

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JUL 23 1986

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

STATE OF COLORADO; RICHARD D. LAMM,)
Governor of the State of Colorado;)
COLORADO DEPARTMENT OF INSTITUTIONS;)
FRANK A. TRAYLOR, M.D., Executive Director,)
Colorado Department of Institutions;)
JEFFREY A. SANDLER, Director, Colorado)
Department of Institutions, Division)
for Developmental Disabilities; RAY DEL)
TURCO, Superintendent, Wheat Ridge)
Regional Center,)

Defendants.)

JAMES R. MANSPEAKER
CLERK

Civil Action No.

86-F-1470

CONSENT DECREE

1) This case was filed by the plaintiff on July 10, 1986, pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. §1997.

2) To avoid prolonged litigation and without making any admissions on the merits, the plaintiff and defendants entered into a Settlement Agreement on July 10, 1986, and have consented to the incorporation of that Agreement into this Consent Decree.

3) The Court has jurisdiction over this action pursuant to 28 U.S.C. §1345.

U.S. v. Colorado



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4) The United States has standing to initiate this action pursuant to 42 U.S.C. §1997a and has met all prefiling requirements stated in that statute.

5) The Court has examined the Settlement Agreement entered into between the parties and has determined that it is a fair and appropriate resolution of the case.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) Pursuant to the joint motion of the parties, the Settlement Agreement entered into between the parties on July 10, 1986, which is attached hereto, is approved and entered by the Court and is part of this Consent Decree as if fully set out herein.

2) This Consent Decree shall be applicable to and binding upon all the parties, their officers, agents, servants, employees, assigns, and their successors, and upon those persons in active concert or participation with them who receive actual notice of this Decree.

3) Any party may apply at any time for such further order as may be necessary or appropriate for the construction, implementation, enforcement, or termination of this Consent Decree. Any party may move for such further relief as the interests of justice in this case may require.

4. The parties expect that the defendants will achieve full compliance with the terms of this Decree by July 1, 1988, in which case, upon motion by the parties, the jurisdiction of this Court will terminate. Defendants may apply to terminate jurisdiction of this Court at any time if they can demonstrate compliance with all terms of the Decree provided adequate notice is given to the United States. Absent objection by plaintiff within 60 days, this Court shall terminate jurisdiction and the case shall be dismissed. If disputed, the matter shall be resolved by this Court.

Upon consideration of the foregoing, this Consent Decree is hereby entered as the judgment of this Court.

IT IS SO ORDERED this 22 day of July, 1986, at Denver, Colorado.

Shuman G. F. ...
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
DISTRICT OF COLORADO

JAMES R. MANSPEAKER, CLERK

July 24, 1986

ROOM C-148
UNITED STATES COURTHOUSE
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RE: 86-F-1470, U.S.A. v. STATE OF COLORADO, et al

Enclosed please find a copy of _____

CONSENT DECREE

DATED 7-23-86 _____,

entered by Chief Judge Sherman G. Finesilver in the referenced matter.

JAMES R. MANSPEAKER, CLERK

BY: 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF COLORADO; RICHARD D. LAMM,
Governor of the State of Colorado;
COLORADO DEPARTMENT OF INSTITUTIONS:
FRANK A. TRAYLOR, M.D., Executive Director,
Colorado Department of Institutions;
JEFFREY A. SANDLER, Director, Colorado
Department of Institutions, Division
for Developmental Disabilities; RAY DEL
TURCO, Superintendent, Wheat Ridge
Regional Center,

Defendants.

Civil Action No.

SETTLEMENT AGREEMENT

I. Introduction

On December 16, 1983, the United States Department of Justice, by and through the Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, notified the State of Colorado of its intention to investigate alleged unconstitutional conditions of confinement at Wheat Ridge Regional Center, Denver, Colorado, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. State officials fully cooperated with the investigation and demonstrated a willingness to cooperate in alleviating noted deficiencies. Following a full investigation, on December 12, 1984, the United States informed Governor Lamm of its findings that conditions at Wheat Ridge Regional Center violated the constitutional rights of residents.

State and federal officials have now determined that the interests of the citizens of the State of Colorado can best be served by entering into this Agreement for needed improvements at Wheat Ridge Regional Center as opposed to engaging in adversarial litigation. In entering into this Settlement Agreement, State officials do not admit any violation of law and it is the intent of the parties that this Agreement is not to be used as evidence of liability in any other civil proceeding. This Agreement is legally binding and judicially enforceable by the parties hereto and shall be entered as a Consent Decree by the appropriate federal court. It is intended by the parties to assure certain conditions of care, medical treatment, and training at Wheat Ridge Regional Center and shall be read in light of that purpose.

II. Definitions

1. "Physician": An individual who is licensed to practice medicine.

2. "Psychiatrist": A person who is board certified or eligible for board certification as a psychiatrist.

3. "Direct Care Worker": Staff responsible for implementing training programs and providing care to residents.

4. "Qualified Professional": A person competent, whether by education, training, or experience, to make the particular decision at issue.

5. "Bodily Restraints": Any physical or mechanical device used to restrict the movement of a resident or the movement or normal function of any portion of the resident's body excluding those devices used only to provide support for the achievement of functional body position or balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and any psychotropic medications which might be used to control the behavior of a resident, including behavior management drugs as defined herein.

6. "Behavior Management Drugs": Drugs which are prescribed or administered for the purpose of modifying behavior. Included are the major and minor tranquilizers and antidepressants. Excluded are drugs that may have behavior modifying effects but that are not prescribed or administered for that purpose such as anticonvulsants.

7. "Time Out": A behavior management technique whereby a resident is isolated from other residents.

8. "PRN": A treatment modality ordered on a pro re nata or "as needed" basis.

9. "Training Program": A program of therapeutic steps and activities, including behavior management, determined by a qualified professional to be appropriate to protect a resident from unreasonable risks to personal safety and to facilitate his or her ability to function free from undue bodily restraint.

10. "Satellites:" Eight-bed group homes operated off the main campus at 10285 Ridge Road, Wheat Ridge, Colorado, 80033 and within the neighboring community.

11. "The State": The Executive Branch of the Government of the State of Colorado specifically including the Governor of the State of Colorado, Colorado Department of Institutions, the administration of Wheat Ridge Regional Center and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees or assigns.

III. General Principles

The State of Colorado and the United States agree to the following general principles:

1. With respect to all residents, decisions regarding medical treatment, training, and basic self-care skills (e.g., feeding, toileting) shall be made and rendered consistent with the exercise of professional judgment by a qualified professional.

2. All residents must be afforded appropriate care and medical treatment.

3. All residents must be afforded such training as is reasonable to guarantee their constitutional rights to freedom from unreasonable risks of harm to their personal safety and freedom from unreasonable bodily restraints.

4. All residents shall be protected from unreasonable risks of harm to their personal safety from the conduct of staff and other residents.

5. The physical environment of the Wheat Ridge Regional Center must be maintained so as not to expose residents to unreasonable risks of harm to personal safety.

6. The Defendants shall facilitate, within the constraints of their lawful authority, the provision of a free, appropriate public education to residents between the ages of five and twenty-one which requirement is consistent with the Education of the Handicapped Act, 20 U.S.C. §§1401-1420 and in particular 34 C.F.R. §300.122.

In order to ensure compliance with the above-stated general principles, the State will perform the actions required by Sections IV, V, VI and VII, herein.

IV. Staffing

1. By no later than July 1, 1988 except as otherwise specified herein, the State shall ensure that a sufficient number of physicians, psychologists, registered nurses, licensed practical nurses, and direct care workers are employed to assure attainment and consistent maintenance of at least the ratios of staff to residents of Wheat Ridge Regional Center listed below. At the State's discretion, the ratios may be attained by hiring additional needed staff or by reducing the resident population of Wheat Ridge Regional Center through discharges, transfers, etc.

a. Physicians	By July 1, 1986: 1:125
	By July 1, 1988: 1:100

b. Psychologists	By July 1, 1986:
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Psychologists with a minimum of a Masters degree -- 1:30 for all residents having identified emotional/behavioral problems. A ratio of 1:60 for all others.

Ph.D. psychologists -- within the above - stated overall ratio for psychologists, a ratio of 1:200; but in any event no less than four Ph.D. psychologists shall be employed full-time at the Wheat Ridge Regional Center as long as the population is 500 or more residents.

- c. Registered Nurses (on duty on the day shift only) By July 1, 1986: 1:40
- d. Direct Care Workers
 - 1. On duty on day and evening shifts on Sunshine and Infirmary
 - By July 1, 1986: 1:5
 - By July 1, 1988: 1:3
 - On duty on night shift on Sunshine and Infirmary By July 1, 1986: 1:10
 - 2. Assigned and present during any 24 hour period on halls other than Sunshine and Infirmary including the satellites By July 1, 1986: 1:2

2. All living units, exclusive of the satellites, Crosby Center and the Kipling Houses, shall have a least two staff present on the third shift.

3. As of July 1, 1986, at least three registered nurses will be on duty at Wheat Ridge Regional Center on each evening and night shift and shall be readily available on an as-needed basis.

4. By July 1, 1986, the State shall have completed assessment and evaluation of each resident exhibiting frequent

and serious self-injurious or aggressive behavior to determine the resident's need for, and ability to benefit from, training programs, as defined herein. If the State determines, through the judgment of a qualified professional, that a resident cannot benefit from a training program, the State shall record in the resident's chart or record the basis for that determination. For each resident who needs and has the ability to benefit from training programs, the State shall develop an appropriate training program. The implementation of the training program will begin within thirty days of completed assessments. This thirty days will allow for effective program development and design, and for the staff training necessary. Program implementation shall be completed for all residents by January 1, 1987. Those residents exhibiting the greatest need for and ability to benefit from a training program shall be given first priority in the implementation of training programs.

5. By July 1, 1986, the State shall ensure that each resident with physical handicaps is assessed and evaluated in order to develop and implement appropriate therapy programs and services designed to prevent contractures, inappropriate body growth, deformity, and other serious physical degeneration that can be eliminated or reduced by physical therapy.

6. By July 1, 1986, the State shall ensure that a sufficient number of psychiatrists are employed or otherwise made

available at Wheat Ridge Regional Center to render and implement professional decisions with regard to residents who are using behavior management drugs and residents in need of psychiatric evaluations or treatment necessary to avoid undue risks to personal safety.

7. By July 1, 1986, the State shall ensure sufficient consultation or otherwise provide services at Wheat Ridge Regional Center by such medical specialists as may be needed to provide adequate medical care to each resident including, but not limited to, neurologists, orthopedists and dentists.

8. The State shall ensure that direct care workers, on units other than the satellites, ordinarily will not be used to perform routine support functions, such as housekeeping, maintenance, laundry, meal preparation, etc. This shall not preclude direct care workers from training residents in these functions. On the night shift, direct care workers' responsibilities may include routine housekeeping, maintenance, and laundry, but these duties shall be secondary to the direct care of residents and shall be concentrated during residents' sleeping time.

V. Implementation Plans

Defendants will submit to the Court plans which are designed to assure fulfillment of the objectives listed below. Implementation of these plans will be monitored by the United States consistent with the Consent Decree filed in this case and with the principles set forth in Section III of this Agreement.

The objectives of these plans will be to assure:

A. That a sufficient number of qualified professional and direct care staff are on duty at Wheat Ridge Regional Center to render appropriate care and adequate medical treatment and to implement training programs consistent with qualified professional judgment.

B. That procedures for identifying residents' needs for training and implementing training programs are established and implemented.

C. That such resident care, medical treatment, and training programs as are needed to protect residents from unreasonable risks to their personal safety and from unreasonable bodily restraints are consistently maintained in all aspects of the facility's operation.

D. That there is consultation and communication of relevant information between and among personnel regarding residents' care, medical treatment, and training needs.

E. That such recordkeeping systems and procedures are established and implemented with respect to each resident's medical history and course of training so as to ensure that sufficient information relevant to care, medical treatment, and training is maintained and kept available for use by appropriate staff.

F. That behavior management drugs are prescribed and administered pursuant to the exercise of judgment of qualified professionals. Behavior management drugs shall not be administered

for the convenience of staff or as a substitute for prescribed training programs.

G. That restraints and time out are administered only pursuant to the exercise of judgment by a qualified professional. Restraints and time out shall not be used as a form of punishment, for the convenience of staff, or in lieu of a prescribed training program, but may be used, when appropriate to control residents when they engage in isolated incidents of violent, and/or dangerous behavior. Actions taken by staff in such circumstances and a description of the behavior involved shall be recorded contemporaneously.

H. That systems and procedures are established and implemented as are necessary to protect residents from unreasonable risks of harm to their personal safety by the conduct of staff or other residents.

I. That the physical environment of the facility poses no unreasonable risks to the personal safety of its residents.

VI. Construction and Implementation

1. If the United States at any time believes that the State is failing to comply with this Agreement, State and Federal officials shall meet in a good faith effort to resolve their differences. If the State and Federal officials cannot resolve their differences, the United States may seek appropriate orders for enforcement of this Agreement.

2. If, at any time, State officials determine the need to modify a plan or any portion thereof, State officials


shall notify the Court and United States of the need for modification. If the United States objects to the modification and the United States and the State are unable to resolve their differences, the issue shall be presented to the Court for resolution, using the standards set forth in this Agreement.

3. The State shall submit compliance reports to the United States and the Court. The reports shall be filed every ninety (90) days beginning July 1, 1986 and continue until such time as this Agreement expires. The compliance reports shall describe the State's progress towards or maintenance of compliance with the plan(s) submitted pursuant to this Agreement.


4. During the life of this Agreement, the United States and its attorneys and consultants shall have reasonable access to the facilities, records, residents, and employees of Wheat Ridge Regional Center upon reasonable notice to the State.

5. This Settlement Agreement shall terminate when the jurisdiction of this Court is terminated with respect to the Consent Decree filed herewith.

FOR THE STATE OF COLORADO


Date: _____
RICHARD D. LAMM
Governor

FOR THE UNITED STATES OF AMERICA


Date: _____
WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division

Frank Traylor Date: 5/27/86

FRANK A. TRAYLOR, M.D.
Executive Director
Colorado Department
of Institutions

Arthur E. Peabody Jr. Date: 6/11/86

ARTHUR E. PEABODY JR.
Chief
Special Litigation Section

Jeffrey A. Sandler Date: April 15, 1986

JEFFREY A. SANDLER
Director
Division for Developmental
Disabilities

Robert A. Spelke Date: 6/30/86

ROBERT A. SPELKE
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Special Litigation Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____
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District of Colorado