

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BELINDA DUPUY, et al,

Plaintiffs,

No. 97 C 4199

v.

BRYAN SAMUELS, etc.

JUDGE REBECCA R. PALLMAYER

Defendant.

**PLAINTIFFS' MOTION TO REQUIRE IMMEDIATE SUBMISSION
OF MATERIALS DIRECTED BY THIS COURT'S
INJUNCTION ORDER OF DECEMBER 7, 2005**

The plaintiff class, with which this court is very familiar, includes persons who have been, are or will be subject to “safety plans.” This court has entered a preliminary injunction order on behalf of these plaintiffs and against the Director of the Illinois Department of Children and Family Services (“Director” and “DCFS”), which was docketed on December 7, 2005 (“Dupuy II Injunction Order”). Plaintiffs by their attorneys move this court to require defendant to submit, no later than March 10, 2006, all materials this court directed be prepared in order to implement its December 7 Injunction Order.

In support of this motion, plaintiffs state:

1. In Dupuy II, this court entered declaratory relief by order entered on the docket on March 11, 2005 (the March 11, 2005 Order), calling for DCFS to “develop constitutionally adequate procedures consistent with this opinion” within 60 days therefrom. March 11, 2005 Order. Subsequently, this court reviewed the DCFS proposal, plaintiffs’ objections thereto and the

plaintiffs' competing proposal, and entered the December 7 Injunction Order enjoining DCFS to implement the injunctive relief set forth therein. That order in turn largely tracked the DCFS proposal, except in certain respects as described in the December 7 Injunction Order. Specifically, the court directed DCFS to provide class members under safety plans with a Safety Plan Team Assessment meeting within 10 days of the implementation of the plan, exclusive of weekends. December 7 Injunction Order at 3. The court further directed "notation[] of each five day (internal) review by child welfare specialists "of the reason the safety plan should remain in effect." It also prescribed that safety plans contain "specific duration[s] that will be identified either as a specified time period or a specific event..." *Id.*

2. In making the proposal that the court largely adopted, DCFS promised to "draft a revised brochure and specific forms to be used during the SPTA process. *Id.* The court added to the commitments DCFS had made the requirement that it "train its staff regarding [the SPTA] process and provide information concerning that process to class members at the time the safety plan is initiated."

3. The court directed the implementation of the DCFS proposal "as soon as practicable" but it stated that is "expects that will be no later than 60 days after the entry of the order." This time frame was ample, in plaintiffs' view, because DCFS itself had already made the substantive proposal as to the operation of the SPTA process months before the court ruled in its December 7 Injunction Order, and therefore merely needed to "fine tune" its own plan in order to effectuate it for class members.

4. Despite the more-than-sufficient time the court allowed DCFS in which to implement the December 7 Injunction Order, and despite the lack of any motion for any extension

of time in which to provide the promised brochures, forms, training and information to class members, as of the date of the filing of this motion, no evidence of compliance with the court's December 7, 2005 has presented to this court or the plaintiffs. And plaintiffs been hardly been precipitous in bringing the substantial delay in DCFS's implementation of the court's December 7 Injunction Order to the court's attention. Rather, plaintiffs have made sustained out-of-court attempts to avoid the necessity of yet another complaint regarding delayed implementation of court orders in this long-standing litigation. Specifically, plaintiffs first waited until after the 60 day period for implementation had already passed before writing to the defendant's counsel concerning the default (i.e. until after February 6, 2006 had already passed without any materials being filed and with the court tendered to them). By letter of February 8, 2006, the plaintiffs' counsel requested that materials related to implementation of the court's order be provided to them by February 14, 2006. See Letter from Diane L. Redleaf to DCFS Counsel Beth Solomon and Barbara Greenspan, February 8, 2006, Exhibit 1 hereto. Instead of providing any materials responsive to that letter, DCFS Counsel, on February 14, 2006, sent a letter to plaintiffs' counsel stating merely that "With respect to your demand that we provide you with documents regarding the court's December 2, 2005 order, please be advised that we will be filing those documents with the court in the near future and you will receive a copy in connection with that filing." Letter from Beth Solomon to Diane Redleaf, February 14, 2006, Exhibit 2 hereto. No further specificity as to when such filing would occur was provided.

5. On February 15, 2006, after still not receiving any documents and having no specific commitment to a date certain by which DCFS would provide the materials the court had ordered provided no later than February 6, 2006, the plaintiffs sent defendant's counsel yet another letter that

was more specific as to their intention to enforce this court's expectation of timely implementation of the December 7 Injunction Order. See Letter from Diane L. Redleaf to DCFS Counsel Beth Solomon and Barbara Greenspan, February 15, 2006, Exhibit 3 hereto. In response to this second letter, DCFS Counsel Solomon sent a letter stating that DCFS had in fact "trained staff" and "implemented the requirements of the court's order" but provided no documentation of the manner of implementation (i.e. the notices, brochures, training materials and forms it had developed for this purpose). See Letter of Beth Solomon to Diane L. Redleaf, February 22, 2006, Exhibit 4 hereto. Ms. Solomon represented that she had been unable to complete the filing of the documents plaintiffs had requested by their February 8 letter, but stated she that she "plan[ne]d on filing those documents early next week and most certainly by Wednesday, March 1, 2006."

6. Because of the assurance in no uncertain terms that documents related to the implementation of this court's December 7 Injunction Order would be filed "most certainly by Wednesday, March 1, 2006," plaintiffs again desisted in preparing any motion to advise the court of the defendant's default on the court's expectation of timely implementation of its Order.

7. On February 28, 2006, still having not received the promised materials, Ms. Redleaf called both Ms. Solomon and Ms. Greenspan to determine if in fact the March 1, 2006 deadline would be honored as promised. Ms. Redleaf did not reach Ms. Solomon. Ms. Greenspan did respond to her call and represented that she would contact Ms. Redleaf by phone on March 1, 2006 to notify her if the filing was made or if it would be delayed.

8. Ms. Redleaf next called Ms. Greenspan twice on March 1, 2006 to determine the status of any filing of documents fulfilling the promise Ms. Solomon had made in her February 22, 2006 letter. Ms. Greenspan was not available. By phone message left by Ms. Greenspan at

approximately 6:00 p.m. on March 1, 2006, after Ms. Redleaf had left for the day, Ms. Greenspan informed Ms. Redleaf that no filing had been made and that it was uncertain if such filing would be made this week or next due to an unidentified “emergency” matter on which Ms. Solomon was working for the Director of DCFS.

9. It is remarkable that defendant has not treated the requirement that he demonstrate his implementation of a class injunction order entered by the federal court as itself a top priority for DCFS and its counsel. It is also distressing that defendant’s counsel has failed to live up to her own explicit promise, and then failed to notify both counsel and the court as to the reasons why her express representation of compliance by March 1 could not be achieved. This conduct is unacceptable. This court has determined the relief to which plaintiffs are entitled in Dupuy II, (albeit not fully to plaintiffs’ satisfaction), and DCFS nevertheless has failed to demonstrate that it is in compliance in any respect with the court’s unambiguous commands respecting such relief. Providing the documentation of its compliance efforts is a first step only, and even that step has not been taken to date. Plaintiffs are entitled to review these steps to determine how plaintiffs’ rights are being afforded to them in keeping with the court’s December 7 Injunction Order, and plaintiffs are entitled to bring to this court any compliance concerns they may have (such as whether materials should be posted on the Web or embodied in rules or procedures, whether computer changes are necessary, whether the training described has adequately reached all staff who require it).

10. While defendant’s counsel maintain that the court’s December 7 Injunction Order “has been implemented,” as of the date of the filing of this motion (March 3, 2006), no evidence of any revised brochures, notices or rules appears on the DCFS web site. Indeed, plaintiffs’ counsel have found no mention whatsoever of any orders or requirements or procedures related to safety

plans on the DCFS web pages.

11. Plaintiffs have not sought any reporting order as to Dupuy II. They believe that reporting orders are appropriate once procedures are operating and records of those procedures are kept.

12. For all of the reasons set forth above, plaintiffs seek an order requiring that all materials related to the implementation of Dupuy II (brochures, forms, notices to class members, procedures or rules, memoranda to Child Protection Managers convening the SPTA meetings, training schedules, and any other documents in DCFS's possession related to the steps taken to implement this court's December 7 Order) should be filed forthwith, but no later than March 10, 2006.

Respectfully submitted,



One of the Attorneys for Plaintiffs

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1325 S. Wabash #100
Chicago IL 60605
312-356-3201

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of this motion was served upon counsel of record by electronic filing on March 3rd 2006.

s/Diane L. Redleaf

Diane L. Redleaf, Attorney

THE REDLEAF LAW FIRM

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E-MAIL: dredleaf@aol.com

February 8th, 2006

Beth Solomon
DCFS Legal
160 N. LaSalle, 6th Floor
Chicago IL 60601

Barbara Greenspan
Office of the Attorney General
100 W. Randolph St., 11th Floor
Chicago, IL 60601

Re: Dupuy II December 7, 2005 Injunction Order

Dear Counsel:

As you know, Judge Pallmeyer's December 2, 2005 Injunction Order in Dupuy II directed DCFS to implement its Safety Plan Team Assessment ("SPTA") within 60 days of that order. The order is docketed on December 7, 2005, meaning that the DCFS implementation deadline is no later than February 6. Included in the terms Judge Pallmeyer's Injunction Order is a requirement for a "draft revised brochure and specific forms to be used during the SPTA process," "that the Department train its staff regarding this process," and "provide information concerning that process to class members at the time the safety plan is initiated."

Yesterday I faxed you an urgent request for a SPTA on behalf of a class member who has been under an out-of-home safety plan since December 19, 2005. I did not receive any response from you today as of the time this letter is being faxed to you regarding that case ("R.B."), including whether the safety plan will be terminated with DCFS's agreement or a SPTA otherwise scheduled. We have also checked the DCFS website today and found no available information concerning the SPTA process or any other aspects of the court's December 7 order. As you know, the court stated that DCFS was to implement its order "as soon as practicable" but it expected that to be "no later than 60 days." We are now past the 60-day mark and have no information as to how anyone may access the court-ordered process.

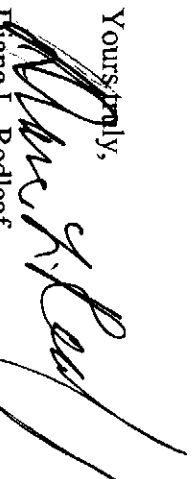
Please send to me (plaintiffs' counsel Diane Redleaf), or notify me as to when are where I may review, no later than February 14, 2006: (1) the draft revised brochure; (2) all forms; (3) the revised notice and safety plan forms that explain the SPTA process; (4) the training materials the court anticipates concerning this process; (5) any guidelines for Child Protection Managers who are

convening the SPTA meetings; and (6) all rules, policies and procedures describing the process, including how it is to be requested, where and when it is to be convened, and what the rights of participants are in the SPTA (including what information they are to be provided in advance of such meeting).

This information essential for us to ensure compliance with the federal court's order, to represent individual class members entitled to this review process, and to develop information that will be a component of the final trial on the merits in this cause. Of course, to the extent there has been inadequate implementation of the court's order to date, we will be required to bring implementation concerns to Judge Pallmeyer's prompt attention. Therefore, to the extent you do have materials available, even if incomplete, please send us the materials that are now available.

In addition, the Fifth Dupuy I Compliance Report is now due. Please notify me when that report will be filed with the court.

Yours truly,



Diane L. Redleaf
One of the Plaintiffs' Counsel



IDOCIES

Illinois Department of Children and Family Services

Rod R. Bigofevich

Governor

Bryan Samuels

Director

VIA FACSIMILE AND U.S. MAIL
February 14, 2006

Diane Redleaf
1325 South Wabash Avenue
Suite 100
Chicago, Illinois 60606

Re: DuPuy v. Samuels
97 C 4199

Dear Ms. Redleaf:

This letter will respond to your recent correspondence regarding compliance issues with respect to DuPuy II and Rebecca Brant. With respect to your demand that we provide you with documents regarding the court's December 2, 2005 order, please be advised that we will be filing those documents with the court in the near future and you will receive a copy of those documents in connection with that filing.

With respect to the case regarding Ms. Brant, your letter misstates our conversation. First, I did not berate you for misspelling your client's name and misstating her children's birth dates. I explained that I could not respond to you any earlier because I was unable to locate any information in the Department's computer systems based on the information provided in your letter and had to enlist other Department staff to assist in locating information, which took a significant amount of time. Second, I explained that the case had been open for intact family services to a private agency for several months and the Department's investigation remains open only to obtain the necessary medical documentation. Moreover, I was advised by Department staff that the request that your client live in another location was part of a service plan, not a safety plan that was part of a pending child abuse and neglect investigation. You should contact the private agency directly regarding your concerns.

Very truly yours,

Beth I. Solomon
Senior Litigation Counsel

Cc: Barbara Greenspan
William Sullivan
Elizabeth Yore

Exhibit 2

Office of Legal Services
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February 15th, 2006

Beth Solomon
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Barbara Greenspan
Office of the Attorney General
100 W. Randolph St., 11th Floor
Chicago, IL 60601

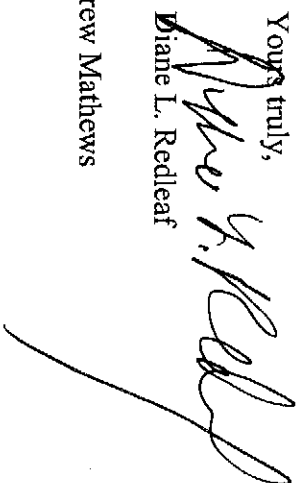
Dear Counsel:

As you know, on February 8, 2006 I sent you a letter requesting that, no later than February 14, 2006, you provide the following materials concerning the SPTA process: (1) the draft revised brochure; (2) all forms that will be used in the process; (3) the revised notice and safety plan forms that explain the process; (4) the training materials the court anticipates concerning the process; (5) any guidelines for Child Protection Managers who are convening the SPTA meetings; and (6) all rules, policies and procedures describing the process, including how it is to be requested, where and when it is to be convened, and what the rights of participants are in the SPTA (including what information they are to be provided in advance of a meeting). Under the court's December 7, 2005 Order, DCFS was to have implemented the SPTA process, by the adoption and implementation of appropriate procedures, not later than February 6, 2006.

Yesterday I received a very short response from you stating that these materials would be provided in the "near future" and filed with the court. The letter gave us no specific information as to the target date by which the SPTA system will be functioning. In effect, DCFS appears to have given itself an unspecified compliance extension.

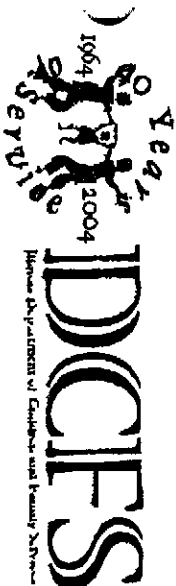
We are willing to desist from bringing DCFS's default in timely implementing the December 7 Order to the attention of the federal court if we receive the referenced materials by February 21, 2006. That deadline provides DCFS more than two weeks beyond the court's own February 6 deadline to do what the court ordered it to do and certainly comports with your own representation that the materials will be available in the "near future." If we do not receive the materials by then however, we will be bringing the default and the delay to the court's specific attention.

Yours truly,



Diane L. Redleaf

cc Dupuy counsel: Jeff Gilbert, Robert Lehrer, Andrew Mathews



Rod R. Blagojevich
Governor
Bryan Samuels
Director

VIA FACSIMILE AND U.S. MAIL
February 22, 2006

Diane Redleaf
1325 South Wabash Avenue
Suite 100
Chicago, Illinois 60606

Re: DuPuy v. Samuels
97 C 4199

Dear Ms. Redleaf:

This letter will respond to your recent correspondence regarding implementation of the court's order with respect to safety plans. The statement in your letter that the Department has not implemented the requirements of the order is not correct. The Department has trained staff and implemented the requirements of the court's order. I had hoped to file documents regarding the Department's implementation, but given my current schedule, I was not able to get that completed for filing. As I will be depositions that have been previously scheduled for the remainder of this week, I plan on filing those documents early next week and most certainly by Wednesday, March 1, 2006.

I appreciate your patience in this matter.

Very truly yours

Beth I. Solomon
Senior Litigation Counsel

Cc: Barbara Greenspan
William Sullivan
Elizabeth Yore

Exhibit 4

Office of Legal Services
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