

AP NewsBreak: Idaho's Jeff D. lawsuit revived
By REBECCA BOONE, Associated Press

BOISE, Idaho (AP) — A federal appeals court on Wednesday revived a decades-old lawsuit against the state of Idaho over claims of substandard childrens' mental health care.

The case began in 1980 when a little boy known only as Jeff D. brought a class-action lawsuit against the state for institutionalizing mentally ill children instead of providing care for them.

Jeff D. won, and several years ago the court settled on 250 action items — a to-do list of sorts — that the state had to complete in order to be in compliance with the ruling. In 2007, U.S. District Judge B. Lynn Winmill decided that the state had substantially complied with the action items, and closed the case.

But in Wednesday's ruling, the 9th U.S. Circuit Court of Appeals found that setting a list of action items wasn't enough to show indigent and mentally ill kids were getting the care they needed. Instead, the court must consider whether the state was meeting the larger goals represented by the list — providing community-based mental health care to indigent children with severe emotional and mental disabilities.

The decision means that the Jeff D. lawsuit will go back before Winmill in Boise's federal court.

Ultimately, the state should be required to prove that it has complied with the action items, the appellate court found, rather than expecting the plaintiffs to prove that the state wasn't following through with the tasks on the list.

"We wish to make clear at the outset that we recognize and appreciate that the district judge has expended a great deal of time and effort wrestling with the attempted enforcement of these consent decrees for at least the last 13 years, and has issued orders that helped to move the state towards the achievement of the agreed goals," Judge William Canby wrote for the three-judge panel that decided the case.

But Winmill should consider the state's record of compliance, which has been "far from exemplary," the judges noted.

Idaho Deputy Attorney General Michael Gilmore said he couldn't immediately comment on the ruling because his office was still reviewing the ruling and needed to talk with its clients, the Idaho Departments of Health and Welfare and Juvenile Corrections.

Howard Belodoff, the attorney representing Jeff D. and the other families in the class-action case, said the ruling was a vindication for children with severe emotional disturbances and their families.

"The department (of Health and Welfare) basically turned their nose at the court orders and refused to do it," Belodoff said. "Now it's worse than even before the lawsuit was closed. They've had huge cuts to services."

As part of the action items, the state created the Idaho Council on Children's Mental Health in 2001. The council was an independent agency with members from several state departments and the public, and they were charged with the job of improving community-based services for children with severe

emotional disturbances.

But in the months after the Jeff D. case was closed, the council quietly disbanded. Children's mental health advocates complain that the state also walked away from other requirements under the Jeff D. action plan, cutting funding and along with it, access to services.

Belodoff said that the state simply created an "illusion of compliance."

Now, just like before the lawsuit, kids with severe emotional disturbances are left untreated until they're sick enough to be institutionalized or have a major crisis and end up in the custody of the Idaho Department of Juvenile Corrections, Belodoff said.

"Mental health is no different than cancer or any other kind of physical ailment: It can be treated in most cases," Belodoff said. "It's not fatal unless it's left untreated, and it's blatant discrimination to not provide these families with the treatment that is proven to work."

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