

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF CONNECTICUT; William A.)
 O'Neill, Governor of the State of)
 Connecticut; Brian Lensink,)
 Commissioner, Connecticut Department)
 of Mental Retardation; Robert)
 Griffith, Director, Southbury)
 Training School,)
)
 Defendants.)

Civil Action No.

N. 86-252 EBB

CONSENT DECREE

Introduction

1. This case was instituted by the United States on July 25, 1986, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 et seq.

2. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. 1345.

3. Venue is appropriate pursuant to 28 U.S.C. 1391(b).

4. The United States is authorized to institute this civil action by 42 U.S.C. 1997a and has met all prerequisites for the institution of this civil action prescribed by that statute.

5. The Defendants are the State of Connecticut; the Honorable William A. O'Neill, Governor of the State of Connecticut; Brian Lensink, Commissioner of the Connecticut

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Department of Mental Retardation; and Robert Griffith, Director of Southbury Training School; and are sued in their respective official capacities.

6. The Defendants have authority and responsibility for the operation of Southbury Training School and are officers of the Executive Branch of the State of Connecticut.

7. On May 1, 1984, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, notified the Governor of Connecticut, the Attorney General of Connecticut, and the Superintendent of Southbury Training School, of his intention to commence an investigation of alleged unlawful conditions of confinement at Southbury Training School, Southbury, Connecticut, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997.

8. Following an investigation, on September 11, 1985, the Attorney General, by and through the Assistant Attorney General, Civil Rights Division, informed the Governor of Connecticut, the Attorney General of Connecticut, and the Superintendent of Southbury Training School that the Attorney General had reasonable cause to believe that persons residing in or confined to Southbury Training School were being subjected to egregious and flagrant conditions that deprived them of their rights, privileges, and immunities secured by the Constitution and laws of the United States.

9. The parties agree that the care, confinement, and training of residents of Southbury implicate rights of these

residents that are secured and protected by the Constitution of the United States. The parties entering into this Consent Decree recognize these constitutional interests, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

10. In entering into this Consent Decree, State officials do not admit any violation of law and this Consent Decree may not be used as evidence of liability in any other civil proceeding. The parties have entered into this Consent Decree without any legal obligation to make or enter into the agreements contained herein. The terms of this Consent Decree are not applicable to any other Department of Mental Retardation facility.

11. Any violation of provisions of this Consent Decree does not create a private right of action. This Consent Decree is enforceable only by the parties.

12. The provisions of this Consent Decree are a fair and appropriate resolution of this case.

13. This Consent Decree shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

I. Purposes and Objectives

The State of Connecticut and the United States stipulate and agree that the purposes and objectives of this Consent Decree are to establish within the timelines set forth herein the following conditions at Southbury Training School in order to ensure that residents at the facility are not being deprived of rights, privileges or immunities secured to them by the Constitution of the United States:

1. Training programs professionally designed to reduce or eliminate unreasonable risks to personal safety or unreasonable use of restraints and developed by qualified professionals shall be available to all residents whom it is determined by qualified professionals are in need of such programs in order to reduce or eliminate such risks.

2. That degree of care shall be provided which is sufficient to protect all residents from unreasonable risks to their personal safety both by the conduct of staff and of other residents, and from unreasonable use of bodily restraint.

3. Adequate medical care shall be afforded all residents pursuant to the exercise of professional judgment by a qualified professional.

4. Behavior Modifying Medications and other medications must be prescribed and administered to residents pursuant to the exercise of professional judgment by a qualified professional.

5. Restraints, seclusion procedures and behavior modifying medications, when appropriate, must be administered safely and pursuant to the exercise of professional judgment by a qualified professional.

6. The physical environment of the facility shall be improved, as necessary, so as to insure that it poses no unreasonable risks including fire safety risks to the personal safety of residents. An unreasonable risk is that which is known to exist or should be known to exist, with the exercise of professional judgment.

These purposes and objectives shall be achieved at Southbury Training School by implementing the requirements set forth in Parts III and IV and by developing and implementing the plans described in Part V of this Consent Decree.

II. Definitions

As used in this Consent Decree, the following definitions shall apply:

1. "Physician": A medical doctor lawfully entitled to practice medicine.
2. "Psychiatrist": A physician who either is certified by or is eligible for certification by the American Board of Psychiatry and Neurology or who has successfully completed an approved residency program in psychiatry and upon completion of post-residency requirements will become eligible for examination for such certification.
3. "Psychologist": A person who has attained at least a master's degree in the field of psychology or special education.
4. "Nurse Practitioner": A person qualified by academic and practical experience or training to provide patient services under the supervision, control, responsibility and direction of a physician and who is certified by the State as a nurse practitioner.
5. "Direct Care Worker": Staff immediately responsible for implementing training programs and providing care to residents.
6. "Qualified Professional": A person who is employed by or under contract with the State, and who is competent, whether by education, training, or experience, to make the particular decision at issue.

7. "Restraints": Any devices used to restrict the movement of a resident or the movement or normal function of any portion of resident's body, excluding those mechanical supports designed by a physical therapist and approved by a physician used solely to achieve proper body position or balance and devices used for specific medical and surgical (as distinguished from behaviorial) treatment.

8. "Seclusion": Placement of an individual alone in a locked room, or a room from which the patient is physically prevented from egress.

9. "Time Out": A behavior management technique which removes a resident from a situation for a period of time for the purpose of modifying a specific inappropriate behavior.

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

11. "Behavior Modifying Medications": 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.

12. "Training Program": A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by a qualified professional consistent with professional judgment to be necessary to protect a resident from unreasonable risks to personal safety and to facilitate his or her ability to function free from undue restraint, and from unreasonable use of behavior modifying medications.

13. "Resident": A person residing at Southbury Training School who is receiving services from the Department of Mental Retardation.

14. "The State": The Governor of the State of Connecticut, the Commissioner of the Connecticut Department of Mental Retardation, the Director of Southbury Training School, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees or assigns who have responsibility for the care and treatment of residents at Southbury Training School.

15. "Professional judgment": A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice, or standards as to demonstrate that the person responsible did not base the decision on such professional opinion, practice, or standards.

III. Conditions Requiring Immediate Correction

In order to eliminate conditions which pose an immediate and unlawful threat to the life, health, and safety of residents at Southbury Training School, the State agrees to meet the following requirements:

1. Within 30 days after entry of this Consent Decree at least two staff personnel shall be on duty in each living unit housing more than 6 severely or profoundly retarded residents, when the residents are present.

2. Within 30 days after entry of this Consent Decree, at least three registered nurses will be on duty at Southbury Training School and shall be readily available to the general

population during the day and evening shifts. At least two registered nurses and two licensed practical nurses will be on duty and readily available to the general population during the night shift.

3. Within 30 days after entry of this Consent Decree, the equivalent of at least one full-time psychiatrist will be provided at Southbury Training School.

4. Within 30 days after entry of this Consent Decree, the State will have devised plans to provide for the emergency evacuation of all living units, appropriate to the population housed therein. Said plans shall be fully implemented within 180 days after entry of this Consent Decree.

5. Within 30 days after entry of this Consent Decree, restraint and seclusion may not be used by staff as punishment, but they may be used, when appropriate, to control residents when they engage in isolated incidents of violent and/or dangerous behavior. The decision to place a resident in restraints, seclusion, or "time out" shall be recorded promptly in the resident's records and a procedure shall be adopted and put into effect to ensure that such decision shall be reviewed by a qualified professional at specified reasonable intervals to determine whether or not the continuation of such restraint, seclusion, or "time out" is professionally justified.

IV. Staffing

1. By no later than the dates set forth below, the State shall ensure that a sufficient number of physicians, nurse practitioners, psychologists, registered nurses, licensed practical

nurses, and direct care workers are employed to assure attainment and consistent maintenance of at least the ratios of such staff to residents at the Southbury Training School delineated in subparagraphs A-G below.

A. Physicians	1:125	by February 1, 1987
B. Nurse Practitioners	1:250	by August 1, 1987
C. Psychologists	1:30	by February 1, 1987
D. Registered Nurses	1:40	by August 1, 1986
E. Licensed Practical Nurses	1:40	by August 1, 1986
F. Direct Care Workers (on cottage)	1:5 1:10	day and evening shifts night shift by February 1, 1987
	1:4 1:8	day and evening shifts night shift by February 1, 1988
G. Direct Care Workers (day programs)	1:5	by February 1, 1988 (clients included in this ratio are those programmed on-grounds and not participating in supervised employment or community-based programs)

2. The United States agrees not to seek contempt for minor deviations from these ratios in an emergency situation.

3. At the State's discretion, the ratios may be obtained by hiring additional needed staff or by reducing the resident population of the Southbury Training School. The State agrees that, if it decides to reduce the population of the school by discharging or transferring residents, the determination as to which residents shall be discharged or transferred will be made by professional staff qualified to make such decisions.

4. By no later than December 15, 1986, the State shall likewise ensure sufficient consultation or otherwise provide services at Southbury Training School by such medical specialists as may be needed to provide adequate routine and emergency medical care to each resident including, but not limited to, neurologists, gerontologists, gynecologists, orthopedists, and dentists.

V. Plans

In order to establish compliance with this Consent Decree, the State shall file with the Court no later than August 15, 1986, its plan(s) for implementing this Consent Decree. Such plan(s) shall set forth:

1. The steps that the State will take in order to meet the staff-to-resident ratios required under the terms of this Decree. Appropriate steps may include transfer or discharge of residents, changes in personnel policies, hiring standards and employment practices, adjustments in salaries or pay levels, and recruitment efforts or other outreach techniques, and other measures calculated either to attract and retain qualified staff, or to reduce the resident population, or both.

2. The number and categories of staff that will be utilized to implement plans required by Paragraphs 3 to 11, below.

3. The procedures (a) to be utilized to provide regular, periodic professional evaluations of each resident in order to identify those in need of training programs; and (b) to provide a sufficient number of training program hours to each resident for whom such training program is necessary.

4. The procedures to be utilized to reasonably ensure that there is consultation and communication of relevant information between and among personnel regarding residents' care, training needs and priorities, and medical needs and priorities and that such information is communicated to staff who provide care for that resident.

5. Recordkeeping systems, policies, and procedures with respect to each patient's care, medical treatment, and required training that shall be utilized to maintain and make available in each resident's record such information as is professionally necessary to permit the exercise of professional judgment in that resident's care, medical treatment, and training.

6. The measures that will be undertaken to provide adequate medical care, including evaluation of residents with physical disabilities and the specific steps that will be undertaken to provide appropriate medical and physical therapy services to prevent contractures, physical degeneration, and inappropriate body growth and deformity.

7. The policies and procedures that will govern the use of drugs, particularly behavior modifying medications, including policies and procedures concerning the handling and storage of drugs, monitoring and review of whether the drugs prescribed for and administered to each resident are appropriate for the needs of that resident, drug side effects, drug dosage levels, use of two or more behavior management drugs, telephone orders and PRN prescriptions, and utilization of drugs with a behavior modification program.

8. The policies and procedures that will be utilized to provide that restraints, behavior modifying medications, seclusion, and time out (a) are administered only pursuant to the judgment of a qualified professional; (b) are not to be used as punishment, in lieu of training programs prescribed by a qualified professional or for the convenience of staff; but (c) may be used, when appropriate, to control residents when they engage in isolated incidents of violence and/or dangerous behavior. Said policies and procedures shall provide that the decision to place a resident in restraints, seclusion, or time out or to administer behavior modifying medications shall be recorded promptly in the resident's records and shall be reviewed by a qualified professional at specified reasonable intervals to determine whether or not the continuation of such restraint, seclusion, time out or medication is professionally justified.

9. The procedures that will be utilized to provide that residents shall be protected from unreasonable risks of bodily harm to their personal safety by the conduct of staff or other residents, including requirements to report alleged incidents of bodily harm or unreasonable risk of bodily harm. Said procedures should include requirements for investigating such allegations, disciplinary rules and procedures, and sanctions to be followed upon any findings of bodily harm or unreasonable risk of bodily harm. There shall be devised procedures to provide adequate staff supervision, and procedures that will be utilized to provide for sufficient grounds and other security personnel designed to protect residents from unreasonable risks of bodily harm.

10. The enforcement mechanisms to be used, including disciplinary measures and sanctions where appropriate, to provide for staff compliance with all policies, rules, and standards of job performance and behavior.

11. The procedures Southbury Training School will utilize to survey all buildings and steps it will take to protect all residents there, particularly those who are blind or non-ambulatory and non-mobile, from unreasonable fire safety risks.

12. All plans shall state in specific terms and reasonable detail the actions to be taken by the Defendants, the dates of such actions, the text of the procedures, regulations, or protocols to be promulgated and issued by the Defendants, and the name and qualifications of a professional who employed his or her professional judgment to review and approve the plan as submitted.

13. All plans shall state the specific date or dates by which each shall be implemented in toto but in no event shall the final implementation date of any plan be later than February 15, 1988.

VI. Construction and Implementation

In construing and implementing the terms of this Decree, the following are agreed to by the parties:

1. A. The Defendants shall file the plan with the Court and the United States on or before August 15, 1986. The United States shall have sixty (60) days from receipt of any plan in which to file a response to the plan with the Court. If the United States objects to any plan or portion thereof filed by the State, State and Federal officials shall meet in a

good faith effort to resolve their differences. If the State and Federal officials are unable to resolve their differences through negotiation, the adequacy of the contested portions of the proposed plan to achieve the purposes and objectives set forth in Part I of this Consent Decree shall be determined by the Court. Defendants shall have the burden to persuade the Court that the plan is adequate under this standard.

B. If, after a plan is approved, State officials decide to modify that plan or any portion thereof, State officials shall notify the Court and the United States of the proposed modification. The United States shall have sixty (60) days from the receipt of any proposed modification in which to file a response to the proposed modification with the Court. If the United States objects to the modification sought, State and Federal officials shall meet in a good faith effort to resolve their differences concerning the proposed modification. If State and Federal officials are unable to resolve their differences through negotiation, the adequacy of the proposed modification to achieve the purposes and objectives set forth in Part I of this Consent Decree shall be determined by the Court. The Defendants shall have the burden to persuade the Court that the modified plan is adequate under this standard.

C. Plans submitted to the Court, including modifications of plans, to which the United States does not timely object, shall be deemed moved for approval by the Court.

D. All plans required under this Decree, if approved by the Court, shall be issued as orders of the Court and enforceable as such.

2. A. The State shall submit periodic compliance reports to the United States and the Court. A report will be filed 45 days after the filing of this consent decree with regard to Section III. With regard to Sections IV and V, the State will submit a compliance report on October 1, 1986, and quarterly thereafter, continuing until such time as this Consent Decree is terminated.

B. The format and content of these compliance reports shall be provided for in the State's Plan(s).

3. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, residents, and employees of the Southbury Training School upon reasonable notice to the State for the purpose of ascertaining compliance with the Decree. Such access shall continue until this Consent Decree is terminated.

4. All parties shall bear their own costs, including attorney fees.

VII. Termination of Decree

1. The parties contemplate that the Defendants shall have fully and faithfully implemented all provisions of this consent decree, and plans herein required to be submitted and approved by the Court, on or before February 15, 1988.

2. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until the Defendants shall have fully and faithfully implemented all provisions of the Consent Decree and plans submitted pursuant thereto and until the judgment be discharged.

3. On or after the date on which the Defendants shall have fully and faithfully implemented all provisions of this Consent Decree and plans submitted thereto, the Defendants may move that the injunctions entered herein be dissolved, the judgment discharged, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that the Defendants have fully and faithfully implemented and maintained all provisions of this Consent Decree and plans submitted pursuant thereto.

4. Dismissal shall be granted unless, within sixty (60) days after receipt of the Defendants' motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the United States to demonstrate that the Defendants have not fully and faithfully implemented all provisions of this Consent Decree or any approved plan(s) or any part thereof and, if objection is based upon failure to implement any plan or part thereof, that such plan or part thereof is essential to the achievement of one or more of the purposes and objectives set forth in Part I of this Consent Decree. If the United States fails to meet this burden, the injunctions shall be dissolved, the judgment shall be discharged, jurisdiction shall be terminated forthwith, and the case shall be closed and dismissed with prejudice.

5. The Parties reserve the right to withdraw consent in the event that this decree is not approved by the Court in its entirety.

CONSENTED TO BY THE UNDERSIGNED:

FOR THE STATE OF CONNECTICUT

FOR THE UNITED STATES OF AMERICA

Will. O'Neill Date: 7/18/86
WILLIAM A. O'NEILL
Governor

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

Joseph I. Lieberman Date: 7/15/86
JOSEPH I. LIEBERMAN
Attorney General

Stanley A. Twardy, Jr. Date: 7/25/86
STANLEY A. TWARDY, JR.
United States Attorney
District of Connecticut

Brian Lensink Date: 7/18/86
BRIAN LENSINK
Commissioner
Connecticut Department of Mental
Retardation

Arthur E. Peabody, Jr. Date: 7/23/86
ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section

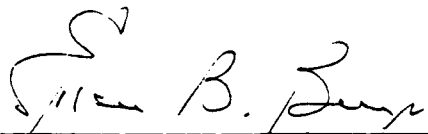
Robert Griffith Date: _____
ROBERT GRIFFITH
Director
Southbury Training School

Benjamin P. Schoen Date: 1/23/86
BENJAMIN P. SCHOEN
Deputy Chief
Special Litigation Section

V. Colleen Miller Date: _____
V. COLLEEN MILLER
Attorney
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, this Consent Decree is hereby entered as the JUDGMENT of this Court.

IT IS SO ORDERED, this 20th day of December, 1986, at Hartford, Connecticut..



UNITED STATES DISTRICT JUDGE

FILED
DEC 21 3 03 PM '86
U.S. DISTRICT COURT
NEW HAVEN, CT