technical advisory committee (TAC) was part of the original settlement, but its role has been revived under the latest deal.

"I'm very pleased with the progress made over the last week," Bredesen said in a statement released yesterday. "The national expertise of the TAC, coupled with the new leadership Dr. Miller brings and the work being completed by the task force I named last month, puts us well on our way to compliance, and more importantly, an improved Department of Children's Services."

Raybin said "litigation is always a blunt instrument, and it was unfortunately necessary to remedy these defects. But in this case, I'm optimistic."