

Delaney



JI-NC-001-002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
(WESTERN DIVISION)

ANDRE LAW, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 C. ROBIN BRITT, Secretary of Human)
 Resources, et al.,)
)
 Defendants.)

No. 93-300-CT-BR

Consolidated with:

ANTWAN SIMPSON, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 C. ROBIN BRITT, et al.,)
)
 Defendants.)

No. 5:94-CT-581-BR2

SETTLEMENT AGREEMENT

The Plaintiffs, the classmembers represented and the Defendants, desiring to avoid further protracted and costly litigation, do hereby agree as settlement of all claims set forth in the above-captioned consolidated actions, subject to the approval of the Court, as follows:

I. POPULATION

A. Capacity

1. Defendants will attempt to maintain the population at each of the following centers ("named centers") at its operating capacity, defined as follows:

BUNCOMBE - 14
CUMBERLAND - 18

GASTON	- 12
NEW HANOVER	- 18
PITT	- 14
LEONARD	- 5
WAKE	- 14
WILKES	- 8

2. Until these consolidated actions are dismissed, Defendants will document the daily populations for each named center. Each Tuesday, by 11:00 am, Defendants will make available to counsel for the Plaintiffs the daily population count for each named center for the preceding week. For the purposes of this agreement, daily populations are those taken at 8:00 am. Average weekly population for each named center is the seven-day total daily populations beginning each Tuesday, divided by 7 and rounded down to a whole number.

3. Defendants will take remedial action if the sum of the average weekly populations of the named centers is greater than 132 or if the average weekly population of any named center is above the following numbers:

BUNCOMBE	- 18
CUMBERLAND	- 23
GASTON	- 17
NEW HANOVER	- 23
PITT	- 18
LEONARD	- 11
WAKE	- 18
WILKES	- 13

Remedial action means that each affected named center will identify juveniles who are no longer in need of secure custody and notify the Juvenile Court and the juvenile's counsel of this opinion and request that the State juvenile court consider this opinion in determining whether there is a need for continued secure custody; and will also notify the Senior Court Counselors in the named center's catchment area of the need to limit the center's population and request cooperation.

4. If the sum of the average weekly populations or the stated average weekly populations for any named center exceeds the above levels for two consecutive weeks, counsel for the plaintiffs may petition the Court for appropriate relief under this agreement, which may include orders to release individual juveniles from detention.

5. If the sum of the daily populations of the named centers does not exceed 123 on any day between September 15, 1995, and December 15, 1995, Defendants will be released from their obligations regarding population in this section of this Agreement, except that they will still attempt to maintain the population at capacity, as required

by subsection A.1. above. If the population exceeds 123 on any day during the period September 15, 1995, and December 15, 1995, then Plaintiffs may petition the Court for an extension of the population control obligations under this section, for an additional six months. If an extension is granted by the Court, all provisions of this section will remain operative for six months or until such time as Defendants operate the named centers at a total population of 123 or less for ninety consecutive days. If the population remains at 123 or below for ninety consecutive days, then Defendants shall be released from their obligations under this section; if not, Plaintiffs may seek another six-month extension on the same terms.

B. Alternatives To Detention

The North Carolina Department of Human Resources, Division of Youth Services ("DYS") will establish a population committee and will request representatives of the Administrative Office of the Courts to participate. The committee will explore alternatives to detention and make efforts to educate court personnel with the goal to detain only juveniles who cannot be safely managed elsewhere. The population committee will also explore, develop and recommend strategies to limit the population of detention facilities. The committee will consider information from risk assessments conducted on each juvenile entering secure detention by center staff which may be used to develop strategies regarding which juveniles need to be held in detention. This input will be forwarded to the Secretary of the Department of Human Resources, the Administrative Office of the Courts and to the Juvenile Code Revision Committee for appropriate legislative action.

A Willie M. classmember may only be released from secure custody by order of the juvenile court. However, DYS will contact the local court and Willie M. Services staff to facilitate alternative placement as soon as possible. DYS will begin this process within 72 hours of a Willie M. admission. DHR will continue its efforts to make placements for Willie M. classmembers as soon as possible after their admission to secure detention.

DYS will conduct an automatic review of every juvenile who has been detained longer than 30 days, and will contact court counselors with a recommendation for alternative placement and/or to expedite an alternative placement, if appropriate, based on the juvenile's behavior and progress while in detention.

II. STAFFING

Defendants will make a good faith effort to add additional staff at the named centers.

III. TRAINING

The DYS Staff Development Director will continue to plan and provide for training of new

employees and continuing training as necessary. When required, DYS will contract with specialists in specific areas of training and will arrange for on-site training at least quarterly. DYS training program for new and current employees will include those subjects set forth in 12 NCAC 09B.0234. DYS will provide detention training in addition to that required by 12 NCAC 9B.0234 and will attempt to provide training of employees within four to six months of their employment. Prior to assumption of independent duties, new employees will receive training through on-the-job training or otherwise.

DYS will specifically review its training dealing with juvenile suicide and provide present employees additional training if necessary.

IV. MEDICAL CARE

There will be a full-time nurse coordinator for DYS housed in the DYS Central office. DYS will develop a medical plan to be implemented at each named center. The plan will include the following:

1. Each named center shall contract with medical personnel (registered nurse, physicians assistant or family nurse practitioner) for a minimum of 20 hours per week per named center to provide medical services to detainees, including reviewing intake documents, monitoring medications, providing medical assessments as needed, and making appropriate referrals. The medical professional will meet with each new detainee within 72 hours of his or her arrival at a named center.
2. Each named center shall make arrangements for emergency medical care.
3. Each named center shall arrange for emergency dental care.
4. Detention staff will be specifically trained to perform a medical screening and mental health screening with heavy emphasis in suicide assessment at the time a juvenile is admitted and to make immediate referrals to appropriate providers.
5. Medical personnel will review all intake screenings and will conduct further assessments as needed. Such assessments may include a medical history, a medical assessment including physical examination, a mental health assessment, appropriate screening for sexually transmitted diseases and vision, and tuberculosis testing.
6. Each employee of a named center shall be certified in cardiopulmonary resuscitation (CPR) and first aid. Such certification shall be kept current.
7. Medical personnel shall conduct sick call in response to complaints of juveniles and when staff refer juveniles for treatment. Each juvenile shall be allowed unimpeded access to sick call and cannot be prevented from attending sick call by staff.

8. Medical personnel will monitor the storage and administration of all medications.

V. MENTAL HEALTH CARE

A. Mental Health Plan

DYS shall develop a mental health plan that includes a contract with the local Area Mental Health Authority ("Authority/Authorities") to be implemented at each named center. The plan shall include at least the following provisions:

1. DYS mental health plan shall include provisions for "emergency" and "non-emergency" protocols which will be negotiated with the local Authorities."
2. The contract with an Authority will provide for guidance and training to selected staff from the named detention centers on selecting a mental health screening protocol and conducting an initial interview. Training will also target non-verbal and verbal juvenile communication which demands immediate referral to the designated Authority professional.
3. Upon admission, each juvenile will be given a mental health screening by staff, including a suicide assessment.
4. Referrals will be made to the local Authority in accordance with the DYS contract with the Authority for juveniles at risk of suicide or exhibiting signs of depression. Each juvenile referred in a "non-emergency" status will be seen by a qualified mental health professional within five days. "Emergency" referrals will be seen immediately in accordance with the DYS contract with the local Authority.

B. Suicide Prevention Plan

The DYS shall develop a suicide prevention plan, to include the following provisions:

1. All suicidal gestures or remarks are to be taken seriously and not to be viewed as merely manipulative. All suicidal behavior will be treated therapeutically, not punitively.
2. Each named center shall arrange for emergency mental health services in accordance with the contract with the local Authority.
3. Mechanical restraints shall not be used on juveniles at risk for suicide except in consultation with medical personnel.
4. Staff shall receive no less than four hours of training in suicide prevention.

5. Each juvenile shall be assessed for suicide risk upon admission to a named center.
6. Staff shall conduct continuous identification and monitoring of juveniles at risk for suicide and make appropriate referrals to mental health providers.
7. Suicide risks and attempts shall be dealt with as provided in the DYS Detention Policy Manual, Policy Number JDS 9.11.
8. Voluntary or involuntary commitment to a mental health facility should be considered if a juvenile has made a suicide attempt or gesture.

VI. BEHAVIOR MANAGEMENT

A. Behavior Management System

The DYS shall develop a consistent behavior management system to be implemented at each named center. The system shall attempt to manage behavior of juveniles through rewards and discipline. Implementation of the system will include training for staff.

B. Crisis Management

The DYS shall develop a policy in crisis management, encompassing appropriate interventions to be used when a juvenile's behavior is out of control. Staff shall be trained in the use of appropriate interventions ranging from verbal intervention to a period of isolation.

C. Disciplinary System

There shall be a uniform disciplinary code which includes a list of major and minor infractions. The code shall be posted at each named center and are included in orientation materials for all juveniles.

The code shall include the following provisions:

1. Minor infractions which may or may not result in room confinement.
2. Major infractions which, absent special circumstances, may result in no more than two days of room confinement. Confinement for a major infraction shall be reviewed, at a minimum, every 24 hours.
3. For major infractions, there shall be developed a disciplinary procedure, which shall include notice and the opportunity for the juvenile to be heard by someone not involved in the incident.

4. Juveniles placed in isolation as a result of a major infraction shall receive at least one hour of large muscle activity per day and, if behavior permits, may be allowed visitors.

D. Use Of Isolation And Mechanical Restraints

The DYS shall develop a uniform policy for the use of isolation and mechanical restraints to be implemented at each named center, which shall include, at a minimum, the following provisions:

1. Isolation and mechanical restraints shall not be used as punishment but may be used for discipline and control of a juvenile who is out of control.
2. Unit lock-down or wholesale isolation shall not be used, except in emergencies.
3. No juvenile shall be held in mechanical restraints while in isolation unless he or she poses a threat to himself or herself or to others or to property.
4. Metal restraints shall be used only for transportation purposes. Soft restraints have been purchased and will be used after staff training.
5. No juvenile shall be held in mechanical restraints for more than one hour without the approval of the center director or his designee.
6. Any child who is placed in mechanical restraints or in isolation shall be visually monitored at least every 15 minutes.
7. Detailed and accurate records of every use of isolation or restraint shall be maintained by each named center. The records shall indicate the exact method and duration of isolation or restraint used, the reason for its use and accurate notations of staff observations during 15 minute room checks.
8. Each named center director, or his designee, shall review incident, isolation, and use of force reports monthly for the purpose of monitoring staff compliance with DYS isolation and restraint policies. As a form of ongoing behavior management training, the director shall review with all staff any incidents of improper use of force, restraint or isolation.

VII. EDUCATION

The DYS shall develop an educational plan to be implemented at each named center. The plan shall include the following provisions:

1. Each named center shall employ a certified full-time teacher.
2. Each juvenile who is detained for more than five consecutive days shall receive no less than five and one half hours of instruction per day unless the juvenile is in court or is being disciplined. Each juvenile detained more than thirty consecutive days will receive a course of instruction appropriate to his or her age, capacity and interests.
3. If a named detention center teacher believes that a juvenile has demonstrated, after the first two weeks in detention, that he or she may be a student with identified special education needs, the teacher must take immediate steps to contact the school where the juvenile was last enrolled. Every attempt will be made to have the resource teacher from the juvenile's school forward appropriate educational guidance with materials. If a juvenile is believed to have special education needs and is expected to be in detention for thirty consecutive days or more, steps will be taken to have the juvenile assessed. The named detention center teacher will contact the DYS Chief of Education to arrange for educational assessments and to establish a committee which will function as a School-Based Committee and the Administrative Placement Committee as provided for in Rule .1507 of *Procedures Governing Programs and Services for Children with Special Needs* published by the Division of Exceptional Children's Services, North Carolina Department of Public Instruction. The teacher will keep a confidential record of pertinent documentation with respect to special educational needs identification, the juvenile's Individualized Education Program ("IEP"), the juvenile's progress, and all services provided in accordance with the IEP. A juvenile's progress will be made available to both the juvenile's parents and the juvenile's school in his or her community. In the case of lack of information, problems with parental consent and all other procedural matters, DYS will continue to rely on the guidance from the Division of Exceptional Children's Services, North Carolina Department of Public Instruction.
4. The named centers will ensure that all education records and results of any educational tests and/or assessments are forwarded to training school or provided upon request to the juvenile's next placement, if any.

VIII. ADMISSION PROCEDURES

A. Intake

DYS shall develop intake procedures and standardized forms for use at all named centers. The procedure should include the following:

1. Intake screening shall be conducted on each juvenile at the time he or she enters the named center. Screening shall be conducted by trained staff.
2. Intake screening shall include at a minimum the following areas:

- a. Medical screening as provided in IV above.
 - b. Mental health screening as provided in V above.
 - c. Risk assessment using the Broward Juvenile Detention Risk Assessment Instrument.
3. Upon intake each juvenile shall be oriented to the physical plant and the operation of the named center. Each juvenile shall be given a copy of the rules and regulations of the named center, including access to health care, grievance procedure, and disciplinary rules and procedure.
 4. DYS will make a good faith effort to obtain each juvenile's medical and education records after admission to secure detention.

B. Classification

DYS will develop and implement a system for classifying juveniles admitted to a named center for the purpose of determining the juvenile's housing assignment. The classification system shall consider the juvenile's sex, age, physical size, offense, mental health history and status, etc. The classification system will be developed to attempt to prevent children from harming each other while sleeping in the same room; for example, aggressive children should not be housed with non-aggressive children, and children accused of sexual offenses should be housed in their own rooms.

IX. CONDITIONS

Because the design of the named centers does not allow the children access to a toilet or sink without the assistance of staff, staff shall receive special training/instruction on the need for prompt attention to requests to use the bathroom and will make regular rounds offering toilet and sink use when children are confined to their rooms.

Juveniles shall only share rooms when necessary due to crowding or classification.

Each juvenile shall be allowed to retain approved items of personal property in his or her room. With the named center's approval, juveniles may have age appropriate reading material maintained at the named center in their rooms.

X. RECREATION/PROGRAMMING

Unless restricted for health or security, each juvenile shall be allowed one hour of large-muscle activity per day, rain or shine.

Except in exceptional circumstances, each juvenile shall be out of his or her room no less than 13 hours per day, unless that juvenile has been assigned to isolation for disciplinary reasons.

DYS shall:

1. Have each center develop a recreation and programming schedule approved by DYS.
2. Increase passive recreation opportunities.

XI. FAMILY SUPPORT/INTERACTION

In recognition of the important role to be played by family and community in the support of detained juveniles, DYS shall develop a policy regarding visitation, telephone use and mail that shall be implemented in each named center. The policy shall contain, at a minimum, the following provisions:

1. Hours for visitation will be expanded and family members will, upon request, be informed of visiting times. Each named center shall have a total of at least five visiting hours per week. Reasonable accommodations will be made for visitors who are not able to come at regular hours.
2. Each child shall be allowed to include on his or her visitation list adult family members, including, but not limited, to his or her parents, clergy, and other adults from the community who do not pose a threat to the safety and security of the facility.
3. Children shall have access to a telephone from which they may place collect calls.
4. Staff shall not open outgoing mail.
5. Staff may open incoming mail for the limited purpose of preventing the introduction of contraband into the facility. In such an event, the mail shall be opened only in the presence of the child to whom it is addressed.
6. Staff shall not open mail from attorneys or from elected or appointed state officials for any reason.
7. Staff shall not read incoming or outgoing mail unless there is clear and convincing evidence that the mail contains contraband or the correspondence creates a substantial threat to the security, order and/or mission of the center.
8. There shall be no unreasonable restriction on the number of letters each child is allowed to send or receive.

9. The named center shall provide each child with writing materials and postage.

XII. PHYSICAL PLANT

DYS shall conduct regular inspections of each named center. Each facility shall be maintained in accordance with applicable state and local codes.

XIII. IMPLEMENTATION

1. This agreement will begin to be implemented upon approval by the Court.
2. DYS will maintain documentation of its compliance with the provisions of this agreement, and Plaintiffs' counsel may inspect such documentation upon proper request and notice.
3. Prior to dismissal of these consolidated actions and upon reasonable notice to Defendants, Plaintiffs' counsel may visit any named center not more than once every three months at Plaintiffs' expense.
4. The Court shall retain jurisdiction over the enforcement of this agreement until its provisions are fully implemented. When the provisions of this agreement are fully implemented and Defendants have been released from the population control obligations of section 1.A., Plaintiffs shall dismiss this action with prejudice. Plaintiffs and Defendants consent to United States Magistrate Judge Alexander B. Denson being appointed to hear and decide any requests for relief or disputes regarding implementation and compliance under this agreement.

XIV. ATTORNEYS FEES

Defendants agree to pay Plaintiffs' attorneys, upon receipt and after review of time sheets and expense records, the sum \$95,000.00 which shall represent full and complete satisfaction of all attorneys' fees, costs and expenses associated with these consolidated actions. Plaintiffs agree that no additional attorneys' fees, costs or expenses will be paid by Defendants unless Plaintiffs apply for and receive relief from the Court under this Settlement Agreement.

XV. Plaintiffs will provide such notice of this agreement as the Court may direct.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
(WESTERN DIVISION)

FILED
FEB 22 '95

CLERK
U.S. DISTRICT COURT
E. DISTRICT OF N.C.

ANDRE LAW, et al.,)
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No. 5:94-CT-581-BR2

ORDER ON NOTICE TO PLAINTIFF CLASS

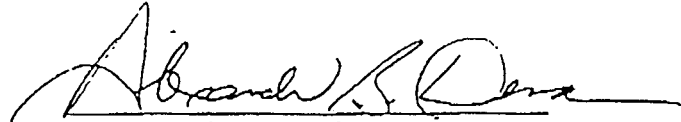
It is ordered that the following provisions regarding notice of settlement agreement to the plaintiff class shall be accomplished:

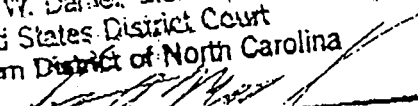
1. Within one week of the date of this Order, guardians ad litem for the two classes of juveniles shall make best efforts to contact class members and former class members who have been named as class representatives or interviewed as potential witnesses in order to inform them of the settlement agreement and notify them of their right to contact the Court should they have any objections. Each such class member will be given a copy of the settlement agreement and the Notice to Class Members (Attachment A.)
2. Within a week of the date of this Order, the Director at each named center shall post a copy of the Notice to Class Members (Attachment A) in a conspicuous location

in the center, which shall remain posted for 30 days.

3. For one month after the date of the Order, the Director of each named center shall maintain copies of the full settlement agreement, and shall provide a copy of it to any child class member upon request.

SO ORDERED this 22nd day of February, 1995.


U. S. Magistrate Judge

Identify the foregoing to be a true and correct copy of the original.
By: 
W. Daniel Clark
United States District Court
Western District of North Carolina
Deputy Clerk