



MR-MS-001-003

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
! JUN 21 1990
J. T. NOBLIN, CLERK
BY _____ DEPUTY

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF MISSISSIPPI; Ray Mabus,)
Governor of the State of Mississippi;)
Albert Randel Hendrix, Executive Director)
Mississippi Department of Mental Health;)
Roger McMurtry, Chief, Bureau of Mental)
Retardation; Clyde Woodruff, Director,)
Ellisville State School,)
)
Defendants.)

Civil Action No.
J90-0320(B)

CONSENT DECREE
Introduction

1. This case was instituted by the United States 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 Mississippi; the Honorable Ray Mabus, Governor of the State of Mississippi; Albert Randel Hendrix, Executive Director of the Mississippi Department of Mental Health; Roger McMurtry, Chief, Bureau of Mental Retardation; and Clyde Woodruff, Director, Ellisville State

School. All individual Defendants are sued in their respective official capacities.

6. The Defendants have authority and responsibility for the operation of Ellisville State School and are officers of the Executive Branch of the State of Mississippi.

7. On September 11, 1985, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, notified the Governor of Mississippi, the Attorney General of Mississippi, and the Director of Ellisville State School, of his intention to commence an investigation of alleged unlawful conditions of confinement at Ellisville State School, Ellisville, Mississippi pursuant to the Civil Rights of Institutionalized Persons Act (C.R.I.P.A.), 42 U.S.C. 1997.

8. Following a thorough investigation, on March 25, 1986, the Attorney General, by and through the Assistant Attorney General, Civil Rights Division, informed the Governor of Mississippi, the Attorney General of Mississippi, and the Director of Ellisville State School, pursuant to C.R.I.P.A., of the alleged unconstitutional conditions of confinement at the Ellisville State School, the supporting facts giving rise to the alleged conditions and the minimum measures necessary to remedy those conditions.

9. Upon notification of needed remedial measures, State officials instituted immediate steps to implement improvements at Ellisville State School and have cooperatively worked with

federal officials to resolve this matter amicably and in the best interests of the mentally retarded residents of Ellisville State School. State officials cooperated in all respects with each aspect of the United States' investigation and have, from the outset, indicated a willingness to remedy deficiencies identified by the United States at the Ellisville State School.

10. It is specifically recognized that the State of Mississippi and its officials and agencies are acting in good faith and have voluntarily undertaken this commitment to bring about improvements throughout Mississippi's mental health system and specifically at the Ellisville State School.

11. Moreover, it appears that state and federal officials generally concur regarding appropriate improvements at the Ellisville State School and that the care, confinement, treatment and training of residents at the Ellisville State School implicate rights that are secured and protected by the Constitution of the United States. The parties recognize these constitutional interests, and for the purposes of avoiding protracted and adversarial litigation, and in the best interest of the mentally retarded citizens of Mississippi, agree to the provisions set forth herein.

12. In entering into this Consent Decree, the Defendants do not admit any violation of law and this Consent Decree may not be used as evidence of liability in any other proceeding.

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

14. This Consent Decree, voluntarily entered into, shall be entered by the United States District Court for the Southern District of Mississippi and shall be enforceable as an order of the Court.

15. 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 Mississippi and the United States stipulate and agree that the purposes and objectives of this Consent Decree are to achieve and/or maintain the following conditions at Ellisville State School in order that residents at the facility will be afforded rights, privileges or immunities secured or protected by the Constitution of the United States:

1. Training programs developed by qualified professionals that are designed to reduce or eliminate unreasonable risks to personal safety or unreasonable use of bodily restraints shall be afforded to all residents whom qualified professionals determine are in need of such programs to reduce or eliminate such risks.

2. That degree of care must 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.

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

4. When necessary, psychotropic and other medications must be prescribed and administered to residents pursuant to the exercise of professional judgment by qualified professionals.

5. Bodily restraint and seclusion procedures, when appropriate, must be administered safely and pursuant to the exercise of professional judgment by qualified professionals.

These purposes and objectives shall be achieved at Ellisville State School by implementing the requirements set forth in Parts III and IV, and Part V below.

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.

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

5. "Qualified Professional": A person competent, whether

by education, training, or experience, to make the particular decision at issue.

6. "Bodily Restraints": (1) 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 (2) chemical substances used solely to restrict the movement of a resident, including behavior management drugs as defined herein.

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

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

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

10. "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.

11. "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 bodily restraint.

12. "The State": The Executive Branch of the Government of the State of Mississippi specifically including the Governor of the State of Mississippi, Mississippi Department of Mental Health, the Bureau of Mental Retardation, the administration of Ellisville State School, and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees or assigns.

13. "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. Corrective Measures

1. By no later than six months from entry of this Consent Decree the State shall ensure that a sufficient number of qualified physicians and psychologists are employed to assure attainment and consistent maintenance of at least the ratios of such staff-to-residents at the Ellisville State School as delineated below:

| | | |
|----|---------------|-------|
| A. | Physicians | 1:120 |
| B. | Psychologists | 1: 25 |

2. At the State's discretion, the ratios may be obtained by hiring additional needed staff or by reducing the resident

population of the Ellisville State School. The State agrees that, if it decides to reduce the population of the school by discharging residents, the determination as to which residents shall be discharged will be made by professional staff qualified to make such decisions.

3. Psychiatric consultation will be available at Ellisville State School at the rate of one hour per week for every ten (10) residents on psychotropic drugs or those residents on behavior programs requiring psychiatric services. Such consultation shall include the systematic review of the use of behavior management drugs for individual residents and may be provided by employing full-time psychiatrist(s) or engaging the services of psychiatrists on a part-time basis.

4. The State will make reasonable efforts to assure that at least one-third of the psychologist positions at Ellisville State School will be filled with individuals possessing a doctorate in psychology. When hiring psychologists for new or vacant positions, the State shall make reasonable best efforts to maintain the ratio of one Ph.D. level psychologist for every three psychologists. However, first priority for hiring will be given to those persons who have a background in applied behavior analysis. The parties agree that, while a Ph.D. level applicant with this background will receive first priority in hiring, a Masters' level applicant with this background will be hired before a Ph.D. level applicant without this background. Quarterly reports shall state whether the State has maintained

the ratio of one Ph.D. for every three psychologists. Where the State does not maintain this ratio, the State will describe with particularity, including supplying any supporting documentation, efforts it has made to hire a Ph.D. psychologist for the new or vacant positions.

IV. Plans

1. Submitted herewith, and incorporated herein by reference as a part of this Consent Decree, are the State's plans and the appendices thereto which serve to implement the terms of and fulfill the purposes and objectives of this Decree. (Exhibit A, attached hereto). This plan and appendices set forth the following:

a. 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 release of residents, changes in personnel policies, hiring standards and employment practices, adjustments in salaries or pay levels, enhanced 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.

b. The number and categories of staff that will be utilized to implement plans required by Paragraphs c to j, below.

c. 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.

d. The procedures to be utilized to provide for consultation and communication of relevant information between and among personnel regarding residents' care, medical treatment, and training needs.

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

f. The policies and procedures that will govern the use of drugs, particularly behavior management drugs, 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.

g. The policies and procedures that will be utilized to provide that bodily restraints, seclusion, and time out (a) are administered only pursuant to the judgment of a qualified professional; (b) are not to be used for the convenience of staff or in lieu of training programs prescribed by a qualified

professional; 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 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, or time-out is professionally justified.

h. 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 should also 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.

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

j. The specific terms and reasonable detail of 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 the professional who employed his/her professional judgment to review and approve the plan as submitted.

2. The plan states the specific date(s) by which each requirement shall be implemented completely but in no event shall the final implementation date of any plan or portion thereof be later than two years after entry of said plan.

3. The State of Mississippi agrees that all remedial measures undertaken pursuant to the plan shall be implemented in a fashion designed to achieve the purposes and objectives stated herein. Once those purposes and objectives have been obtained, the above referenced remedial measures shall be continued in place until such time as this Decree is terminated.

4. The United States has reviewed and approved the plan of implementation filed with this Consent Decree.

V. Construction and Implementation

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

1. The State of Mississippi agrees to implement all provisions of the plan of implementation and appendices thereto, (Exhibit A), which is incorporated herein, and that said plan of

implementation and appendices thereto shall be enforceable as a court order.

2. If State officials decide to modify the plan or any portion thereof, State officials shall notify in writing the Court and the United States of the proposed modification. After notice of such a proposal by the State, if the United States objects to the modification sought, State and Federal officials shall meet or otherwise confer, 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 within 30 days of receipt of the notice, either party may submit the proposal to the Court, who shall determine whether such proposal is acceptable under the Consent Decree. The Court's determination shall be based upon the purposes and objectives set forth in Part I of this Consent Decree. The State shall have the burden to persuade the Court that the modification sought is warranted.

3. The State shall submit periodic compliance reports to the United States and the Court. The reports shall be filed quarterly, fifteen (15) days after the end of each quarter, beginning 60 days after entry of this Consent Decree, and continue until such time as this Consent Decree is terminated.

4. The format of these compliance reports shall be within the discretion of the State. The content of the reports shall include specific information describing the State's progress

towards implementation of and compliance with the provisions of this Consent Decree and the plan(s) submitted pursuant thereto. The United States may from time-to-time request that the State include additional information in the compliance reports.

5. The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, residents, and employees of Ellisville State 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.

6. The State shall provide to the United States, within 20 days of receipt, specific written answers to specific written questions from the United States regarding the state's compliance reports on the status of implementation of its plans.

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

VI. TERMINATION OF DECREE

1. The parties contemplate that the Defendants shall have fully and faithfully implemented all provisions of this Consent Decree and the plans submitted herewith two years from the date of entry of this Decree by the Court.

2. Notwithstanding the period of time set forth in paragraph 1 of this section VI, 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 (as verified by the process of reporting and ascertaining compliance with this decree that is contemplated in section V above) and until the judgment is 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, this judgment shall be discharged, jurisdiction shall


be terminated forthwith, and the case shall be closed and dismissed with prejudice.

CONSENTED TO BY THE UNDERSIGNED:


FOR THE STATE OF MISSISSIPPI FOR THE UNITED STATES OF AMERICA



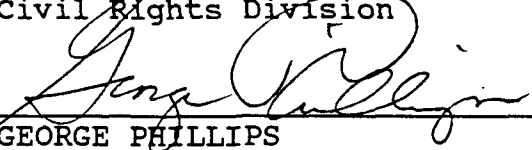
RAY MABUS
Governor



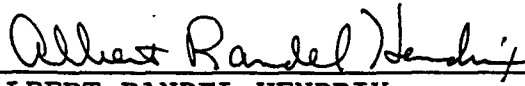
JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division



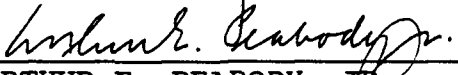
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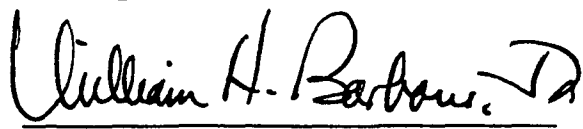
CLYDE WOODRUFF
Director, Ellisville State
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DAVID DEUTSCH
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U.S. Department of Justice
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WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, this Consent Decree is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this 21st day of June, 1990, at Jackson, Mississippi.



WILLIAM H. BARBOUR, JR.
UNITED STATES DISTRICT JUDGE