



Jl-IN-003-003

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

SEP 27 1993

W. C., <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. IP 90-40-C
)	
CHRISTOPHER DeBRUYN, <u>et al.</u> ,)	
)	
Defendants.)	

**PARTIES' STIPULATION TO WITHDRAW CONTEMPT PLEADING AND
STIPULATION TO AMEND SETTLEMENT**

Come now the parties, by their counsel and say that:

1. On May 28, 1993 Plaintiffs filed their Verified Petition to Hold Defendants in Contempt for Violation of Consent Decree.

2. Since that time the parties have engaged in discovery and discussions and now enter into the following stipulations which dispose of the issues as specified.

3. The Defendants deny the allegations of the Verified Petition, but believe that it is in the best interests of the State of Indiana and its citizens to resolve the issues presented by the Verified Petition to Hold Defendants in Contempt.

4. The parties, desiring to avoid protracted and unnecessary litigation, accept this Stipulation as final on the issues resolved herein. The parties stipulate and agree that this Stipulation, which modifies the previous Judgment entered by this Court, should be subject to Rule 23(e) of the Federal Rules of

Civil Procedure. Accordingly, the Stipulation cannot be approved until appropriate notice is given to the class. This Stipulation, being entered with the consent of the parties, shall not constitute an admission or finding on the merits of the case.

5. This Stipulation resolves all issues raised in the Verified Petition to Hold Defendants in Contempt.

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:

SHORT TERM DETENTION PROCEDURES

6. In the Verified Petition the Plaintiffs complained that students confined to short term detention in Cottage 10 were not being allowed vigorous physical exercise at least one hour a day and were not being allowed outdoor recreation in violation of paragraph 10e of the original Stipulation to Enter Consent Decree of September 26, 1991.

7. The parties agree and stipulate that students in Cottage 10 are now being allowed one hour of vigorous physical exercise a day and that they are being allowed outdoor recreation, weather permitting.

RESTRAINTS/SECLUSION PRACTICES

8. In the Verified Petition the Plaintiffs complained that restraints and seclusion practices being utilized on Cottage 13 violated paragraphs 13, 16 and 18 of the Stipulation to Enter Consent Decree of September 26, 1991.

9. The parties now stipulate and agree that the

incidents of restraints and seclusion in Cottage 13 have dropped significantly over the last year.

10. In order to further reduce the incidents of restraint and seclusion the Defendants agree that the following steps will be taken.

a. The Department of Corrections will continue to monitor the performance of staff in Cottage 13 to determine their compliance with the terms of this Stipulation and the Consent Decree.

b. All staff on Cottage 13 have been or will be trained, at the earliest possible opportunity, in techniques designed to minimize the need for and the use of restraints and seclusion.

c. Paragraph 16 of the Stipulation to Enter Consent Decree of September 26, 1991, provides that restraint and/or seclusion shall not be utilized unless authorized by a mental health staff member. The Defendants agree that in order to ensure a more meaningful review by mental health staff members that the following steps shall be taken. If a mental health staff member is on grounds he or she shall be immediately consulted and shall view the student prior to restraint or seclusion or immediately thereafter. Any mental health staff member who is contacted concerning restraint or seclusion shall make contemporaneous detailed notes justifying the need for restraint and/or seclusion.

d. Defendants shall supply to Plaintiffs' counsel

all restraint and seclusion reports for the twelve months following the date that this document is filed. The reports will be supplied on a monthly basis.

COTTAGE 13 - INTENSIVE TREATMENT UNIT

11. In paragraph 37c of the Stipulation to Enter Consent Decree of September 26, 1991, the parties agreed that all students in the long term unit of Cottage 13 (Intensive Treatment Unit or "ITU") would be out of their rooms from waking until the evening hours unless room restriction was required by legitimate treatment or institutional concerns.

12. In the Verified Petition to Hold Defendants in Contempt, Plaintiffs alleged that certain classes of students were restricted to their rooms in Cottage 13 in violation of the Consent Decree.

13. The parties stipulate and agree that at the current time no students are restricted to their cells on the intensive treatment unit in Cottage 13 in violation of the Consent Decree. Defendants would note that occasionally students who are eligible for placement in short term segregation pursuant to disciplinary findings as provided for in the Consent Decree are housed in the long term unit on Cottage 13 because of lack of room on the short term disciplinary side. This is acceptable to the Plaintiffs provided all procedures and durational limitations for short term detention are followed as specified in paragraphs 10-12, inclusive, of the Stipulation to Enter Consent Decree of September 26, 1991.

POPULATION

14. The parties agree that the Defendants have been unable to fully comply with the population levels specified in Paragraph 2 of the Stipulation to Enter Consent Decree of September 26, 1991.

15. Specifically, the population at the Boys School has been consistently higher than the 400 student population level which is the current population cap.

16. The defendants agree that the current capacity of the Boys School remains 255 and that the Boys School should not have more than 255 students.

17. Accordingly, the Defendants will still reduce the Boys School population to 255. However, Defendants propose, and Plaintiffs' counsel agree, that they should be given an additional 12 months, to, and including December 20, 1995, to reach the 255 level.

The Defendants' and Plaintiffs' counsel desire to amend paragraph 2 of the Stipulation to Enter Consent Decree of September 26, 1991, to specify that:

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 time specified:

December 20, 1993 -	475
March 20, 1994 -	400
December 20, 1994 -	365
June 20, 1995 -	305
December 20, 1995 -	255

18. The Defendants need additional time to meet the ultimate cap of 255 so that a new system of treating juvenile

offenders can be fully implemented in Indiana. This system will feature, among other things, the use of: a common risk management assessment tool to assist in placement decisions; the use of existing Department of Correction operated community based satellite facilities throughout the State; the development and use of day service programs to allow offenders to be diverted away from the Boys School; and, the employment of up to 18 case managers to follow offenders in the day treatment programs.

19. Within 60 days of the parties' filing of this Stipulation, the Defendants shall file a detailed plan with this Court specifically describing the new system of treating juvenile offenders mentioned in paragraph 18. The Plan shall specify what steps will be taken and the time schedule for each major step on the plan. Until the population of the Boys School reaches 255 the Plaintiffs shall be provided with quarterly progress reports from the Defendants as to the steps made to achieve the goals specified in the plan which is to be filed with the Court pursuant to this paragraph. The first such progress report will be provided to Plaintiffs' counsel no later than 90 days after the detailed plan is filed with the Court as specified in this paragraph. The quarterly reports need not be filed with the Court.

20. Plaintiffs shall continue to receive weekly population reports from the Boys School until the 255 level is reached. The population shall be measured on a day after the regular weekly intake and discharge of students at the Boys School.

21. In the event that the population, measured as

specified in paragraph 20, exceeds the levels specified in paragraph 17 by 10% or more for four consecutive weeks, the Defendants agree that they will seek permission from the Court to house youth at the Boys School in excess of the cap amount and they will, unless and until such approval is received, cease admissions to the Boys School.

SPECIAL EDUCATION

22. Paragraph 26a of the Stipulation to Enter Consent Decree of September 26, 1991, obligates the Defendants to identify potentially disabled youth pursuant to the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. 1401, et seq. In order to comply with this requirement the Defendants shall:

a. Continue to administer a battery of group psychological tests to students coming into the institution. The parties agree that these tests are for purposes other than identification under the IDEA. However, the results of the tests or the intake process may disclose suspected disabilities.

b. In the event that the testing or general education intervention procedures disclose a suspected disability, the Boys School shall seek parental permission pursuant to 34 C.F.R. § 300.504. Once the permission is received, or the permission is dispensed with pursuant to 34 C.F.R. § 300.504 (b)(2) and concomitant state procedures, the Boys School shall engage in all individual testing necessary to comply with the IDEA and necessary to

determine the existence of a disability as required by 34 C.F.R. §§ 300.530-534.

c. In conducting the individual tests to determine the possibility of disability, the Defendants shall comply with all time limits as specified in the IDEA and its regulations and concomitant state law.

d. The Defendants may conduct these individual tests with Boys School staff or may utilize other persons to conduct these tests. However, no matter who is utilized, the Defendants remain responsible for insuring that all of the IDEA's identification requirements are met.

e. Within 45 days from the filing of this Stipulation the Defendants shall file with the Court their plan specifying how they intend to satisfy the identification requirement of the IDEA.

23. The parties acknowledge that since the filing of the Verified Petition to Hold Defendants in Contempt in this cause the Defendants have begun to conduct case conferences as required by the IDEA. In order to assure that the case conference considers the full range of educational possibilities the parties agree that although the general education program at the Boys School is a three hour academic program (combined with three hours of counselling activities), the case conference is not to engage in any presumption that disabled students should receive only three hours of academic programming. Instead, the case conference should consider the full range of educational possibilities for each

disabled student so that an individualized educational program can be devised. The Defendants agree that they will endeavor to insure that each case conference participant is aware of the fact that a full range of educational programming must be considered and that the program designed must be individualized without regard to the standard education being provided at the Boys School to non-disabled students. The Defendants shall devise written procedures to insure that this is done and these procedures will be filed with the Court within forty-five (45) days of this pleading being filed.

24. For a period of three months from the date that this pleading is filed, Plaintiffs' counsel shall be notified of all case conferences being scheduled at the Boys School. For a period of six months from the date that this pleading is filed, Plaintiffs' counsel shall be sent copies of all final case conference reports and Individual Education Plans. If Plaintiffs' counsel appeals case conference determinations within the administrative and statutory framework provided by Indiana law, the Defendants, to the extent allowed by the Indiana Constitution, will waive any and all mootness objections to the appeals.

REGULAR EDUCATION

25. The parties acknowledge that inasmuch as the Charlton School at the Boys School is not accredited by the Indiana Department of Education the minimum hour requirements for education in Indiana statutory and regulatory law do not apply to the Boys School.

26. Plaintiffs now withdraw their contempt claims concerning the three hour regular education program instituted by the Defendants at the Boys School.

27. Defendants agree to continue to reevaluate the regular education program at the Boys School and to make any changes that they deem necessary.

28. The Defendants agree to reinstate a pre-vocational course curriculum by April 1, 1994 and a vocational course curriculum by September 1, 1994.

NOTICE TO THE CLASS

29. The parties agree that before the Court can enter approval of this Stipulation that notice to the class must be given pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

30. 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. The 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 Stipulation. The parties shall endeavor to do this in the least disruptive and time consuming manner as 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.

31. Plaintiffs' counsel shall report back to the Court as to any contact from the class concerning this Stipulation. This report shall be filed no earlier than 30 days and no later than 45

days following the meeting specified in paragraph 30b above.

COSTS AND ATTORNEYS' FEES

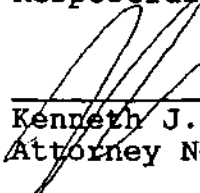
32. The parties agree that Plaintiffs are prevailing parties in this matter pursuant to 42 U.S.C. 1988 and further the parties agree that plaintiffs' counsel shall be paid the sum of \$20,000 as the full amount of their costs and fees.

INCORPORATION


33. In all other respects not specified in this document, the parties desire that the Stipulation to Enter Consent Decree of September 26, 1991, and this Court's Judgment of December 20, 1991, remain in full force and effect.

WHEREFORE, the parties file their Stipulation disposing of certain issues in this case and request that the Stipulation be approved, and for all other proper relief.

Respectfully submitted,

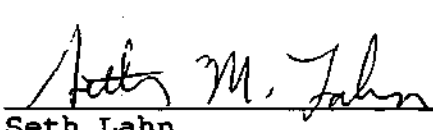


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