

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

J.P., and all others similarly situated, : Case No. 2:04-CV-692
c/o Children's Law Center :
Children's Law Center, Inc. : Judge Marbley
104 East Seventh Street :
Covington, Kentucky 41011, :

S.J., and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

D.B., a minor child, by and through her :
next friend Donald Geiger, :
and all others similarly situated, :
c/o Children's Law Center : **AMENDED**
Children's Law Center, Inc. : **COMPLAINT FOR**
104 East Seventh Street : **DECLARATORY AND**
Covington, Kentucky 41011, : **INJUNCTIVE RELIEF**

H.H., a minor child, by and through her :
next friend Shanda Spurlock, :
and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

M.M. and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, and :

T.M., and all others similarly situated, :
c/o Children's Law Center :
Children's Law Center, Inc. :
104 East Seventh Street :
Covington, Kentucky 41011, :

Plaintiffs, :

V. :

BOB TAFT, :
Governor of the State of Ohio, :
in his official capacity only, :
77 South High Street, 30th Floor :
Columbus, Ohio 43215, :

and :

THOMAS STICKRATH, :
Interim Director, Ohio Youth Services, :
in his official capacity only, :
51 North High Street :
Columbus, Ohio 43215, :

Defendants. :

INTRODUCTORY STATEMENT

1. This is a civil rights class action suit challenging the denial of access to the courts for juveniles committed to the Ohio Department of Youth Services (“ODYS”) as juvenile delinquents or serious juvenile offenders and incarcerated in institutions, secured facilities, or community corrections facilities operated by, or funded in part or in total by contract with, ODYS throughout the State of Ohio. Plaintiffs bring this action for declaratory, injunctive and other equitable relief on behalf of themselves and all other juveniles similarly situated who are or will in the future be committed to ODYS and placed in an institution, secured facility, or community corrections facility operated by, or funded in part or in total by contract with, ODYS without a means to exercise their constitutional right to access the courts in violation of the First, Sixth, and Fourteenth Amendments of the United States Constitution and related provisions of the Ohio Constitution.

2. Plaintiffs bring this action under the federal Civil Rights Act, 42 U.S.C. § 1983, to redress the violation by Defendants, acting under color of state law, of rights guaranteed to Plaintiffs under the First, Sixth, and Fourteenth Amendments to the United States Constitution as more particularly set forth in this Complaint.

JURISDICTION

3. Jurisdiction over Plaintiffs' claims for declaratory and injunctive relief is proper in this Court pursuant to 28 U.S.C. §§ 1331(a), 1343(3), and 1343(4).

4. This Court has supplemental and pendent jurisdiction pursuant to 28 U.S.C. § 1367 to review and decide Plaintiffs' state law claims.

5. Venue is proper in this district and division as the various acts which form the basis of this complaint occurred within the Southern District of Ohio, Columbus Division.

PLAINTIFFS

6. Plaintiff J.P. is and has been incarcerated at the Scioto Juvenile Correctional Facility since January 2002 as a result of an adjudication through the Hamilton County Juvenile Court. She has had significant needs concerning mental health and medical care that have been largely ignored by the facility staff. On or about February 14, 2003, J.P. was sexually assaulted by a Juvenile Corrections Officer ("JCO") while on "suicide watch" in a special unit. She was 17 years old at the time. The JCO has since been convicted of sexual battery in this case and that of another juvenile resident and was sentenced to prison. J.P. filed a grievance in March 2003 and also sent a letter to the Chief Inspector regarding the assault. She was later advised by an attorney with the Ohio Public Defender office to file a grievance asking for a civil attorney from ODYS. She was told by the facility superintendent Mr. Warner, relative to her request for an attorney, that he would "take care

of it.” J.P. never received a response to her grievance of March 2003, nor was she provided with an attorney initially. J.P. wanted an attorney during that time to ensure the JCO who assaulted her would not be permitted around her, and to protect her from retaliation from staff. J.P. was eventually referred to an attorney, but did not see this person until December of 2004, five months after filing this lawsuit. (*See* Affidavit of J.P., Combined Exhibit A).

7. S. J. was incarcerated at the Scioto Juvenile Correctional Facility from October 2003 until July 2004 as a result of an adjudication through the Hamilton County Juvenile Court, and is now on parole to the Ohio Department of Youth Services. On or about December 27, 2003, she was physically assaulted by a male Juvenile Corrections Officer who followed her into her room and repeatedly slapped her on the side of her face with the palm of his hand, causing her eardrum to rupture, and causing bruises and welts on her face. S. J. was 17 years old at the time of the assault. S. J. was threatened with retaliation if she reported the incident, and was instructed by the JCO to report the injury as self-inflicted. S. J. was also threatened with receiving more time at Scioto if she told the truth about what happened. S. J. filed a grievance regarding this incident, and, following the advice of an attorney from the Ohio Public Defender’s office, also sent a letter to the Chief Inspector on the same day regarding the assault. She specifically asked for legal assistance from ODYS and was told by Scioto Superintendent Morgan that ODYS could not provide her with an attorney, and that this was up to her and/or her family. S.J. wanted an attorney to prevent retaliation by JCO’s as a result of her reporting the incident, and to ensure that the JCO who assaulted her did not return to work on her unit. She also wanted to secure better medical care through the assistance of an attorney. The Defendants failed to provide her with legal assistance to address these matters. (*See* Affidavit of S.J., Combined Exhibit B).

8. D.B. is and has been incarcerated at the Scioto Juvenile Correctional Facility since July 2003, although she was briefly released on parole from May 31, 2004 through July 12, 2004. She was placed at Scioto as a result of an adjudication through the juvenile court in Paulding County. On or about February 3, 2004, she was physically assaulted by a male Juvenile Corrections Officer who followed her into her room, grabbed her and threw her to the floor, pulled her arm behind her back, and punched her arm, breaking it. D.B.'s head also hit the floor during the assault. D.B. has been required to have surgery on her arm for it to properly heal. D. B. was 16 years old at the time of the incident. D.B. filed a grievance on February 6, 2004 and asked to speak with an attorney regarding her rights. She was advised by Mr. Morgan, the superintendent, that he would get her an attorney. However, he did not do so. Finally, in January, 2005, D.B. spoke with Larry Mathews, on contract with ODYS, regarding her request for an attorney. Mathews indicated he would try to find her an attorney. D.B. wanted an attorney to assist her in filing a civil action to compensate her for her injuries, and to ensure that the JCO who assaulted her was not working around her. The Defendants have still not provided her with legal assistance to address these matters. (*See* Affidavit of D.B., Combined Exhibit C).

9. H.H. is and has been incarcerated at the Scioto Juvenile Correctional Facility as a result of an adjudication through the juvenile court in Franklin County. She was 13 at the time of her adjudication. In December, 2003, H.H. was involved in an altercation with a Juvenile Corrections Officer who slapped her in the back of the neck, grabbed her and slammed her down on her bed, hit her in the forehead, and continued to punch her in the back and kick her in the stomach. The incident was witnessed by several other youth. H.H. suffered bruises and swelling, and had difficulty breathing after the incident. H.H. filed grievances regarding the assault, including with

the Chief Inspector, and included a request for an attorney. The Defendants have failed to provide her with legal assistance to address these matters. The JCO who assaulted H.H. was indicted in January 2005 for child endangering regarding the incident. (*See* Grievance Forms, Combined Exhibit D).

10. M.M. is an 18 year-old youth who is and has been incarcerated at the Marion Juvenile Correctional Facility as a result of an adjudication from Youngstown, Ohio. In October 2004, M.M. was involved in an incident upon his return from the bathroom wherein he was pushed by a JCO, hit in the head, and then slammed to the ground. One of his hands was placed in a handcuff. A JCO kneeled on the uncuffed hand to prevent M.M. from moving his hand to enable until it could be placed in the handcuff. A JCO placed his arm around M.M.'s neck while M.M. was on the ground causing M.M. to gag and eventually black out. When M.M. regained consciousness he was kicked in the jaw twice by a JCO. M.M. has experienced significant pain and was not able to eat solid food for a week-and-a-half after the incident. After the incident the JCO who choked M.M. told him that if he did not report the incident, the JCO would bring him contraband items such as chewing tobacco and cigars. M.M. filed a grievance regarding this incident on October 16, 2004 and asked that the matter be resolved "in court." He was informed by Superintendent Norm Hills that there was no basis for his allegations. M.M. appealed this decision to the chief inspector. He attached a statement asking for an attorney. M.M. has concerns that there is violence continuing to occur daily against youth in this facility. Attorney Larry Mathews, on contract to ODYS, contacted M.M. but has been unable to find an attorney to assist M.M. in claims against ODYS. M.M. continues to request an attorney while at Marion to assist him in getting proper medical care, and to ensure his proper treatment in the facility. (*See* Affidavit of M.M, Combined Exhibit E).

11. T.M. is an 18 year-old youth at the Marion Juvenile Correctional Facility and has been in the custody of ODYS for approximately two years. In October 2004, during a incident involving T.M. and other youth banging on doors to get permission to use the bathroom, a JCO came into his room, restrained him improperly, “choking him out” until he was rendered unconscious. During the incident, T.M. was also hit in the eye by the JCO, causing injury. T.M. filed a grievance regarding this incident on October 16, 2004, including a written statement detailing the assault by the JCO, and the fact that youth were being forced to urinate in their rooms into rubber gloves rather than being able to use the bathroom. T.M. indicated he wanted to see this grievance resolved “in court.” T.M. sent his grievance to the Chief Inspector on December 15, 2004 because he felt he had not gotten appropriate information or relief from the superintendent. T.M. also met with Larry Mathews and asked for an attorney to file a civil claim for damages, to seek better medical care, and to otherwise learn about his rights. An attorney from Cleveland, arranged by Larry Mathews, finally visited him at the end of January 2005 to discuss possible claims. However, she has not yet informed T.M as to whether she will be able to take his case. (*See* Affidavit of T.M., Combined Exhibit F).

DEFENDANTS

12. Defendant Bob Taft is the duly elected governor of the State of Ohio and functions as the head of the State’s executive branch. In addition, pursuant to Ohio Rev. Code § 5139.01(B), Governor Taft is statutorily required to appoint a director to head the Ohio Department of Youth Services with the advice and consent of the Senate.

13. Defendant Thomas Stickrath is the interim Director of Youth Services and was appointed to replace Geno Natalucci-Persichetti, who was forced to resign as Director in December 2004. As the Director, Stickrath has the powers of a department head set forth in Chapter 121 of the

Ohio Revised Code. These powers and duties include, but are not limited to, adopting rules for the government of the Department, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the Department's records and property. Any duties imposed by law on ODYS must be performed by or implemented by the Director.

CLASS ACTION

14. Plaintiffs bring this action on behalf of themselves and all others similarly pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all juveniles (approximately 2400 children per year) who are or will in the future be committed to ODYS and placed in an institution, secured facility, or community corrections facility operated by, or funded in part or in total by contract with, ODYS.

15. The members of the class are so numerous that joinder of all members is impractical. In addition, there are questions of law and fact common to the members of the class, and the claims or defenses of the representative parties are typical of the claims or defenses of the class. In addition, Defendants have acted or refused to act on grounds generally applicable to the Plaintiff class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

16. The named Plaintiffs in this action, as well as Plaintiffs' counsel, will fairly and adequately protect the interests of the members of the class. All three counsel for the Plaintiff class are civil rights attorneys who have experience representing individuals in federal class action suits.

STATEMENT OF THE FACTS

A. Facts Concerning Plaintiffs

17. As noted above, each of the named Plaintiffs in this action has suffered injuries as a result of being incarcerated. They believe they have valid claims challenging the conditions of their confinement, but are unable to access the courts to file these claims without legal assistance. Each named Plaintiff has filed grievances regarding the underlying incidents and has specifically requested an attorney to assist them. Most of the named Plaintiffs have still not been provided with attorneys, and for those who have, such assistance was provided well after this lawsuit was filed, allowing ongoing injury to occur.

B. Facts Concerning ODYS

18. ODYS operates or funds by contract several community corrections facilities for juveniles committed as juvenile delinquents or serious juvenile offenders, including but not limited to Butler County Juvenile Rehabilitation Center, Hocking Valley Community Residential Center, Juvenile Residential Center of Northwest Ohio, Lucas County Youth Treatment Center, North Central Ohio Rehabilitation Center, Oakview Group Home, Perry County Group Home, and West Central Juvenile Rehabilitation Facility. A community corrections facility is a county or multi-county rehabilitation center for felony delinquents committed to ODYS and diverted from custody and care in an institution and placed in a rehabilitation center.

19. ODYS operates or funds by contract several institutions, including but not limited to Circleville Youth Center, Cuyahoga Hills Boys School, Indian River School, Marion Juvenile Correctional Center, Maumee Youth Center, Mohican Youth Center, Ohio River Valley Youth Center, Scioto Juvenile Correctional Center, and Lighthouse Youth Center at Paint Creek. These

institutions are state facilities created by the General Assembly under the management and control of ODYS or a private entity with which ODYS has contracted for institutional care and custody of felony delinquents.

20. In addition to maintaining these facilities, ODYS supervises committed juveniles housed in institutions or community corrections facilities throughout the State of Ohio.

21. Juveniles who are adjudicated delinquent for committing acts that if committed by an adult would constitute felonies may be committed to ODYS for an indefinite period of time up to and until the child turns 21.

22. Juveniles who have been adjudicated felony delinquents are eligible for placement at community corrections facilities. A felony delinquent is a child at least 12 and less than 18 years of age who has been adjudicated a delinquent child for committing an act that if committed by an adult would be a felony offense or an adult between the ages of 18 and 21 who is in the legal custody of ODYS and has committed an act while in custody that would constitute a felony if committed by an adult.

23. Juveniles committed to ODYS range in age from 12 to 21. Placement in an institution or community corrections facility generally ranges from several months to several years. The average age of admission in Ohio is 15.9 years.

24. Committed juveniles, by virtue of their age, lack of maturity, and education levels, are often unfamiliar with their legal rights and remedies. In addition, they are often unaware of how to obtain access to the courts or challenge the legality of their commitments, their continued confinement, and institutional practices and conditions that may violate their civil rights.

C. Juveniles and the Right to Access the Courts

25. Defendants are obligated pursuant to the First, Sixth, and Fourteenth Amendments to the United States Constitution and related provisions of the Ohio Constitution to provide a system whereby committed juveniles placed in ODYS institutions or community corrections facilities may access the courts for any matters related to the fact, duration, or conditions of confinement that may violate the juvenile's federal statutory or constitutional rights.

26. Defendants presently provide no adequate, effective, and meaningful system for committed juveniles who are placed in institutions or community corrections facilities to gain access to the courts for matters related to the fact, duration, or conditions of confinement which may violate their federal statutory or constitutional rights.

27. Based on plaintiffs' information and belief, the injuries suffered by the plaintiffs, and the findings reported by Fred Cohen, who was retained by the state to investigate conditions of confinement within ODYS facilities, plaintiffs allege that Governor Taft inadequately trained the Director of Youth Services in the proper performance of his duties and inadequately supervised the Department of Youth Services and its staff, thereby proximately causing the injuries that give rise to this action.

28. Moreover, plaintiffs allege that Governor Taft, although aware that plaintiffs' right of access to the courts has been and is being hindered, has failed to conduct a reasonable inquiry into the deficiencies that are causing plaintiffs' injuries, and has not undertaken reasonable means to correct or eradicate those deficiencies.

29. The only legal representation presently provided for indigent committed juveniles is through the Ohio Public Defender's Office. The Public Defender has a staff of four attorneys who

are responsible for screening juveniles at the Scioto intake center. These attorneys are only available to represent committed juveniles who elect to pursue direct appeals of their orders of commitment. The Office has no resources and no state statutory mandate to represent juveniles who desire to pursue claims pertaining to the fact, duration, or conditions of confinement. Consequently, there is no governmental or other entity that routinely provides representation to the Plaintiffs for filing writs of habeas corpus, post-conviction petitions, or civil lawsuits regarding the conditions of a juvenile's confinement.

30. As reported in the media, Defendant ODYS entered into preliminary discussions with the Ohio Public Defender's Office early in 2004 to discuss providing additional legal representation for committed juveniles. To Plaintiffs' knowledge, no formal agreement has been reached to date. Moreover, there are indications that the proposal being discussed is not only inadequate, but would unduly restrict the Ohio Public Defender's ability to provide constitutionally adequate access to the courts.

31. In September 2004, after the filing of this lawsuit, Defendants ODYS hired Larry Mathews under a temporary contract to "assess the demand for legal services on conditions of confinement issues" and to interview and refer youth to private law firms for legal representation. In spite of this contract, some of the named Plaintiffs and members of the putative class continue to be denied their constitutional right to access the courts to redress grievances while in ODYS facilities.

D. Exhaustion of Administrative Remedies

32. The Ohio Department of Youth Services has posted a notice entitled "Your Legal Rights" which identifies four options for youth who have complaints regarding their treatment by

ODYS, including speaking with a staff member about their concerns, filing a grievance, having the youth contact your own attorney, or contacting an attorney provided by ODYS through a post office box. (See “Your Legal Rights” document, Combined Exhibit G).

33. Each of the named plaintiffs exhausted his or her administrative remedies by speaking with staff members and/or submitting written grievances. Each of the named plaintiffs specifically sought the assistance of an attorney through ODYS either verbally or in writing through the grievance process. Plaintiffs have done all that ODYS has required them to do to seek the assistance of an attorney, and in some cases, have done more than required. (See Combined Exhibits A to G).

CAUSE OF ACTION

Claim One: The Right to Redress Grievances and to Due Process Through Access to the Courts

34. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

35. The right to petition the government for redress of grievances is guaranteed by the First and Sixth Amendments to the United States Constitution and the Due Process Clause of the Fourteenth Amendments to the United States Constitution, as well as related provisions of the Ohio Constitution. These guarantees encompass a right of access to the courts for inmates of state institutions so that they may challenge the legality and conditions of their confinement. When the Ohio Department of Youth Services takes commitment of a juvenile, particularly for the purposes of placing that juvenile in an institution or community corrections facility, it has an affirmative duty to provide access to the courts by providing legal counsel for the juvenile. *See John L. v. Adams*, 969 F.2d 228 (6th Cir. 1992). Defendants have failed to effectively meet their constitutional obligation to afford committed juveniles with representation and access to the courts to redress their

grievances. Such failure denies Plaintiffs and all others they seek to represent the rights guaranteed to them under the First, Sixth, and Fourteenth Amendments to the United States Constitution and analogous provisions of the Ohio Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that on their behalf and on the behalf of all others they seek to represent, that this Court:

1. Assume jurisdiction of this cause and set this case for a prompt hearing;
2. Permit Plaintiffs to proceed in this action under their initials as opposed to their full legal names in order to protect their anonymity;
3. Determine by order, pursuant to Rule 23(b)(2) and (c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action on behalf of the class defined herein;
4. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57, and 58 of the Federal Rules of Civil Procedure declaring that Defendants failure to provide a meaningful program of legal assistance to juveniles committed to the Ohio Department of Youth Services for placement in an institution or community corrections facility violates the First, Sixth, and Fourteenth Amendments to the United States Constitution and related provisions of the Ohio Constitution, and deprives these juveniles of their right to access the courts for redress of grievances and their right to due process under the law;
5. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, enter an order directing Defendants to develop a program for the effective delivery of legal services to the class members and to submit a plan for the prompt implementation of that program;
6. Award Plaintiffs reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988; and

7. Grant such other relief to Plaintiffs and all others similarly situated as the Court deems to be just, proper, and equitable.

Respectfully submitted,

/s/ Kim Brooks Tandy
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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing document was provided via the Court's electronic notification system to: Joseph Mancini and Sharon Jennings, Assistant Attorney Generals, Ohio Attorney General's Office, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215, on the 7th day of March, 2005.

/s/ Jennifer M. Kinsley

_____ JENNIFER M. KINSLEY (Ohio Bar No. 0071629)

Counsel for Plaintiffs