

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO. CC 79-0294

WILLIE M., a minor, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JAMES B. HUNT, JR., et al.,)
)
 Defendants.)

SECOND SET OF STIPULATIONS

Plaintiffs and defendants (except Black and Bason) hereby stipulate to the following and agree to the inclusion of these stipulations in an order by the Court in this matter:

JURISDICTION

1. This Court has jurisdiction of the subject matter of this action pursuant to 29 U.S.C. §1343, 42 U.S.C. §1983 and 28 U.S.C. §1331. The Court has jurisdiction over the plaintiffs' state claims arising under state law under the Court's exercise of pendent jurisdiction.

CLASS

2. This action is properly maintained as a class action and is appropriately designated as coming within the provisions of Rule 23(b)(2) of the Federal Rules of Civil Procedure.

3. Plaintiffs in this action are the named plaintiffs, Willie M., Jeanette M., Tom H., and Timothy B., and plaintiff class, which includes all minors who are citizens of the State of North Carolina and who:

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FROM SERIOUS
emotional, mental or neurological handicaps,
which handicaps have been accompanied by behavior
which is characterized as violent or assaultive; and

- b. are, or will be in the future, involuntarily institutionalized or otherwise placed in residential programs; and
- c. for whom the defendants have not provided appropriate treatment and educational programs.

Subpart (b) above includes:

1. Minors who are mentally ill as defined by N.C.G.S. §122-36 (d)(ii) and for whom application for evaluation in or admission to a treatment facility is sought pursuant to Article 4 of Chapter 122 of the General Statutes of North Carolina, whether such minor is accepted for evaluation or admitted to such facility or not.
2. Minors referred to an area mental health, mental retardation or substance abuse director or local mental health director pursuant to N.C.G.S. 7A-647(3) for whom residential treatment or placement is recommended.
3. Minors placed in residential programs as a condition of probation pursuant to N.C.G.S. §7A-649(1).
4. Minors ordered to a professional residential treatment program pursuant to N.C.G.S. §7A-649(6).
5. Minors committed to a mental health facility or treatment facility pursuant to Article 5A of Chapter 122 of the General Statutes of North Carolina.
6. Minors committed to the custody of the Division of Youth Services pursuant to N.C.G.S. &7A-649(10).

PLAINTIFFS' RIGHTS

4. Plaintiffs have the right to appropriate treatment as provided by the Fourteenth Amendment to the United States Constitution.
5. Plaintiffs committed to the custody of the Division of Youth Services pursuant to Article 7A of the General Statutes of North Carolina have a right to appropriate treatment under N.C.G.S. §134A-20.

6. Plaintiffs who are residents of a treatment facility as defined by N.C.G.S. §122-36(g) have a right to appropriate treatment under N.C.G.S. §122-56.

7. Plaintiffs have a right to a free appropriate public education in the least restrictive environment as provided for and defined in the Education for All Handicapped Children Act, 20 U.S.C. §1411, et seq., and implementing regulations, 45 C.F.R. 121A.1, et seq.

8. Plaintiffs have a right to free appropriate public education in the least restrictive environment as provided for by and defined in N.C.G.S. §115-363, et seq., and implementing regulations, 16 N.C.A.C. 2E.1500, et seq.

DEFENDANTS' OBLIGATIONS

9. In recognition of the above-stated rights, defendants agree and acknowledge their obligation to provide all plaintiffs with appropriate treatment. The scope of defendants' obligation shall be as follows:

- (A) Each plaintiff shall be provided habilitation, including medical treatment, education, training and care, suited to his needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Such habilitation shall create a reasonable expectation of progress toward the goal of independent community living. Defendants do not guarantee each plaintiff a "cure", but do guarantee each plaintiff a program of habilitation which is a good faith effort to accomplish the goals set forth herein.
- (B) Each plaintiff shall be provided with the least restrictive, i.e., most normal, living conditions appropriate for that person. Among the factors to be considered in determining the least restrictive living conditions appropriate for the individual are the need to minimize institutionalization and the need to minimize the possibility of harm to the individual and society.

(C) The goal of habilitation shall be to enable each plaintiff as appropriate for that individual, to move from:

- (1) Living and programming segregated from the community to living and programming integrated with the community;
- (2) More structured living to less structured living;
- (3) Group residences to individual residences; and
- (4) Dependent living to independent living.

(D) Each plaintiff shall be provided such placements and services as are actually needed as determined by an individualized habilitation plan rather than such placements and services as are currently available. If placements and services actually needed are not available, the person shall be entitled to have them developed and implemented within a reasonable period. Prior to development and implementation of needed placements and services, the person shall be entitled to placement and services which meet as nearly as possible his actual needs.

10. Defendants agree that the habilitation program for an individual plaintiff, provided for herein, may continue for a reasonable period beyond his eighteenth birthday if the individual:

- a. continues to be in need of such treatment and will benefit from continuing placement or involvement in the program in which he is receiving treatment on his eighteenth birthday; and
- b. he voluntarily agrees to continue treatment in that program in a manner consistent with state law or is confined pursuant to applicable state law.

REMEDY

11. The parties agree that this Court's jurisdiction over this matter shall continue.

12. The parties agree that an independent panel of experts in treatment and education shall be established to review and make recommendations with respect to identification and evaluation of plaintiffs and development of appropriate treatment and education plans and programs for plaintiffs. The specific procedures for the operation of this panel shall be developed after further consultation between the parties and with the Court.

13. The parties agree that Jeanette M. will remain in her current placement at the Adolescent Admission Unit at Dorothea Dix Hospital for a limited period of time in order that a more complete evaluation of her treatment and educational needs can be made and an habilitation plan satisfying the standards of paragraph 9 of these stipulations can be developed and implemented.

14. The parties agree that Willie M. will remain in his current placement at the Adolescent Unit at Dorothea Dix Hospital for a limited period of time in order that a habilitation plan satisfying the standards of paragraph 9 of these stipulations can be developed and implemented.

15. The parties agree that the defendants will immediately develop and implement a habilitation plan for Tom H. which is designed to remove him from C.A. Dillon School and which will satisfy the standards of paragraph 9 of these stipulations.

16. The parties agree that Timothy B. will remain in his current placement at Caramore Community and that defendants will assure continued funding for this placement at least through June 30, 1981.

17. The parties agree that the panel's review and recommendations with respect to development and implementation of appropriate treatment and education plans for the named plaintiffs shall be expedited in accordance with a timetable to be developed by the parties and the Court.

18. The parties agree that nothing herein shall impose an obligation on, or grant authority to defendants to involuntarily confine an individual beyond the scope of their statutory and constitutional authority.

Respectfully submitted.

This 2 day of September, 1980.

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