



JI-NM-002-002

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

MAY 24 1983

FOR THE DISTRICT OF NEW MEXICO

JOHNNIE K., et al.,

Plaintiffs,

James ... CLERK
ENTERED ON DOCKET
MAY 24 1983

vs.

No. CIV-82-0182-HB

ROGER W. CRIST, et al.,

Defendants.

STIPULATION AND ORDER

Stipulation

WHEREAS, on or about February 18, 1982, Plaintiffs filed a civil rights class action for declaratory, injunctive and other equitable relief with regard to the mail regulations at the New Mexico Boys School promulgated on September 1, 1974, (Exhibit A hereto), and

WHEREAS, on or about March 29, 1982, the New Mexico Boys School adopted and put into effect new mail regulations and procedures (Exhibit B hereto), and

WHEREAS, the New Mexico Boys School has no intention of returning to the 1974 mail regulations, and

WHEREAS, Plaintiffs have requested certain modification of the March 29, 1982, mail regulations,

IT IS HEREBY STIPULATED by and between the parties:

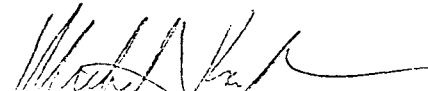
1. Without conceding or admitting any liability with regard to the 1974 mail regulations, or the constitutionality of any portion thereof, but solely for the purpose of expediting the conclusion of this lawsuit, Defendants agree not to readopt the 1974 mail regulations, (Exhibit A hereto).

2. Solely for the purpose of settlement of this lawsuit and without admitting any liability or conceding that any portion of the March 29, 1982, mail regulations are unconstitutional, Defendants agree to adopt certain modifications requested by Plaintiffs, and certain additional revisions desired by Defendants, and to put into effect the revised mail regulations shown on attached Exhibit C within ninety (90) days of entry of this Order.

3. That any and all claims for damages asserted in this action are hereby settled, and that Defendant will purchase a \$100 savings bond for Johnnie K. at a cost of \$50, to be held in trust by his attorneys until Johnnie K. is no longer residing in the New Mexico Boys School;

4. That all issues in this action have now been resolved with the sole exception being an award of attorney's fees, if any, to Plaintiffs' attorneys.

APPROVED:

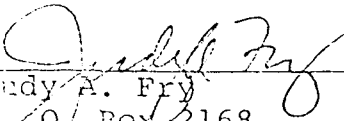


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ORDER

The Court having reviewed the aforesaid stipulation of the parties, and finding the terms fair, just and equitable, hereby approves the same, with the only remaining issue being the award of attorneys' fees, if any, to Plaintiffs' attorneys.


UNITED STATES DISTRICT JUDGE

Subject: Mail Regulations

Approved: B. O. Mass

This directive is intended to set forth current mailing procedures for all students, regardless of type of commitment.

1. One of the most important privileges that a student has is correspondence. It is important to a student because it provides him with the opportunity of keeping in contact with his family and friends.
2. A student may write to anyone subject to the provisions of this directive. The school will pay the postage on outgoing mail.
3. The number of letters that a student may write depends largely upon good judgment. A reasonable number of letters may be written.
4. Student incoming and outgoing mail will be reviewed by lodge staff and a log maintained on all students' mail (see log form attached hereto).
5. Lodge staff may reject an incoming or outgoing letter for any of the following reasons:
 - a. If they contain any material or so worded that existing postal law may be violated or if they contain obscenity, lewdness, threats, blackmail attempts, contraband, escape plots or statements which may tend to incite race hatred.
 - b. If they discuss criminal activities or give false, malicious or libelous information about individuals. Discussion of the character, crimes, or personal habits of other students will not be allowed nor will be letters which attempt to give instructions or advice about another student or his associates.
 - c. If they are not legible, clear, addressed correctly or if they contain references, innuendos, or codes which lead the staff to suspect that they might not be proper.
 - d. If they are not written in English or Spanish, unless special permission to correspond in another language has been given.
 - e. Mail may be rejected by staff if they contain information that is considered detrimental to the student or to his program.
6. Privileged Communications
 - a. Correspondence to attorneys or judges from students will be considered "privileged communications" and will not be opened or be censored by staff. This applies to letters mailed and received.
 - b. Privileged communications should be marked "privileged communication" on the face of the envelope by the student.

EXHIBIT

A



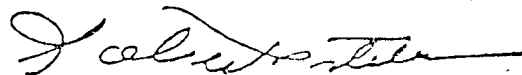
Subject: Mail Regulations

Approved: *Bob Marshall*

- c. Staff may open any letters to attorneys, in the presence of the student, when suspected of contraband, other matters inconsistent with school rules or not pertinent to the student's case.
 - d. In the event privileged correspondence is opened, the corresponding party will be notified in writing.
7. Magazine, book, newspaper publications and periodicals: All orders for magazines, books, newspaper subscriptions are to be approved by the School Principal and the student's lodge staff. If approved, a Boys' Trust Fund Expenditure form should be processed through the Finance Office.
- a. Magazines, books, newspaper subscriptions and periodicals may be sent to a student from others provided they have been approved by the School Principal and lodge staff.
 - b. There is no list of approved books, newspapers, publications and periodicals.
 - c. The approval of orders and material being ordered or received may be disapproved if the subject nature is subversive, militant, or "hard core pornography."
8. When incoming correspondence is rejected by lodge staff, the student should be sent a memorandum stating that the correspondence was rejected and for what reason. A copy of the memo will be kept in the student's central file. Outgoing letters that are rejected will be delivered to the student by his caseworker who will explain the reason for the rejection (see memo form attached hereto).
9. Packages for students will be picked up by lodge staff at supply. The staff member will sign a receipt for the package and deliver it to the student at the lodge. The student will open the package and sign a receipt for it from the staff member. The staff member will examine the contents of the package for contraband. Any items removed will be noted on the student's receipt and a copy retained for the student's central file. Items of value removed will be delivered to Control, receipted and placed with the student's personal property.

Subject: Mail Regulations

Approved



Robert Portillos

1. Policy.

One of the most important privileges that a resident has is correspondence. It is important to a resident because it provides him with the opportunity of keeping in contact with family and friends. To enhance communications between residents and correspondents, this directive will be prominently posted on all bulletin boards in the institution and will be available to non-residents upon request.

2. General Policy.

A resident may write to any one and receive correspondence from any one subject to the provisions of this directive. No limit is set on the number of letters a resident may send or receive. Postage on outgoing mail will be paid by the institution. However, since the institution pays the postage on outgoing mail, good judgment suggests that a reasonable number of letters can be mailed out at institution expense.

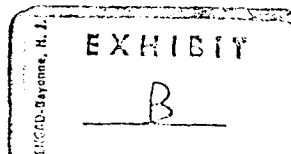
3. Incoming Mail.

Incoming mail will be handled in the following manner:

a. Letters and packages will be opened only in the presence of the resident by lodge staff and checked for contraband and money each day so that money can be sent to the business office and contraband otherwise disposed of through proper channels.

b. Contraband that is confiscated from an incoming letter or package may result in the revocation or suspension of the sender's correspondence privileges. Contraband involving illegal items such as weapons or controlled substances may result in referral for prosecution. A letter stating that contraband was seized and the reasons therefor will be placed in the resident's central file, copies sent to the sender and to the resident. Violation of postal laws may result in referral for prosecution.

c. Money will be removed from an in-coming letter or package in the presence of the resident and receipt therefor will be given to the resident with a copy retained by the school. All receipts and money will

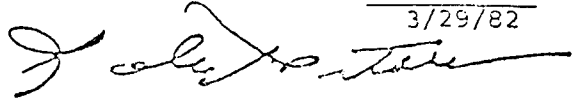


NEW MEXICO BOYS' SCHOOL
Administrative Directive

Section IV - Program
Number M
Page 2 of 4 pages
Original Date 9-1-74
Revised Date 11/24/81
3/29/82

Subject: Mail Regulations

Approved


Robert Portillos

be turned in to the business office each day. Upon the resident's release, the business office will prepare a check with the full amount from the resident's account for him to pick up.

d. Packages for resident will be picked up daily by lodge staff at Supply. Once the package is opened and examined in the presence of the resident, the staff will note any items removed on a resident receipt. This will include items of value kept by mutual agreement in the Boys' School safe. The receipt will be placed with the resident's belongings. Staff will make every effort to return items of value to parents during visitation at the earliest possible date. Parents should be asked to verify receipt prior to leaving the New Mexico Boys' School. This receipt will be placed in the Control Center file.

4. Procedure for Outgoing Mail.

Outgoing mail will be brought to on duty staff and the resident will show the staff member that there is no contraband contained in the envelope before the resident seals it. The staff member who made the inspection for contraband will initial the letter before placing it in outgoing mail. Night staff will log the number of outgoing letters mailed by each resident and deliver mail to the Control Center at the end of their shift.

5. When Mail Can Be Read.

Incoming and outgoing mail will not be held for more than 24 hours, excluding weekends and holidays. Incoming and outgoing letters are not to be read, except where there is clear and convincing evidence to believe that the mail contains escape plans, other plans to commit a delinquent act or crime or to violate institutional rules or regulations, or constitutes a delinquent act or crime in or of itself. In such cases the resident will be present when the incoming letter is opened and read or when the outgoing letter is read. When mail is read, the staff member who reads the mail will prepare a memo outlining what action was taken and why.

a. Rejection of Mail.

Outgoing and/or incoming mail will be rejected when there is reasonable cause to believe that the mail contains contraband, escape plans, other plans to commit a delinquent act or crime, or to violate institutional rules and regulations, or would constitute a delinquent act or crime in or of itself. Mail will also be rejected if it contains codes or other attempts

Subject: Mail Regulations

Approved _____

Robert Portillos
Robert Portillos

to circumvent this directive or if material contained therein is obscene or patently offensive.

b. When mail is rejected the resident and the correspondent will be notified in writing as to the reason for the rejection. Only the Superintendent or his authorized representative can authorize mail to be rejected. Any resident whose outgoing mail is rejected may contest rejection through the Resident Grievance Procedures. Any sender whose incoming mail is rejected must be given an opportunity to object to such rejection. Rejected mail can be withheld, photocopied and filed for future reference.

c. Incoming mail can also be rejected if the correspondent's mail privileges have been revoked or are currently suspended.

6. Privileged Communications.

a. Correspondence to or from attorneys or judges, probation officers, the Secretary of Corrections, or the Juvenile Parole Board will be considered privileged communications. Outgoing privileged communications will be sealed by the resident and will not be inspected or opened by staff.

b. An outgoing communication which is considered a privileged communication by the resident must be clearly labeled privileged communication on the face of the envelope by the resident.

c. Incoming privileged communications will not be opened unless the Superintendent or his designee determines that there is reasonable cause to believe that it contains contraband or is not in fact a privileged communication. Such mail will be opened only in the presence of the resident. Mail suspected of containing contraband can be checked for contraband but not read by staff. If such mail is suspected of being other than a privileged communication, then such communication can be inspected or read to determine whether or not it is in fact a privileged communication. Once a staff member determines that it is a privileged communication, then such document cannot be further inspected or read by staff. However, if the communication is not in fact a privileged communication, then the ordinary rules of general correspondence apply to such non-privileged communication.

NEW MEXICO BOYS' SCHOOL
Administrative Directive

Section IV - Program
Number M

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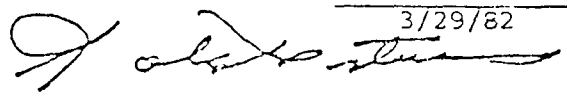
Original Date 9-1-74

Revised Date 11/24/81

3/29/82

Subject: Mail Regulations

Approved


Robert Portillos

7. Publications.

The institution will allow residents access to publications unless the Superintendent or his designee determines that access to a particular publication is inconsistent with the institutional goals, internal discipline, security or the resident's rehabilitation. Rejected publications can be withheld, photocopied and filed for future reference.

8. Miscellaneous.

a. Letters must be written in Spanish or English except when another language of correspondence has been approved in advance.

b. Letters addressed to the institution without proper identification of the resident can be opened to obtain such identification so that the resident can receive his mail.

c. Outgoing letters that are placed in envelopes without a sending or return address will be opened to determine the origin of the letter only. The contents will not be read. Once the origin of the letter is determined, it will be returned to the originator to be properly addressed.

d. All residents will be held responsible for the contents of their outgoing letters and violations of this administrative directive may result in disciplinary action.

MAIL REGULATIONS

1. Policy.

One of the most important rights that a resident has is correspondence. However, such right is subject to certain limitations as outlined below. This right is important to a resident because it provides him with the opportunity of keeping in contact with family and friends. To enhance communications between residents and correspondents, this directive will be prominently posted on all bulletin boards in the institution and will be available to non-residents upon request.

2. General Policy.

A resident may write to anyone and receive correspondence from anyone subject to the provisions of this directive. No limit is set on the number of letters a resident may send or receive. Postage on outgoing mail will be paid by the institution. However, since the institution pays the postage on outgoing mail, good judgment suggests that a reasonable number of letters can be mailed out at institution expense.

3. Incoming Mail.

Incoming mail will be handled in the following manner:

a. Letters and packages will be opened only in the presence of the resident by lodge staff and checked for contraband and money each day so that money can be sent to the business office and contraband otherwise disposed of through proper channels.

b. Contraband that is confiscated from an incoming letter or package may result in the revocation or suspension of the sender's correspondence privileges. Contraband involving illegal items such as weapons or controlled substances may result in referral of sender for prosecution. A letter will be placed in the resident's central file, copies sent to the sender and to the resident. Violation of postal laws may result in referral of sender for prosecution.

c. Money will be removed from an incoming letter or package in the presence of the resident and receipt therefor will be given to the resident with a copy retained by the school. All receipts and money will be turned in to the business office each day. Upon the resident's release, the business office will prepare a check with the full amount from the resident's account for him to pick up.

d. Packages for residents will be picked up daily by lodge staff at Supply. Once the package is opened and examined in the presence of the resident, the staff will note any items removed on



a resident receipt. This will include items of value kept by mutual agreement in the Boys School safe. The receipt will be placed with the resident's belongings. Staff will make every effort to return items of value to parents during visitation at the earliest possible date. Parents should be asked to verify receipt prior to leaving the New Mexico Boys School. This receipt will be placed in the Control Center file.

4. Procedure for Outgoing Mail.

Outgoing mail will be brought to on-duty staff and the resident will show the staff member that there is no contraband contained in the envelope before the resident seals it. The staff member will also check the envelope to see that it has a complete sending address and return address, including the name of the resident. The staff member who made the inspection for contraband will initial the letter before placing it in outgoing mail. Night staff will log the number of outgoing letters mailed by each resident and deliver mail to the Control Center at the end of their shift.

5. a. When Mail Can Be Read.

Incoming and outgoing mail will not be held for more than 24 hours, excluding weekends and holidays. Only the Superintendent or his authorized representative in his absence, following proper chain of command, can read incoming or outgoing letters. Incoming and outgoing letters are not to be read, except where there is probable cause to believe that the mail contains escape plans, other plans to commit a delinquent act or crime, is in code, contains obscene* material, or constitutes a delinquent act or crime in and of itself. In such cases, the resident will be present when the incoming letter is opened and read or when the outgoing letter is read. When the mail is read, the Superintendent or his authorized representative in his absence who reads the mail will prepare a memo stating the reasons justifying the reading, and outlining what action was taken and why.

b. When Mail Can Be Rejected.

Only the Superintendent or his authorized representative in his absence, following proper chain of command, can authorize mail to be rejected. Outgoing and/or incoming mail will be rejected when the mail contains contraband or is prohibited material as outlined in Section 5a above.

c. Notification of Rejection; Opportunity to Object.

When mail is rejected the resident and the correspondent will be notified in writing as to the reason for the rejection. Any resident whose incoming or outgoing mail or publication is rejected may contest rejection through the Resident Grievance Procedures. Any sender whose incoming mail is rejected must be given an opportunity to object to such rejection. Rejected mail shall be withheld, photocopied and filed for future reference.

d. Probable cause exists for reading a correspondent's incoming mail when the correspondent's mail has, within the previous 90 days, contained prohibited material as outlined in Section 5a above.

6. Privileged Communications.

a. Correspondence to or from attorneys or judges, probation officers, the Secretary of Corrections, the Juvenile Parole Board, those elected government officials on attached Exhibit A, grand juries, or Corrections Commissioners, will be considered privileged communications. Outgoing privileged communications will be sealed by the resident and will not be inspected or opened by staff.

b. An outgoing communication which is considered a privileged communication by the resident must be clearly labeled privileged communication on the face of the envelope by the resident.

c. Incoming privileged communications will not be opened unless the Superintendent or his authorized representative in his absence, following proper chain of command, determines that there is probable cause to believe that it contains contraband or is not, in fact, a privileged communication. Such mail will be opened only in the presence of the resident. Mail suspected of containing contraband shall be checked for contraband but not read by staff. If such mail is suspected of being other than a privileged communication, then the ordinary rules of general correspondence in Section 5 apply to such non-privileged communication.

7. Publications.

The institutions will not allow residents access to publications if the Superintendent or his authorized representative in his absence, following proper chain of command, determines that a particular publication is (1) obscene*, or (2) depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices or advocates violence; (3) depicts, encourages or describes methods of escape from correctional facilities or contains blueprints, maps, drawings, or similar descriptions of correctional institutions or the immediately surrounding area; (4) depicts or describes procedures for the brewing of alcoholic beverages or the use, cultivation or manufacture of drugs; or (5) is written in code; (6) contains prohibited material set forth in Section 5a above; and (7) advocates or espouses racial or ethnic hatred, prejudice or violence.

8. Miscellaneous.

a. Letters addressed to the institution without proper identification of the resident can be opened to obtain such identification so that the resident can receive his mail.

b. All residents will be held responsible for the contents of their outgoing envelopes and violations of this administrative directive may result in disciplinary action.

*In determining whether a matter is obscene, the Superintendent shall use as guidance Section 30-37-1 NMSA (1978).

EXHIBIT A

Governor of the State of New Mexico

U. S. Senators

U. S. Representatives