

Consent Decrees

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

TERRY D., ROMONDO P., DAVID )  
L., ROGER V., BYRON C., )  
JEFFERY H., LAURA C., )  
REBECCA G., by their )  
attorneys and next friends )  
Steven A. Novick and Richard )  
L. Weldon, individually and on )  
behalf of all other persons )  
similarly situated, )

Plaintiffs, )

vs. )

NO. CIV-78-0004-T

L. E. RADER, et al., )

Defendants, )

STATE OF OKLAHOMA, ex rel )  
DEPARTMENT OF INSTITUTIONS, )  
SOCIAL AND REHABILITATIVE )  
SERVICES, )

Intervenor-Defendant. )

CONSENT DECREE

All parties to this action, by and through counsel, submit this Consent Decree to the Court for approval and entry in resolution of the merits of this action.

Plaintiffs filed this class action pursuant to 42 U.S.C. §1983 on January 4, 1978 challenging conditions and child care practices at state childrens' institutions. The plaintiff class was certified by order of the Court on November 3, 1978, and is composed of all children who are now or may be in the future confined to one of the institutions named in this action. Initially, these institutions were Helena State

Terry D. v. Rader & Oklahoma



Jl-OK-0001-0004

Federal Rules of Civil Procedure. Nothing in this Decree shall be construed to abrogate any substantive rights or procedural protections a child may now have or hereafter acquire under state law.

Based upon the discovery herein, including the investigations and reports prepared by expert consultants; and

Based upon the acknowledged constitutional and statutory rights of the plaintiffs embodied in the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the Oklahoma Juvenile Code; and

Based upon significant changes in policy effected by the Department of Human Services since the commencement of this action; and

Based upon the parties' interest in maintaining continued progress in the provision of a safe, humane, caring environment for children through the utilization of the least restrictive setting and individualized care and treatment; and

Based upon the concensus of the plaintiffs and defendants that the interests of all parties to this action can best be served by entering into this Decree, which is consistent with the constitutional and statutory rights of the plaintiffs; and

Based upon all the pleadings and other papers filed in this action,

The parties hereby agree to the entry of this Consent Decree as a final judgment of the Court with respect to the merits of this action. The terms of this Decree have been ne-

gotiated without regard to any claim for costs and attorneys' fees. These issues will be resolved informally, or upon application to the Court.

I. TERMS AND DEFINITIONS

A. Child

Any person defined as a child by 10 O.S. 1982 §1101.

B. Non-Offender

Any person defined under 10 O.S. 1982 §1101 as a child in need of supervision, a deprived child, or a child adjudicated solely in need of treatment.

C. Child in Need of Treatment

Any person defined under 10 O.S. 1982 §1101 as a child in need of treatment.

D. Division

The Division of Children and Youth Services of the Oklahoma Department of Human Services, and any successor division.

E. Department

The Oklahoma Department of Human Services.

F. Director

The Director of Public Welfare of the State of Oklahoma.

G. Commission

The Oklahoma Public Welfare Commission, also known as The Oklahoma Commission for Human Services.

H. Institution

Any residential facility operated by the Department for children housing more than twelve (12)

children, except emergency shelters and rehabilitative facilities as defined by 10 O.S. 1982 §§ 1101(S) and 1137(B).

I. Facility

Any place, institution, building or set of buildings utilized for the placement of children outside of their homes, other than a foster home.

J. Community-Based Program

Any foster home, halfway house, group home, home placement or similar alternative as defined in 10 O.S. 1982 §1101(L).

K. Solitary Confinement

Involuntary removal of a child from contact with other children by confinement in a room, including the child's own room or cubicle, when locked or when the child is otherwise restrained from leaving, except during normal sleeping hours.

L. Training School

An institution maintained by the State exclusively for the care, education, training, treatment and rehabilitation of delinquent children.

M. Treatment Center

A facility maintained by the State exclusively for the care, education, training, treatment and rehabilitation of children in need of treatment.

N. Separation Facility

A building designed and operated for the short-term separation of resident children from the

general population, where ingress and egress are controlled exclusively by staff.

O. Placement

As used in this Decree, placement shall refer to the entire placement process, including pre-adjudicatory intake recommendations, post-adjudicatory dispositional recommendations, and post-commitment placement decisions.

II. DEINSTITUTIONALIZATION

A. General Principles

1. The parties recognize and acknowledge the right of children to receive individualized care and treatment in the least restrictive setting consistent with the treatment needs of the children, and additionally in the case of delinquent children, with the protection of the public, under Title 10, Oklahoma Statutes and the Fourteenth Amendment to the United States Constitution.
2. The Department shall not confine in any institution a child who is capable of surviving safely, without serious danger to himself or others, in a community-based program by himself or with the responsible assistance of others, including the Department.

B. Non-Offenders

The Department shall not place any non-offender in a Department institution, except that a child

placed in the Department's custody as a child in need of treatment may be placed in a Department treatment center.

C. Children in Need of Treatment

The Department shall not place any child in a Department treatment center or other psychiatric facility, other than on an emergency basis, unless the child has been adjudicated in need of treatment and placed in the Department's custody pursuant to the criteria set forth in 10 O.S. 1982 §1116(A)(5)(b).

D. Implementation

1. Least Restrictive Alternative

All recommendations and decisions concerning the placement of children shall be governed by the principle of the least restrictive alternative. In determining the appropriate placement of children, the presumption shall be that the child's best interests are served by remaining in his home community with necessary services to be provided there. If, after all community-based alternatives have been considered or attempted, it is determined that placement of a child in an institution is necessary, such placement shall be in the least restrictive institution.

2. Community-Based Programs

The Department shall take all necessary steps to develop and implement sufficient community-based programs to carry out the terms of this Decree, including but not necessarily limited to, group homes, family support services, foster care homes, halfway houses, shelter care facilities, and day treatment programs.

III. STANDARDS

A. American Correctional Association Standards

The Department shall comply with the American Correctional Association (ACA) Standards for Juvenile Training Schools and Services, Juvenile Community Residential Services and Juvenile Probation and Aftercare Services (1983), except where such standards are inconsistent with the terms of this Decree, in which case this Decree shall be controlling. The Department shall actively seek accreditation of the applicable facilities and programs from the Commission on Accreditation for Corrections.

B. Joint Commission on Accreditation of Hospitals, Consolidated Standards for Child, Adolescent and Adult Psychiatric Facilities

The Department shall comply with the JCAH Consolidated Standards (1981) at its treatment centers, except where such standards are inconsistent with

the terms of this Decree, in which case this Decree shall be controlling. The Department shall actively seek accreditation of the applicable facilities from the Joint Commission on Accreditation of Hospitals.

#### IV. SEPARATION PROGRAMS AND SOLITARY CONFINEMENT

##### A. Separation from General Population

Short-term separation from the general population may be necessary for counseling or other services to resolve problems and conflicts experienced by children. Separation need not involve confinement, however, Department institutions may maintain a separation facility to confine children where the child's problems appear incapable of resolution without temporary confinement. Confinement in a separation facility shall not be used for punishment at any Department institution. During any period of such confinement, the child shall receive appropriate psychological, educational, medical and recreational services.

##### B. Confinement in Separation Facility

A child may be confined in a separation facility when less restrictive methods of control have failed, only upon the prior approval of the Superintendent, Administrator on Duty or a licensed physician, and only under the following circumstances:



1. where there are reasonable grounds to believe, based upon overt acts, that the child is a serious and continuing escape risk; or
2. where the child is out of control, and is a serious and immediate physical danger to himself or others; or
3. upon the child's request.

C. Limitations on Confinement in Separation Facility

1. No child shall be confined in a separation facility in excess of 24 hours, and the child shall be released as soon as he is no longer an escape risk or physical danger, except as specifically provided herein. Children admitted to the separation facility on their own request shall be released upon request. The use of consecutive periods of confinement in separation to evade the spirit and purpose of this section is prohibited.
2. It is contemplated that confinement in a separation facility in excess of 24 hours shall be exceptional. Such confinement shall require the approval of the Superintendent, the Administrator on Duty or a licensed physician, and shall be limited to the following situations:
  - (a) when a child in a Department institution continues to engage in violent physical assaults against other persons, the child

must be placed in the least restrictive setting to protect others from harm, which may include confinement in a separation facility for a period not to exceed 72 hours.

(b) when the Department has been ordered by a court to detain a child pending court proceedings, such child shall be placed in any appropriate Department facility in the least restrictive setting necessary for the protection of the public and to assure the child's appearance in court, which may include confinement in a separation facility; provided that solitary confinement may only be imposed according to the terms of this Decree.

(c) A child may be required to remain in a separation facility in excess of 24 hours, but not to exceed 72 hours, when there is documented concern that release of the child to his regular living area presents an ongoing risk of physical danger to others; provided that during any such period of confinement, the child shall be permitted to participate in the regular programs and services of the institution, except for a program in which participation poses a physical danger to others.

#### D. Solitary Confinement

Solitary confinement is a serious and extreme measure and may be imposed only in emergency situations as described herein. Solitary confinement shall not be used for punishment at any Department institution. A child in a Department institution may be confined in solitary confinement, only in cases where such child is out of control and is a serious and immediate physical danger to himself or others, and only after less restrictive methods of restraint have failed. Solitary confinement may be imposed only with the prior approval of the Superintendent, Administrator on Duty, or a licensed physician.

Children in solitary confinement shall receive appropriate psychological and medical services. Nothing herein shall be construed to limit the authority of direct child care staff to impose room or cubicle restriction pursuant to Standard 2-9293 of the ACA Standards for Juvenile Training Schools and Services.

#### E. Limitations on Solitary Confinement

No child shall remain in solitary confinement in excess of three hours. As soon as a child is sufficiently under control so as to no longer pose a serious and immediate danger to himself or others, he shall be released from solitary confinement immediately. In the event that a child is

not sufficiently under control to be returned to the general population following a period of solitary confinement, he may be held in the separation facility as provided herein. The use of consecutive periods of solitary confinement to evade the spirit and purpose of this section is prohibited.

F. Reporting Requirements

The reporting requirements of the ACA Standards for Juvenile Training Schools and Services, Standards 2-9302 and 2-9313, shall apply to both solitary confinement and separation.

G. Conditions and Services of Solitary Confinement and Separation

1. All solitary confinement rooms shall contain at least eighty (80) square feet of floor space, and shall have adequate lighting, heat and ventilation for the comfort of the child.
2. Staff shall provide monitoring and supervision to children in solitary confinement as provided in ACA Standard 2-9302. Children in solitary confinement shall have immediate access to staff at all times, including psychological and medical services.
3. As soon as a child is confined in solitary confinement or separation, the goal shall be the removal of the child from confinement as soon as possible. For every child confined in separation, staff shall immediately attempt

to identify the crisis and shall develop an action plan for the removal of the child from confinement.

4. The separation facility shall approximate, as nearly as possible, the regular cottage living units in the facility, including but not limited to, living space, furnishings, lighting, heat and ventilation. The child shall be permitted to have items necessary for his health and comfort, including but not limited to, regular clothing, a bed, mattress, pillow, linens and blanket, toilet, and wash basin and shower with hot and cold running water. The Superintendent, Administrator on Duty, or a licensed physician may approve the removal of belts, bed linens, or other means of inflicting self-injury based upon a documented concern for the safety of the child. Reading and writing materials, a television, arts and crafts, games and toys shall be made available to a child in separation as long as the child is not destructive of such items.

## V. RESTRAINTS

### A. Mechanical Restraint Prohibited

The use of mechanical restraints for any purpose is prohibited, except upon a child's hands as specifically provided herein. The practice of attaching hands and feet, as in hog-tying, is

presumptively punitive and is specifically prohibited.

B. Exceptions

Mechanical restraints may be employed only upon the prior approval of the Superintendent, Administrator on Duty, or a licensed physician, and only in the following situations:

1. In transporting a child to or from any Department facility when there are reasonable grounds to believe, based upon overt acts, that the child is a serious escape risk or a threat to public safety.
2. Within Department institutions, to transport a violently out of control child to a place of confinement, but only after less restrictive methods of control have failed. When restraints are employed in this situation, they shall be removed as soon as the child regains control or is confined, whichever occurs first.

C. Reporting Requirements

Every incident of mechanical restraint shall be reported on a standardized form which shall include the child's name, the date, the amount of time in restraints, a statement of the circumstances leading to the use of restraints, including attempts at less restrictive methods of control,

any injuries incurred, and the signature of the person authorizing restraints.

D. Type of Mechanical Restraints Permitted

In order to minimize the risk of physical injury, all mechanical restraints employed by the Department shall be padded or cushioned with appropriate material.

VI. STAFF

In addition to the staffing requirements of the ACA Standards for Juvenile Training Schools and Services, the Department shall, at a minimum, employ the following personnel:

- A. One qualified licensed psychologist at every institution. The Department may employ a qualified applicant for licensure under 59 O.S. 1971 §1362(a), provided that such applicant must be licensed within one (1) year of the date of employment;
- B. One qualified licensed consulting psychiatrist for every institution;
- C. One qualified licensed consulting physician for every institution;
- D. One registered nurse or physician's assistant with training in pediatrics on duty from 7:00 a.m. to 11:00 p.m. at every institution.
- E. One qualified full-time director of educational services assigned solely to the Division.

- F. One qualified licensed physician to serve as a director of medical services for the Division.
- G. Sufficient qualified institutional staff to staff each cottage at a staff-resident ratio of 1:8 at all times that children are regularly in the cottage, except during normal sleeping hours.
- H. Sufficient social workers qualified by a degree in the behavioral sciences from an accredited college, to achieve a minimum social worker-child ratio of 1:20 at every institution. Consistent with Standard 2-9075 of the ACA Standards for Juvenile Training Schools and Services, the Department may retain as social workers present social work staff who are sufficiently qualified by experience.

#### VII. ADMINISTRATION OF MEDICATION

Medications such as stimulants, tranquilizers or psychotropics, may be administered only as a part of a program of medically approved therapy. The administration of such drugs shall be periodically monitored by a licensed psychiatrist according to accepted medical standards. The use of medication for punishment, control or program management is prohibited.

#### VIII. ADMINISTRATIVE TRANSFERS

##### A. Procedures

Prior to the transfer of a child from a less restrictive to a more restrictive setting, the child shall be entitled to an administrative hearing to determine the necessity for the transfer.



At such hearings, the child shall be entitled to the following elements of procedural due process:

1. the right to at least 24 hours written notice of the alleged reasons for the transfer;
2. the right to present evidence in mitigation, explanation or denial of the allegations, including compulsory attendance of witnesses;
3. the right to be represented by counsel or counsel substitute;
4. No waiver of administrative hearing shall be effective without the child first having consulted with counsel or counsel substitute;
5. No waiver of administrative hearing by a child shall relieve the Department from conducting institutional screening processes embodied in its policies.

B. Classifications of Restriction

For the purpose of this section, the following levels of restriction shall apply:

1. Community-based programs - lowest level of restriction.
2. Training Schools (Taft and Rader Center) - second level of restriction.
3. Maximum Security Training School (ITC) - highest level of restriction.

A change in institutional function shall result in a reclassification of its level of restriction according to the scheme set forth above.

C. Limitations on Transfers

1. A child in Department custody may not be transferred to a treatment center or other psychiatric facility, other than on an emergency basis, except upon a judicial finding pursuant to 10 O.S. 1982 §1116(A)(5)(b).

2. A child in need of treatment initially placed in any treatment center or other psychiatric facility, who has been discharged from such facility as no longer requiring residential treatment, may not be transferred to a Department training school.

IX. ACCESS TO THE COURTS

Children at all Department residential facilities covered by this Decree shall have the right of access to the courts, attorneys and counsel substitutes; and the Department shall promulgate written policies and procedures to ensure and facilitate this right. Indigent resident children shall be entitled to receive legal assistance free of charge from persons with legal training, provided that in any matter wherein the Department may be a party with adverse interests to the child, such legal assistance shall be provided by a person or agency independent from the Department.

## X. CLASSIFICATION

The Department shall comply with the provisions of the ACA Standards for Juvenile Training Schools and Services and the JCAH Consolidated Standards relating to classification, except as modified herein.

### A. Evaluation

Every child placed in a Department facility shall receive diagnostic services to include at a minimum the following, unless the age or circumstances of the child renders inappropriate or unnecessary any such diagnostic service: complete medical examination, complete dental examination, family and social summary, educational and vocational evaluation, psychological evaluation, neurological appraisal and a complete evaluation where medically indicated, speech and hearing evaluation and audiometric evaluation. Following a determination by the Division Placement Team that placement of a child in an institution is necessary, each such child shall receive all of the above diagnostic services, to the extent not already recently completed.

### B. Individual Treatment Plan

The evaluation of every child placed in a Department facility shall be fully documented, and an individual treatment plan shall be developed identifying the treatment needs of each child and specifying the methods and programs best suited to meet those needs.

C. Additional Evaluation

Any child in a Department facility who appears to be a child in need of treatment shall receive a complete psychological evaluation performed by a Board eligible psychiatrist or licensed psychologist.

D. Classification Policies and Procedures

Classification policies and procedures shall provide for identification of the least restrictive placement, including community-based programs, consistent with the treatment needs of each child, and additionally in the case of delinquents, with the protection of the public. Any decision by the Division Placement Team not to implement the recommended placement shall be based upon substantial evidence that such placement is inappropriate, and shall be fully documented.

XI. PROGRAMS AND SERVICES

A. Safe, Humane, Caring Environment

The primary goal of the Department's residential programs shall be to achieve a safe, humane, caring environment with access to needed services that will provide for normal growth and development and allow youth to lead lives as close to normal as possible. Consistent with the necessary limitations imposed by an institutional setting, children in institutions shall have access

to all services which would be available to them in the community. The Department shall provide the programs and services necessary to implement each child's individual treatment plan.

B. Discipline

1. All forms of corporal punishment and physical abuse of children in Department facilities are prohibited.
2. Children in Department facilities shall not be subjected to unreasonable silence rules, group punishment for individual acts, profanity, verbal abuse or threats of unnecessary physical force by staff, or "make work"; provided that nothing herein shall prevent the institutional authorities from requiring children to perform routine housekeeping tasks, or from permitting children to perform maintenance work directly related to a vocational program.

C. Denial of Privileges

Any child in a Department facility may be disciplined on an individual basis by the removal of privileges, provided that no child may be denied the following essential services:

- (1) appropriate opportunities for daily outdoor physical exercise;
- (2) appropriate educational services that comply with state educational requirements.

- (3) writing material and mail.
- (4) items and facilities to maintain cleanliness and personal hygiene.
- (5) family visits, unless otherwise ordered by a court of competent jurisdiction.
- (6) regularly scheduled meals.
- (7) access to necessary medical, dental and counseling services.
- (8) access to legal services.
- (9) the right to practice the religion of his choice.

D. Limitations on Size of Institutions

1. Consistent with the ACA Standards for Juvenile Training Schools and Services, the total bed capacity of any training school shall not exceed 100 beds. For the purposes of this section, the Rader Center and ITC shall be treated as separate facilities. This shall not be construed as prohibiting the administrative consolidation of these two facilities.
2. COJTC shall not exceed a total of 90 beds.
3. ITC shall not exceed a total of 56 beds.

E. Coeducational Institutions

It is the preferred practice that all Department institutions be coeducational, and such facilities shall be coeducational whenever feasible. The Department shall have the authority, however, to cease coeducational operations when the number of female institutional residents declines to the point that coeducational operations become impractical.

F. Fire Safety, Health and Sanitation

1. All institutions shall fully comply with the 1981 Life Safety Code of the National Fire Protection Association and the applicable accreditation standards pertaining to fire safety, and any successor codes or standards.
2. All institutions shall fully comply with all applicable federal, state and local health and sanitation codes and the applicable accreditation standards pertaining to food service, sanitation, safety and hygiene.

XII. MONITORING AND REPORTING

A. Office of Juvenile System Oversight

The Office of Juvenile System Oversight (OJSO) of the Oklahoma Commission for Children and Youth is hereby designated to monitor and oversee the implementation of the terms of this Decree; provided that the reasonable costs of any monitoring

services which exceed the statutory duties of OJSO shall be borne by the Department, and the provision of any such monitoring services will be subject to the execution of a contract between the Department and the Oklahoma Commission on Children and Youth.

B. Duties and Powers of OJSO

In addition to the duties and powers set forth in 10 O.S. 1982 §601.6, which are incorporated herein, the OJSO shall have the authority to retain qualified expert consultants to assist it in monitoring compliance with this Decree, the reasonable costs of which shall be borne by the Department.

C. Reporting Requirements

It shall be the duty of OJSO to prepare and submit to the Court periodic written reports regarding progress and compliance with the terms of this Decree. Copies of such reports shall be provided to the Attorney General and designated counsel for the parties.

D. Access of Plaintiffs

Plaintiff's counsel and their authorized representatives, including expert consultants, shall have full access, upon reasonable notice, to all Department child care facilities, all Department child care staff, all class members and all files and records pertaining to any class member, wherever located.



### XIII. CONTRACTING REQUIREMENTS

#### A. Compliance by Private Providers

The Department shall require, as a condition to funding, that all private group homes and private child care institutions providing placements for children in the Department's custody agree to abide by the terms of this Decree relating to solitary confinement, separation programs, mechanical restraints, administration of medication, discipline, and fire safety, health and sanitation.

#### B. Corporal Punishment Prohibited

The Department shall enter no contract for educational services unless corporal punishment is prohibited by the terms of the contract.

### XIV. IMPLEMENTATION PLAN

Within sixty (60) days of the entry of this Decree, the Department shall submit to the Court and the plaintiffs a comprehensive implementation plan, detailing the steps to be taken to achieve and maintain compliance with the terms of this Decree, including an estimated timetable for completion. Plaintiffs shall, within thirty (30) days of the submission of the plan, provide the Court and the defendants with any written comments, objections or proposals in regard to defendants' implementation plan.

### XV. DISPOSITION OF ACTION

#### A. Dismissal

The parties agree that the Court may terminate its supervision herein, and dismiss this action when: