



JI-IN-003-002

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
JOHN A. O'NEAL
CLERK

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

W.C. and T.P., individually and
on behalf of a class of those
similarly situated,

Plaintiffs,

-vs-

JAMES AIKEN, in his official
capacity as Commissioner of the
Indiana Department of Correction,

and

PAMELA H. CLINE, in her official
capacity as Acting Superintendent
of the Indiana Boys' School,

Defendants.

CAUSE NO. IP 90-40-C

STIPULATION TO ENTER CONSENT DECREE
FOLLOWING NOTICE TO THE CLASS

This action comes before the Court upon the filing of a Complaint pursuant to 42 U.S.C. § 1983 and 20 U.S.C. § 1415, by students confined to the Indiana Boys' School, on their own behalf and on behalf of those similarly situated, alleging violation of rights secured by the Eighth and Fourteenth Amendments to the United States Constitution as well as statutory rights secured by 20 U.S.C. § 1400, et seq. The Court has certified a class of all youths who are or may in the future be confined at the Indiana Boys' School.

The Defendants have generally denied the allegations of the Complaint and its amendments, but believe it is in the best interests of the State of Indiana and its citizens to resolve the issues presented by the Complaint and its amendments.

The parties, desiring to avoid protracted and unnecessary litigation, accept this Consent Decree as final on the issues resolved herein. The parties recognize that, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, final judgment cannot be entered upon this Consent Decree until appropriate notice is given to the class. This Consent Decree, being entered with the consent of the parties, shall not constitute an admission or finding on the merits of the case. This Consent Decree resolves all issues in this action.

In resolution of this action, the parties hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following after appropriate notice to the class:

I. POPULATION

1. On and after the thirtieth day after entry of this decree, the population of the Indiana Boys' School shall not exceed 490.

2. The Defendants shall take steps, beginning immediately, to lower the population of the Indiana Boys' School,

and the population shall not exceed the following levels after the times specified:

18 months from the Court's approval of this Decree - 400.

20 b0 24 months from the Court's approval of this Decree - 350.

6 b0 30 months from the Court's approval of this Decree - 300.

17 b0 36 months from the Court's approval of this Decree - 255.

3. Within one year of approval of this decree by the Court, the Defendants shall implement a new juvenile risk assessment and classification system designed both to identify which youths need not be placed in the Boys' School and to identify and classify students who are placed in the Boys' School. Plaintiffs' counsel shall be informed, including receiving a copy of the proposed procedure, prior to implementation and shall have the right to comment on it and to object to it in writing. Subject to the continuing jurisdiction of the Court, Defendants have the right to implement the system over Plaintiffs' counsel's objections, but shall respond in writing to any objection from Plaintiffs' counsel.

II. DISCIPLINARY SYSTEM

4. The Defendants shall continue their re-evaluation of the disciplinary procedure currently being utilized at the Indiana Boys' School. A new procedure shall be in place no later than January 1, 1992, and shall, at a minimum, assure that disciplinary segregation is used only for serious disciplinary infractions.

5. Plaintiffs' counsel shall be informed, including receiving a copy of the proposed procedure, and shall be allowed to comment and to object to the new disciplinary rules and

procedures . Subject to the continuing jurisdiction of the Court, Defendants have the right to implement the rules and procedures over Plaintiffs' counsel's objections, but shall respond in writing to any objection from Plaintiffs' counsel.

6. The new system shall, to the greatest extent possible, conform to standards approved by the American Correctional Association.

7. Pending the implementation of the new procedures, a student may be confined in short term detention only for serious disciplinary infractions. No student will be confined solely for "incurability."

8. Beginning as soon as possible in light of the need for proper and adequate training of staff, the Defendants shall give 24 hours notice in writing before a due process disciplinary hearing, unless the 24-hour period is waived in writing by the student after being fully advised of the right. A student charged with misconduct may be confined or separated from the general population only if the student's continued presence in the population poses a threat to self, others, or the security of the Boys' School, or a serious threat to property, as determined by the Superintendent or designee, which determination shall be made in writing and shall be further discussed with the student within 24 hours of admittance to segregation.

III. SHORT TERM DISCIPLINARY SEGREGATION

9. This Section of the Consent Decree governs confinement in short term disciplinary segregation. "Mental

health staff member" as used in this Decree includes a psychiatrist, psychologist, psychiatric social worker, or behavioral clinician, whether providing services to the students as a state employee or through a contract with the Department of Correction or Indiana Boys' School.

10. Beginning immediately students confined in short term disciplinary segregation shall:

- a. Be entitled to wear appropriate clothing (including state-issued clothing provided for those in segregated status) which shall at a minimum include shirt, underwear, and long pants, unless a mental health staff member determines that to do so could potentially be injurious to the student's safety, to the safety of other students, or to the safety of staff. This determination may, in an emergency, be made by the staff on duty, who shall then consult and obtain approval from a mental health staff member on duty or on call, as quickly as the consultation can be made, which call shall be documented in writing and in detail;
- b. Be allowed the opportunity to receive educational services, absent abuse of this privilege while in segregation, which abuse and the reason for denying access shall be documented in writing and in detail;
- c. Be allowed the opportunity for reasonable access to reading and writing materials, absent abuse of this privilege while in segregation, which abuse and the reason for denying access shall be documented in writing and in detail;
- d. Be allowed opportunity to be out of his cell at least 2 hours a day, exclusive of meals, absent abuse of this privilege while in segregation, which abuse and the reason for denying access shall be documented in writing and in detail;
- e. Be provided the opportunity for at least one hour of vigorous physical exercise a day,

which shall include outdoor recreation when the weather allows it, absent abuse of this privilege while in segregation, which abuse and the reason for denying access shall be documented in writing and in detail; this opportunity may also be withdrawn if a mental health staff member determines that to so allow could potentially be injurious to the student's safety, to the safety of other students, or to the safety of staff. This determination may, in an emergency, be made by the staff on duty, who shall then consult with and obtain approval from a mental health staff member on duty or on call, which consultation shall occur as quickly as possible under the circumstances and shall be documented in writing and in detail.

11. No student shall be held in short-term disciplinary segregation for longer than 5 days for a single offense and no more than ten days consecutively for two or more offenses, unless a new offense is committed while the student is already confined in short term disciplinary segregation.

12. To the extent that confinement in short term disciplinary segregation constitutes a change of educational placement for a child receiving special education pursuant to 20 U.S.C. § 1400, et seq., this confinement cannot exceed 10 days without consent of all parties or a case conference as required by 20 U.S.C. § 1415(e)(3). Honig v. Doe, ___ U.S. ___, 108 S.Ct. 592 (1988).

IV. RESTRAINT/SECLUSION ROOM POLICY

13. By July 1, 1991, the Defendants shall implement a written procedure concerning restraint and seclusion room usage at the Indiana Boys' School which specifically enumerates the grounds justifying restraint and/or seclusion room usage and the persons,

by title or position, who may authorize such usage. Under no circumstances shall restraints and/or seclusion room be utilized for punitive purposes. "Restraints" as used in this Section of the consent decree refers exclusively to the use of mechanical restraints while in a cell or room for the purpose of control and does not refer to the use of restraints in the transportation of a student from one location to another, whether within or out of the Indiana Boys' School.

14. Plaintiffs' counsel shall be informed, including receiving a copy, of the procedure, and shall be allowed to comment and to object to the procedure. Subject to the continuing jurisdiction of the Court, Defendants have the right to implement the procedure over Plaintiffs' counsel's objections, but shall respond in writing to any objection from Plaintiffs' counsel.

15. Defendants shall ensure that the use of "short strap" restraint equipment is not re-instituted. Short strapping is defined as connecting waist and ankle restraints with a leather strap or similar strapping.

16. Use of restraints and/or the seclusion room may only be authorized by a mental health staff member or by the Superintendent or designee, except in cases of an extreme emergency. If restraints and/or the seclusion room is used in an emergency and without prior authorization of a mental health staff member or of the Superintendent or designee, such authorization shall immediately be sought. The need for seclusion room usage and/or restraint usage and all persons consulted and the person(s)

authorizing such usage shall be documented in writing and in detail and maintained in the student's permanent record.

17. If restraints and/or the seclusion room is used, the student shall be under constant visual surveillance with a written log being kept at five (5) minute intervals. The student shall be released from restraints and/or the seclusion room as soon as his behavior allows, or at the end of one hour, whichever first occurs. If the behavior that warranted the use of restraints and/or the seclusion room continues or is re-instated, the student may be returned to restraints and/or the seclusion room following the authorization and notification procedure above.

18. A student placed into restraints and/or into a seclusion room shall be personally seen by a mental health staff member within one half hour of the student being placed into restraints and/or seclusion unless no mental health staff member is on duty and present at the institution. In the event that a student is placed into restraints and/or a seclusion room during the time that mental health staff is not on duty and present at the institution, he shall be seen immediately the next working day, whether still in restraints and/or seclusion or not. The mental health staff member shall document in the student's permanent records the interview and any findings or recommendations as to the student.

V. MEDICAL SERVICES

19. The parties agree that Defendants have requested funds from the 1991 General Assembly in order to substantially

rehabilitate the medical/infirmary unit. Plaintiffs reserve the right to seek relief from the Court as to medical services at the Indiana Boys' School in the event that this request is denied.

20. The Defendants shall, at all times, have a licensed health care provider present at the Indiana Boys' School, 24 hours a day, 7 days a week.

21. By January 1, 1992, the Defendants shall employ or designate a qualified licensed health care provider or medical coordinator whose responsibility shall be to oversee the planning and coordination of the medical services at Indiana Boys' School. This position may be filled by a doctor or by some other health care coordinator who has the ability to insure that students at the Boys' School receive continuity of medical services.

22. Defendants shall insure that all students confined at the Boys' School who are prescribed special diets because of medical conditions receive the diets within 24 hours of the prescription by medical staff.

23. Beginning by June 1, 1991, all students shall be offered annual physical examinations within one month of the anniversary of the student's most recent admission to the Boys' School, unless a complete physical has been given during the year, in which case the annual physical is to be given within one year of the most recent complete physical examination. Initial physical examinations shall continue to be performed within two weeks of a student's admission.

VI. EDUCATIONAL SERVICES

24. The Defendants are obligated to offer education to students confined at the Indiana Boys' School.

25. The Defendants must provide a free and appropriate education as required by federal law.

26. The Defendants must:

a. Identify all children who are potentially children with disabilities;

b. Evaluate all such children;

c. Convene case conferences on any child identified as a child with disabilities at which case conferences all procedural protection required by federal law shall be afforded, with notice to the parents if possible;

d. Develop an individualized education program (IEP) for each student who is identified as a child with disabilities;

e. Provide related services (34 C.F.R. §300.13) as necessary and appropriate;

f. Have sufficiently trained staff to provide the free and appropriate education required by the IEP, as well as the related services (related services may be provided by appropriate persons other than staff in the event that the service is unique and hiring of staff to provide that service is not reasonable);

g. Have in place methods to evaluate and refine IEPs on an ongoing basis;

h. Reevaluate each IEP at least annually.

These requirements are set out in more detail in 20 U.S.C. §1400, et seq. and 45 C.F.R. §300, et seq., all of which requirements must be complied with by the Defendants.

27. The Defendants shall request that the Indiana Department of Education by October 1, 1991 undertake an evaluation of educational services at the Indiana Boys' School under the standards of Indiana Rule S-1, and the Defendants shall begin to implement the applicable standards by January 1, 1992. Plaintiffs' counsel shall have the opportunity to review the manual of standards and to comment, in writing, on the standards. Plaintiffs' counsel shall promptly receive a copy of the evaluation by the Department of Education and may comment on and make objection to the evaluation and recommendations, in writing. The Defendants shall timely respond to any written comments or objections made by Plaintiffs' counsel. Subject to the continuing jurisdiction of the Court, the Defendants may institute the recommendations of the Indiana Department of Education over Plaintiffs' counsel's written comments or objections. If, after negotiation, differences remain over the evaluation and recommendations of the Indiana Department of Education the Plaintiffs may apply to the Court for appropriate relief.

28. By January 1, 1992, the Boys' School shall begin to implement the standards and recommendations referred to in paragraph 27, above.

29. By July 1, 1992, the Boys' School shall insure that all children with disabilities will be evaluated, identified, and educated as required by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

30. During the period of time that the population is being reduced as set forth in paragraph 2, above, if the Defendants determine that reductions in the population of the Indiana Boys' School warrant a reduction in educational and related staffing levels, the Defendants may not reduce the staff unless they advise Plaintiffs' counsel, in writing, 90 days in advance of any planned reduction in the authorized level of educational and related staffing. Plaintiffs' counsel, and such additional persons as counsel may deem necessary, shall have full access to the Indiana Boys' School, educational staff, policies, procedures, and such records as are necessary to review the staffing level and level of services being provided, but access to records will be granted only if the student who is the subject of the records consents in writing to access. Defendants shall respond in a timely manner to any comment or objection received from Plaintiffs' counsel. If objections to reduction in staff remain after receipt of the Defendants' response and attempts to resolve any differences through negotiation, Plaintiffs may apply to the Court for appropriate relief. Staff reductions must be consistent with policies and recommendations of the Indiana Department of Education.

31. The Defendants shall timely act on the recommendations of the Indiana Department of Education.

32. The Defendants shall request that the Indiana Department of Education by October 1, 1991 undertake an evaluation of vocational educational services, including special education

vocational services, at the Indiana Boys' School. Plaintiffs' counsel shall have the opportunity to review the standards and to comment, in writing, on the standards. Plaintiffs' counsel shall promptly receive a copy of the evaluation by the Department of Education and may comment on and make objection to the evaluation and recommendations, in writing. The Defendants shall timely respond to any written comments or objections made by Plaintiffs' counsel. Subject to the continuing jurisdiction of the Court, the Defendants may institute the recommendations of the Indiana Department of Education over Plaintiffs' counsel's written comments or objections. If, after negotiation, differences remain over the evaluation and recommendations of the Indiana Department of Education the Plaintiffs may apply to the Court for appropriate relief.

33. By January 1, 1992, the Boys' School shall begin to implement the standards and recommendations referred to in paragraph 32, above.

VII. PSYCHOLOGICAL SERVICES

34. The Defendants shall continue screening procedures in effect at intake so that before a student leaves intake, the particular psychological services that the student needs, if any, are identified.

35. The Department shall identify the full range of psychology services that should be available to the students at the Indiana Boys' School and identify the staffing necessary to insure that these services are provided. The Defendants shall not

reduce the psychology staff when the population of the Boys' School is reduced as set forth above. In the event that a study or plan indicates that, after population is reduced, psychology staff should be reduced, the Defendants may not reduce the authorized staff level unless they advise Plaintiffs' counsel, in writing, 90 days in advance of any planned reduction in the authorized level of psychology staffing. Plaintiffs' counsel, and such additional persons as counsel may deem necessary, shall have full access to the Indiana Boys' School, psychology staff, policies, procedures, and such records as are necessary to review the staffing level and level of services being provided, but access to records will be granted only if the student who is the subject of the records consents in writing to access. Defendants shall respond in a timely manner to any comment or objection received from Plaintiffs' counsel. If objections to reduction in staff remain after receipt of the Defendants' response and attempts to revolve any differences through negotiation, Plaintiffs may apply to the Court for appropriate relief.

36. By July 1, 1993, the Boys' School shall adequately provide all psychology services necessary implement the full usage of services identified in response to paragraphs 34-35, above.

VIII. COTTAGE 13 - INTENSIVE TREATMENT UNIT

37. Beginning immediately:

- a. All students confined to ITU shall be offered the opportunity to be seen on a weekly basis by a mental health staff member;

b. All students confined to ITU shall be entitled to attend school 4 hours a day, unless disruptive, in which case the reason for refusing to allow the student to attend shall be documented in writing and in detail, including the person or persons making this determination, and this documentation shall be made a part of the student's permanent record;

To the extent that removal from school constitutes a change of educational placement for a child receiving special education pursuant to 20 U.S.C. § 1400, et seq., this removal cannot exceed 10 days without consent of all parties or a case conference as required by 20 U.S.C. § 1415(e)(3). Honig v. Doe, ___ U.S. ___, 108 S.Ct. 592 (1988);

c. All students confined to ITU shall be allowed to be out of their rooms from waking to evening hours unless room restriction is required by legitimate treatment or institutional concerns. In the event that room restriction is imposed in ITU it shall not exceed 8 hours unless authorized by the Superintendent or designee because of an emergency. The reason for imposing room restriction shall be documented in writing;

d. All students confined to ITU shall be offered daily recreation for a minimum of one hour, including outdoor recreation if the weather is appropriate, absent abuse of this privilege while in segregation, which abuse and the reason for denying access shall be documented in writing and in detail; this opportunity may also be withdrawn if a mental health staff member determines that to so allow could potentially be injurious to the student's safety, to the safety of other students, or to the safety of staff. This determination may, in an emergency, be made by the staff on duty, who shall then consult with and obtain authorization from a mental health staff member on duty or on call;

38. The Defendants shall, within one year of the approval of the decree by the Court, implement procedures designed to insure that students are not placed at ITU to control behavior which can be managed through treatment in one of the open cottages. Only those students who will benefit from the programs available at ITU shall be placed there. The procedures shall specify, in reasonable detail, both the standards for admission to and release from ITU. A student charged with conduct that can be considered a crime if committed by an adult and who is awaiting a decision from a court as to whether there will be a waiver of juvenile jurisdiction may be placed in ITU, with access to the programs specified in paragraph 37, if the Superintendent or designee determines that such placement is necessary to protect the student, other students, staff, the security of the institution, or to preclude a reasonable possibility of the escape of that student, which determination and the reasons for it shall be in writing and shall be made part of the student's permanent records.

39. Plaintiffs' counsel shall be consulted and shall be allowed to comment and object to the new ITU procedures prior to their implementation. Subject to the continuing jurisdiction of the Court, the Defendants reserve the right to implement the procedures over Plaintiffs' counsel's objections, but shall respond in writing to any objection from Plaintiffs' counsel.

IX. MISCELLANEOUS PROVISIONS

40. The Boys' School shall continue to materially comply with all applicable health, fire, safety, and sanitary codes.

41. The Boys' School shall continue to endeavor to train correctional staff in anger management and other methods to aid their handling of the students.

42. By June 1, 1991, the Defendants shall modify the Boys' School's current visitation policies so as to assure visitation at reasonable times on weeknights and weekends, with the possibility of weekday visits on a case-by-case basis upon approval by the Superintendent or designee, giving consideration to the reasons that such visits are requested and to the program of the student, his education, and distances that must be travelled for visitation.

X. ATTORNEYS' FEES AND COSTS

43. The Defendants agree that the Plaintiffs are prevailing parties and are entitled to their reasonable attorneys' fees and costs following appropriate documentation. Plaintiffs' counsel shall submit the documentation within 30 days of the date that this Decree is approved by the Court and Defendants's counsel shall respond to the submission within 30 days of receipt. In the event that no agreement or settlement as to the amount of fees or costs is reached within 90 days after the approval of this Decree, Plaintiffs' counsel may apply to the Court to award any or all of the disputed costs.

XI. NOTIFICATION TO THE CLASS

44. The parties agree that before the Court can enter approval of the Consent Decree in this cause, notice to the class must be given pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

45. The parties request that the Court order the following notice to the class consistent with Rule 23(e):

a. Posted notice in each building at the Boys' School to which students have access, which notice shall contain a brief description of the litigation as well as this document. Said notice shall list Plaintiffs' counsel's name, phone number and address and indicate that Plaintiffs' counsel should be contacted in the event of questions or comments. This notice shall be written by Plaintiffs' counsel and shall be approved by Defendants' counsel prior to posting;

b. At a time and date approved by Defendants, Plaintiffs' counsel shall be given an opportunity to meet with all students at the Boys' School to discuss this Consent Decree. The parties shall endeavor to do this in the least disruptive and time consuming manner possible. No earlier than 96 hours prior to the meeting each Boys' School student shall be given a copy of the notice specified in sub-paragraph (a), above. Plaintiffs' counsel shall supply Defendants' counsel with copies of the notice.

46. Plaintiffs' counsel shall report back to the Court as to any contact from the class concerning the Consent Decree. This report shall be filed no earlier than 30 days and no later than 45 days following the meeting specified in paragraph 45(b), above.

XII. CONTINUED REPORTING AND MONITORING

47. It is the intention of the parties that this Consent Decree be approved and that a final judgment be entered thereon following the notice and report to the Court specified above.

48. The parties agree that this Court will retain continuing jurisdiction of this matter to enforce this Consent Decree.

49. Until such time as the population at the Boys' School reaches 255 as required by paragraph 2 of this Consent Decree, the following sub-paragraphs shall apply:

a. As soon as possible after the first of each month, Defendants or their designee shall provide Plaintiffs' counsel with a monthly report of the daily population at the Indiana Boys' School;

b. On February 1 and on August 1 of each for a period of three years, Defendants shall submit to Plaintiffs' counsel a written report outlining all progress in implementing this Decree since the immediately preceding report.

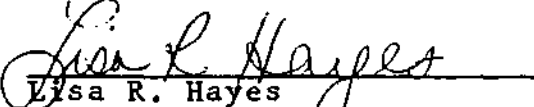
c. Plaintiffs' counsel shall have the right, every six months, to solicit releases from the students to discuss compliance with this Decree and may contact students at any reasonable time in response to students' requests. Plaintiffs' counsel shall at all times have reasonable access to documents, persons, and the Boys' School to be able to monitor compliance and to adequately represent the interests of the class and class members.

50. Once the population reaches 255 as specified above, Defendants shall be relieved of all notice requirements to Plaintiffs' counsel except that the Defendants shall notify

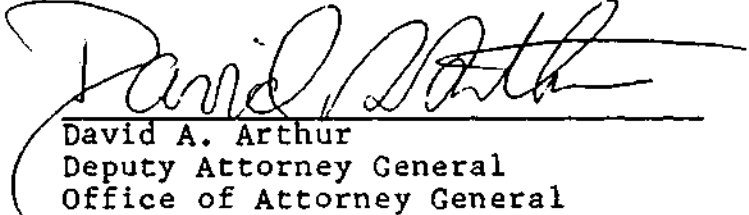
Plaintiffs' counsel, by letter, in the event that the population at the Indiana Boys' School exceeds 255 for a period of 14 consecutive days.

51. In the event that Plaintiffs believe the Defendants are not in compliance with this Decree, Plaintiffs' counsel shall report that belief to the Defendants through their counsel in writing and in detail, and shall attempt to resolve the issue with Defendants prior to petitioning the Court for a hearing. No petition for contempt may be filed with the Court for at least 30 days after receipt of the written statement by Defendants' counsel, except in the event of an extreme emergency.


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