



Jl-DE-001-001

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JOHN A and MARY B, on behalf
of themselves and all others
similarly situated,

Plaintiffs,

v.

C.A. No. 90-200

MICHAEL N. CASTLE, Governor of
the State of Delaware; CHARLES E.
HAYWARD, Secretary of the
Department of Services for
Children, Youth and Their Families;
PATRICK MCCARTHY, Acting Director,
Division of Youth Rehabilitative
Services; MIDGE HOLLAND, Chief of
Secure Care; RICHARD A. SHAW,
Superintendent of Ferris School;
ALFRED JACKSON, Superintendent of
the Bridge House; and GWENDOLYN
ANGALET, Director of the Division
of Administrative and Support
Services; all of the above in
their official capacities,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

1. This class action seeks redress of numerous, continuing deprivations of constitutional rights of children who are now or in the future may be confined to the Ferris School and Bridge House in Wilmington, Delaware. Both these institutions are operated by the Department of Services for Children, Youth and Their Families of the State of Delaware, and are intended to provide secure confinement of youth who have been charged with offenses or who have been committed to the custody of the State following

adjudication. There are presently approximately 60 youth confined at the Ferris School and approximately 40 youth confined at the Bridge House.

2. Plaintiffs challenge the conditions of their confinement at the Ferris School and the Bridge House which endanger their physical and mental health and safety; deny them meaningful access to and opportunities for education, treatment or rehabilitation, and restrict their access to and communication with families, friends, community and the courts. For many plaintiffs, these institutions do not provide the least restrictive placement consistent with statutory goals of rehabilitation and treatment. Further, defendants have subjected plaintiffs to overcrowding; life and fire safety hazards; unhealthy living conditions; inadequate medical and mental health care; abusive punishment and disciplinary practices including isolation, shackling and other forms of physical and verbal abuse; improper classification; inadequate and inappropriate education, rehabilitation and treatment programs; lack of due process; unnecessary and improper restrictions on communication such as the mail, telephone, visits and access to courts; and denial of privacy and dignity. Plaintiffs are not provided adequate food and exercise to insure the basic health needs of growing adolescents. These children are incarcerated for inordinately long periods of time within a toxic environment which is highly detrimental to their growth and development. As a result of these conditions, plaintiffs seek declaratory and injunctive relief prohibiting further violation of their rights as guaranteed by the Fourteenth Amendment to the United States Constitution.

JURISDICTION

3. This Court has jurisdiction of this action under 28 U.S.C. §1343(3) since this is an action to redress the deprivation, under color of state law, regulation, custom or usage, of rights secured by the Constitution of the United States; the Civil Rights Acts, 42 U.S.C. §1983; §504 of the Rehabilitation Act, 29 U.S.C. §794 and the Education for All Handicapped Children Act (EHCA), 20 U.S.C. §1401, et seq.

4. This Court also has jurisdiction of this action under 28 U.S.C. §1343(4) since this is an action to secure declaratory, injunctive and other equitable relief under acts of Congress providing for the protection of civil rights, specifically the Civil Rights Acts, 42 U.S.C. of §1983; §504 of the Rehabilitation Act, 29 U.S.C. §794; and the EHCA, 20 U.S.C. §1401, et seq.

5. This Court also has jurisdiction of this action under 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65 since this is an action seeking a judgment declaring the rights of plaintiffs, and for injunctive and other equitable relief based upon that declaratory judgment, under §1983.

6. This Court has further jurisdiction of this action under 28 U.S.C. §1331(a) since it is a civil action arising under the Constitution and laws of the United States.

PLAINTIFFS

7. John A is incarcerated at the Ferris School. Mary B is incarcerated at the Bridge House. Plaintiffs bring this action under pseudonym in order to preserve confidentiality and protect themselves from harassment and humiliation.

DEFENDANTS

8. Michael N. Castle is the Governor of the State of Delaware, and as such, is ultimately responsible for the constitutional operation of the institutions at issue here.

9. Charles E. Hayward is the Secretary of the Department of Services for Children, Youth and Their Families (DSCYF). As chief executive officer of DSCYF, he is responsible for the care of youth confined at the Ferris School and the Bridge House, pursuant to 29 Del.C. §9000 et seq.

10. Patrick McCarthy is the Acting Director of the Division of Youth Rehabilitative Services of the DSCYF. This division supervises the overall operation of the Ferris School and the Bridge House.

11. Midge Holland is the Chief of Secure Care of the Division of Youth Rehabilitative Services of the DSCYF. She is responsible for the day-to-day operation of the Ferris School and the Bridge House.

12. Richard A. Shaw is the Superintendent of the Ferris School. He is responsible for the provision of care to plaintiffs at the Ferris School, and for supervision of the Ferris School staff.

13. Alfred Jackson is the Superintendent of the Bridge House. He is responsible for the provision of care to plaintiffs at the Bridge House, and for supervision of the Bridge House staff.

14. Gwendolyn Angalet is the Director of the Division of Administrative and Support Services of the DSCYF. This division

supervises the provision of educational services to the children incarcerated at the Ferris School and the Bridge House.

CLASS ACTION ALLEGATIONS

15. The named plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles who are now or who in the future may be confined to the Ferris School and the Bridge House.

16. The members of the class are so numerous that joinder of all members is impracticable. At the present time, approximately 100 children are confined in these institutions. Hundreds of children are confined each year and there is constant turnover of the juveniles at these institutions.

17. The named plaintiffs and their counsel will fairly and adequately protect the interests of the class.

18. The claims of the named plaintiffs are typical of the plaintiff class. The named plaintiffs, together, have been subjected to the conditions, policies, practices, acts and omissions complained of in this action.

19. All plaintiffs are subject to the conditions, policies and practices of defendants described in this complaint during their confinement at these institutions, so that there are questions of law or fact common to members of the plaintiff class. The questions of law or fact common to all members of the plaintiff class include whether the conditions, practices, acts and omissions complained of occur, and whether these conditions violate rights

guaranteed to plaintiffs by the United States Constitution and federal law.

20. By their policies and practices, defendants have acted, and continue to act, on grounds and in a manner generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

FACTUAL ALLEGATIONS - THE FERRIS SCHOOL

21. The Ferris School is located in suburban Wilmington, Delaware. Living units consist of four maximum security areas (Max), and one separate minimum security area known as Mowlds Cottage. The maximum security area, where the large majority of the all-male population is housed, is designed in a highly restrictive style intended to assure the security of staff, rather than the humane treatment of those who must live there. Children spend endless hours behind thick glass walls, or locked in cells with heavy steel doors. Approximately 60 young men are presently incarcerated at the Ferris School.

Living Conditions

22. Defendants have failed to provide living units which meet minimal fire safety standards. Dangerous conditions abound, including presence of foam rubber throughout the facility, failure to provide adequate methods to release locks in the event of fire, failure to conduct necessary fire drills, and lack of sprinkler systems.

23. Every area of the facility has been observed to be uniformly filthy. Most of the cleaning chores are left to the youngsters who are not only untrained in hygienic methods, but are also denied adequate materials and equipment with which to clean. Isolation cells are grossly dirty, and reeking of urine. Mowlds Cottage is crowded and dirty. Bugs are a problem in the maximum units, and Mowlds Cottage is infested with mice. Body lice are a common problem.

24. Defendants have failed to implement even minimal maintenance and repair procedures. The entire institution is in a state of disrepair, including broken lights, windows, screens, plumbing and washing machines. What furniture is available is in tatters, contributing to the general oppressiveness of the environment.

25. Children have often been required to sleep three to a room designed for one. Children often sleep on thin mattresses on the floor. Even in the isolation rooms, three or four children have been held in one room and some have had to sleep on the floor.

26. Defendants have failed to provide appropriate, clean clothing to children. In Max, children must wear shapeless, raggedy sweat suits 24 hours per day, in a style reminiscent of World War II POW camps. The children in the various units are required to wear suits of a particular color, labelling the children as members of that group and denying any sense of individuality. Defendants have failed to provide adequate, clean underwear. All underwear is communal, and children are forced to

compete for clean underwear delivered to the unit. If a child fails in grabbing enough underwear he must then go without. Clothing that is provided is inadequately laundered.

27. Defendants have failed to provide adequate towels, blankets, sheets or pillowcases. The shortage of towels is so severe that children must often dry off after showers with their sweat suits or sheets. Sheets are not properly laundered. Blankets are torn and tattered. Mattresses are not sanitized between use by different children.

28. Ventilation is extremely poor, and areas of the units are often uncomfortably hot or frigid.

29. Lighting is inadequate throughout to conduct close work such as reading or writing.

30. Defendants have failed to provide any modicum of personal privacy to youth. Days are spent in close communal contact, with no regard for the basic necessity of personal dignity.

31. Children have complained that they do not receive sufficient food, and often go to bed hungry. It is common that food is denied as punishment. Some youth are visibly underweight and appear to be ill-nourished. Many children state that they have lost significant amounts of weight during their incarceration. Food that is provided is often cold and unappetizing.

Physical and Verbal Abuse

32. Children at Ferris have been held for long periods of time in isolation cells, sometimes as punishment, sometimes simply for administrative convenience. Children have been held in

isolation rooms for periods of two weeks, with only brief periods of time outside the cells. Staff resort to the use of isolation as punishment for the most minor infractions. Less dangerous interventions are rarely attempted prior to the use of isolation. Sometimes three or four boys have been held in one "quiet room". Water in toilets and sinks are controlled by staff, and have been turned off while children were held in these rooms. No books, papers, magazines or any other materials have been allowed in the "quiet room".

33. Another popular punishment is the use of "early bed", a form of isolation, as a response to misbehavior. Often an entire unit of children have been locked down in their cells as early as 5:00 p.m. in the afternoon. Shoes and pants are taken away from the children when they are locked in their rooms. Food has often been denied to children locked in their rooms.

34. Staff aggressively verbally abuse these young boys. Profanity is rampant, but children are not allowed to respond to these barrages by staff. Children are often cruelly teased, intimidated, baited and berated by certain staff.

35. Children have been physically assaulted and roughed up by staff. Children are sometimes encouraged to fight with each other. Physical mistreatment has occurred under the guise of moving a child into isolation.

36. Mechanical restraints, particularly handcuffs and leather straps, have been improperly used. Children have been handcuffed and strapped to bunks. Staff have threatened to use mace against youth.

Programming

37. Boys at Ferris spend many hours in idleness. Indoor recreation programs are limited to basketball and wrestling. Many boys do not participate in these sports. Boys with "mandatory" sentences are not allowed to go outside. Many youth have spent months without a single venture outside the building. There are no music, art, crafts, hobbies or other productive recreational programs.

38. Children have not been provided adequate psychological services. Drug and alcohol abuse treatment is provided only one hour per week, and only 8 children participate. Sex offender counselling is limited to one hour per week. Many children are in dire need of such services, and often these needs have contributed to their incarceration. Defendants have failed to meet these needs.

39. Psychological treatment is not provided to children who have threatened or attempted suicide. These children are often placed in isolation cells.

40. Defendants provide no structured program of individualized care or treatment of children with specialized needs. Children are basically warehoused at the Ferris School. Many children are inappropriately placed at the Ferris School--many are too young, too small, are minor offenders or are psychologically ill-equipped to be housed in a maximum security prison. No effort is made to appropriately treat these children.

Medical, Dental, Psychiatric Care

41. Defendants have failed to provide youth with adequate medical, dental and psychiatric care to ensure health and safety. Medications are not properly administered. One youth was allowed to hoard medication which he then used to attempt suicide. He was not provided with medical attention for 1-1/2 hours hours after ingesting this medication. Another child was refused medical treatment because staff were unavailable to take him to a doctor. Children have been placed in isolation for fighting, and refused medical treatment for injuries they had sustained. Children complain that they are routinely denied medical attention for sports injuries or injuries sustained in fights. Children experience unreasonable delays when they request to see a dentist or a psychiatrist. These failures constitute deliberate indifference to the medical, dental and psychiatric needs of the plaintiffs.

Classification, Due Process, Grievance System

42. Defendants provide no classification system at Ferris. There is no effort to separate weak from strong, or aggressive from timid youth.

43. Children are provided no due process protections in disciplinary actions.

44. There is no grievance system at Ferris. Children are not allowed to communicate their complaints beyond line staff.

Education

45. Defendants fail to provide children with adequate

education services. Children do not receive educational opportunities equivalent to those available in the community, adequate to meet their special needs.

46. Defendants confine a substantial number of children who are eligible for and require special education services. Defendants fail to provide these children with adequate special education services required by federal law, such as speech and hearing therapy, psychological services, appropriate educational equipment and sufficient qualified staff. Defendants fail to adequately identify, assess, or evaluate children to determine whether they have special needs, and how such special needs can be met.

47. Defendants fail to develop appropriate individualized education programs for children who need special education or to ensure parental involvement or appointment of surrogate parents for these children.

48. Defendants fail to provide special education and related services, including speech therapy, physical therapy, and psychological therapy to handicapped children who need such services to benefit from their education.

49. Defendants fail to employ sufficient numbers of adequately trained, certified special education teachers to provide special education services to children who need them.

Communication

50. Children at Ferris are denied the ability to maintain contact with their family and friends. Visiting is severely

limited. Only 15 minutes per week is allowed for telephone calls, and calls are often cancelled for administrative reasons. No provision is made to assure the right to counsel and the courts. Once a child is incarcerated at Ferris, he is effectively cut off from the outside world.

FACTUAL ALLEGATIONS - THE BRIDGE HOUSE

51. The Bridge House is located in an urban neighborhood of Wilmington, Delaware. It is a detention center, primarily used for the secure incarceration of boys and girls who are awaiting adjudication or placement by the Family Court. It is a maximum security facility. Presently approximately 40 youth are held there, but the population has been twice that number within the past six months. Children are often held for many months with little or no programming or activities while awaiting resolution of their cases.

The Bridge House is an old building which has outlived its usefulness. The design is a maze of tiny rooms, with limited space for program activities. This facility is unsafe and inappropriate for the housing of children.

Living Conditions

52. The Wilmington Fire Marshal's Office has repeatedly cited the Bridge House facility for fire safety violations and has ordered that, unless major renovations are completed, the building must be vacated by July 1, 1990. Until that time, children housed at Bridge House will be subjected to an unreasonable risk of harm.

53. The small rooms in which children live are dark, dingy and barren of any of the minimal comforts generally taken for granted in a civilized society. Often three children have been held in a single room, with the third person sleeping on the floor. Children have been locked into these rooms for long periods of time. Shoes and pants are not allowed in the rooms. During an extended lockdown in December, 1989, children were locked in their rooms for a week. Children have absolutely no privacy.

54. Children are forced to wear ill-fitting institutional clothes, stamped with the words "Property of Bridge House." Clothing is communal and is not properly laundered. Insufficient underwear is provided.

55. Sheets, towels, blankets and pillowcases are in short supply, and are not properly laundered. Mattresses are not sanitized between uses, and often new arrivals are required to sleep on sheets which have not been laundered after the previous occupant.

56. Children have complained that they do not receive enough food to eat. Food is often served undercooked or cold.

57. Ventilation is very poor, particularly in small rooms where children are locked in. Air conditioning and heating are erratic. Windows are usually kept closed.

58. The entire building is in a state of disrepair and poor sanitation. Children do most of the cleaning. Plumbing and other facilities are poorly maintained.

59. Lighting is insufficient for reading or writing. Light

switches are controlled by staff, and often children must sleep with lights on.

60. Insects, especially body lice, are commonly present in the living units.

Physical and Verbal Abuse

61. Children at Bridge House are commonly punished by "early bed", or being locked in their rooms for long periods of time. Often the water for facilities is turned off during lockdowns. Group punishments often take the form of institutional lockdowns.

62. Children have been roughed up by staff and some have been handcuffed to bunks.

63. Staff have verbally abused children by use of profanity, aggressive teasing and intimidation.

64. Children are allowed or encouraged to fight with other children. Often children are subjected to meaningless, repetitious cleaning details for punishment.

Programming

65. There is no structured treatment program at Bridge House. There is virtually no counselling, no substance abuse programming, no psychological therapy, no productive recreation or other meaningful activities. Children spend most of their days jammed into one room, watching TV.

66. Children have spent many days and weeks at Bridge House with no opportunity for outdoor exercise. Indoor exercise opportunities are minimal.

Classification, Due Process, Grievance System

67. Defendants provide no classification system at Bridge House. There is no effort to separate weak from strong, or aggressive from timid youth.

68. Children are provided no due process protections in disciplinary actions.

69. There is no grievance system at Bridge House. Children are not allowed to communicate their complaints beyond line staff.

Education

70. Defendants fail to provide children with adequate education services. Children do not receive educational opportunities equivalent to those available in the community, adequate to meet their special needs.

71. Defendants confine a substantial number of children who are eligible for and require special education services. Defendants fail to provide these children with adequate special education services. Defendants fail to adequately identify, assess, or evaluate children to determine whether they have special needs, and how such special needs can be met.

72. Defendants fail to develop appropriate individualized education programs for children who need special education or to ensure parental involvement or appointment of surrogate parents for these children.

73. Defendants fail to provide special education and related services, including speech therapy, physical therapy, and psychological therapy to handicapped children who need such

services to benefit from their education.

74. Defendants fail to employ sufficient numbers of adequately trained, certified special education teachers to provide special education services to children who need these services in the detention center.

Communication

75. Children at Bridge House are denied the ability to maintain contact with their family and friends. Visiting is severely limited. Only a few minutes per week is allowed for telephone calls. No provision is made to assure the right to counsel and the courts. Once a child is incarcerated at Bridge House, he is effectively cut off from the outside world.

NO ADEQUATE REMEDY AT LAW

76. As a proximate result of the defendants' policies, practices, acts, and omissions complained of and the conditions and circumstances described above to which plaintiffs are subjected, plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs described. Plaintiffs will continue to be irreparably injured by the policies, practices, acts, and omissions of the defendants unless this Court grants the injunctive relief which plaintiffs seek.

LEGAL CLAIMS

77. For plaintiffs' claims enumerated below, they repeat and

reallege paragraphs 1 through 76 above, as if fully set forth herein, in each and every statement of claim, and further allege:

FIRST CLAIM

78. Defendants' policies, practices, acts, and omissions violate plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM

79. Defendants' policies, practices, acts, and omissions complained of herein deprive plaintiffs of the right to treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM

80. Defendants' policies, practices, acts, and omissions complained of, and in particular, defendants' failure to provide handicapped and disabled students with a free and appropriate public education, deprive plaintiffs of rights guaranteed them by Pub.L. No. 94-142, and by §504 of the Rehabilitation Act, 29 U.S.C. §794.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- A. Assume jurisdiction of this action;
- B. Issue an order certifying this action to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- C. Issue a declaratory judgment pursuant to 28 U.S.C.

§§ 2201 and 2202, and Fed.R.Civ.P., Rule 57, that the policies, practices, acts, and omissions complained of:

(1) subject plaintiffs to denial of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution;

(2) violate plaintiffs' rights to receive treatment in the least restrictive setting and under the least restrictive conditions guaranteed by the Fourteenth Amendment to the United States Constitution;

(3) deprive plaintiffs of the right to a free, appropriate public education under the Pub.L. No. 94-142, and §504 of the Rehabilitation Act, 29 U.S.C. §§ 794 et seq.;

(4) violate plaintiffs' rights under 42 U.S.C. §1983.

D. Issue preliminary and permanent injunctions sufficient to rectify the unconstitutional acts and omissions and statutory violations alleged in this Complaint as follows:

(1) Preliminarily and permanently enjoin defendants, their agents, employees, successors in office, and assigns, from engaging in the unconstitutional and unlawful practices, acts, and omissions described herein, including, but not limited to:

(a) confining children in these institutions under conditions that are overcrowded, unhealthful, unsanitary, and life-endangering;

(b) failing to adequately protect children's

physical, mental, and emotional health;

(c) failing to protect children from physical and verbal abuse while confined at these institutions;

(d) failing to protect children from the improper use of mechanical restraints;

(e) failing to provide children with adequate medical, dental, and psychiatric care;

(f) failing to provide children with adequate education, including special education and related services;

(g) failing to provide children with adequate programming, including indoor and outdoor recreation;

(h) using isolation as a method of discipline for children;

(i) failing to provide children with due process protections prior to imposing discipline; and

(j) failing to provide adequate food and clothing.

(2) Restraining and prohibiting defendants from failing to provide and use appropriate community-based alternatives to incarceration of juveniles;

E. Order defendants to develop and implement a comprehensive plan for correction of the unlawful policies, practices, acts, and omissions complained of in this Complaint, and to submit this plan to the Court and to attorneys for plaintiffs for review;

F. Appoint a Special Master to review and ensure implementation of the plan submitted by defendants;

G. Retain jurisdiction over this action until such time as the Court is satisfied that the unlawful policies, practices, acts, and omissions complained of no longer exist and will not recur;

H. Award to plaintiffs and the class reasonable attorneys' fees and costs in this act, pursuant to 42 U.S.C. §1988, 19 U.S.C. §794a(2)(6), and Pub.L. No. 94-142;

I. Award such other and further relief as this Court may deem necessary.

MORRIS, ROSENTHAL, MONHAIT
& GROSS, P.A.

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