

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

BENJAMIN H., by his next friend, Georgann H.,
DAVID F., by his guardian, Carolyn B.,
LORI BETH S., by her next friend, Janie J.,
THOMAS V., by is next friend, Patricia V., and
JUSTIN E., by his next friend, Sherry E.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 3:99-0338

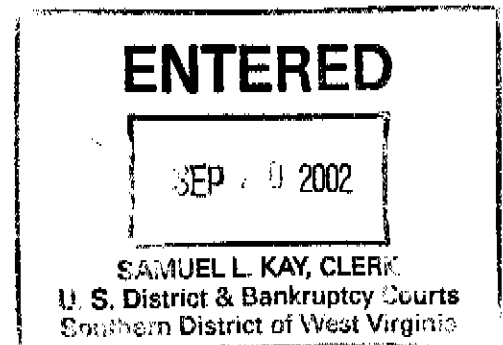
JOAN OHL, Secretary of the Department
of Health and Human Resources,

Defendant.

ORDER

By its Order dated August 21, 2002, this Court notified the parties of its intent to enter judgment in accordance with its prior Orders on the merits, including retaining jurisdiction to enforce its prior Orders, and dismiss the case from the active docket. In response, Plaintiffs' Motion Seeking Contempt Ruling Against Defendant was filed by an attorney representing the West Virginia Emergency Medical Services Technical Support Network (TSN). The Motion states that TSN is the "State designated provider of ... advocacy services for the mentally ill and mentally retarded/mentally disabled" as of January 1, 2002, and as such is the successor agency to the West Virginia Advocates, Inc., which had served as co-counsel in behalf of Plaintiffs. No notice of appearance or motion to intervene or substitute counsel, or the parties, has been filed on behalf of the TSN. Consequently, the Court **DENIES without prejudice** the Motion Seeking Contempt Ruling as improvidently filed.

The parties filed their "Joint Stipulation in Response to Order of August 21, 2002" in which the parties agreed that one unresolved issue should be dismissed without prejudice and that, other than retaining jurisdiction to enforce its prior Orders and to consider any motions for attorney fees and

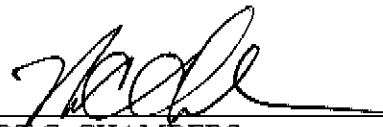


costs, the action may be dismissed from the active docket. Accordingly, the Court **ORDERS** as follows:

1. The Court **DISMISSES** Counts I, II, IV, V, and VI as compromised and settled pursuant to the Orders entered March 7 and March 15, 2000, with the Court retaining jurisdiction to enforce the terms and conditions of such settlement as stated therein;
2. The Court **DISMISSES** Count VIII, having found in favor of the Defendant following a bench trial as reflected in the Court's Memorandum Opinion and Order entered August 9, 2002;¹
3. The Court **DISMISSES** Counts III and VII without prejudice as stated in the Order entered March 15, 2000; and,
4. The Court **GRANTS** leave to the counsel for the Plaintiffs until October 15, 2002, to file any motion seeking an award of attorney fees or costs.

The Clerk is directed to forward a copy of this Order to counsel of record and any unrepresented parties.

ENTER: September 20, 2002



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

¹The Stipulation refers to Count VIII as the "one remaining issue" which "should be dismissed without prejudice", but this Count was clearly submitted to the Court for decision at the bench trial and dismissed by the Court on the merits.