

ENTERED: March 30, 1981

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CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUANN BRUNNER, on her own behalf : CIVIL ACTION
and on behalf of all other :
similarly situated, : NO. 77-4286
Plaintiffs

FILED MAR 27 1981

FILED

v. : CLASS ACTION

MAR 27 1981

MRS. FRANCES C. CARTER, et al.,
Defendants MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT DECREE IN PARTIAL
SETTLEMENT OF THIS ACTION

I. PREAMBLE

Plaintiff filed the Complaint in the above entitled proceeding on December 16, 1977 and an Amended Complaint on February 15, 1978, as a class action, seeking declaratory and injunctive relief and damages based on allegedly unconstitutional conditions and practices at the Montgomery County Youth Center. Whereas the plaintiff and the class she represents has instituted this suit against, inter alia, Montgomery County defendants Frances C. Carter, Lucy M. Sayer, Robert Varner, Henry R. Gally, Alma R. Jacobs, James H. Corum, Jr., Don DeVore, and the aforementioned defendants have denied liability to plaintiffs; after pre-trial conference upon consent of plaintiff, the Montgomery County defendants, the plaintiff class, and their attorneys, all desiring to settle this lawsuit without trial or adjudication of any issue of fact or law, it is agreed that the case shall be settled as set forth herein regarding all equitable claims averred in the pleadings against these defendants.

Brunner v. Carter



J1-PA-001-006

Accordingly, without deciding whether the treatment and conditions which have existed in the past with respect to this matter have been unconstitutional and without conceding that the regulations adopted by the Department of Public Welfare, specifically regarding isolation, 2-38-153 through 2-28-166, are constitutionally sufficient, and recognizing that this Consent Decree shall not constitute any evidence against or any admission of liability by any party with respect to any issue involved in this case, it is hereby ORDERED, Adjudged, Declared, and DECREED that:

II. RESPONSIBILITIES OF THE YOUTH CENTER AND MONTGOMERY COUNTY DEFENDANTS

1. This Decree shall be binding on the Montgomery County defendants, Carter, Sayre, Varner, Gally, Jacobs, Corum, and DeVore, and their officers, employees, agents, successors, and all persons acting in concert with them. It shall apply to all juveniles who are in the custody of the Montgomery County Juvenile Court at the Montgomery County Youth Center (hereinafter "Youth Center").

2. For the purpose of this Consent Decree the following definitions shall apply:

- a) Youth Center - the Montgomery County Youth Center is a secure juvenile detention center facility located in Norristown, Montgomery County, Pennsylvania, as defined by Department of Public Welfare Regulations 2-28-11.
- b) Resident - a member of the plaintiff class; any person admitted to and housed in the Montgomery County Youth Center.

- c) Youth Center staff - only the child care direct service employees of the Youth Center designated as the director, the assistant director, detention caseworkers, child care counselors I, and child care counselors II.
- d) Isolation - Isolation is the placement of a resident in a locked room to control behavior. The resident's request to spend time in a private, unlocked room or room which unlocks from the inside is not to be considered isolation and should be granted if feasible. Quarantine or other preventive health measures are not considered isolation but can only be ordered by a licensed physician. Locking residents in rooms during a normal eight hour sleeping period is not considered isolation, if the rationale and procedures are documented in the current program description.
- e) Youth Center Director - the Youth Center employee ultimately responsible for all programs and operation of the facility; also described as the Administrator under Department of Public Welfare Regulations, 2-28-179 through 2-28-181.
- f) Regulations - the Detention Center Service Regulations, Chapter II, Section 28, of the Department of Public Welfare Children and Youth Manual, adopted by the Pennsylvania Department of Public Welfare, under the authority of the Public Welfare Code, signed and approved by defendant O'Bannon, and

effective on September 1, 1979. A copy of these regulations are attached hereto and marked Exhibit "A".

- g) Whenever, in this Decree a masculine pronoun is used, it shall be read to also connote a feminine pronoun.

3. Isolation may only be used as specifically provided by Regulations 2-28-12 and 2-28-153 through 2-28-166. Residents shall only be isolated when their behavior creates a clear and present danger to the resident, to other residents, or to staff. (2-28-154).

4. The procedures for the use of isolation shall be those specifically set-out in Regulations 2-28-153 through 2-28-167. However, whenever a resident manifests a clear and present danger to the resident himself, to other residents, or to staff necessitating permissible isolation pursuant to Regulation 2-28-154, the Youth Center staff must first attempt to calm the resident without the use of isolation. However, if all intervention fails then the resident may be placed in his own room only after authorization by the Youth Center director or his designate as provided by Regulation 2-28-160, or pursuant to emergency procedures provided by Regulation 2-28-162.

5. As required by Regulations 2-28-30 and 2-28-62, all Youth Center staff must receive training in alternative forms of crisis management techniques.

A summary of this Youth Center training program, as required by Regulation 2-28-63, is attached as Exhibit "B" and is incorporated by reference herein.

6. A resident may only be isolated pursuant to

Regulations 2-28-153 through 2-27-166. If such isolation is required, the director or administrator on duty shall assign a specific staff person to the isolated resident who shall sit in the room with the resident or immediately outside the room. (Regulation 2-28-163). This staff person shall have no other duties or responsibilities other than the supervision of the resident and he shall provide counseling and support to the resident in an effort to assist the resident in regaining self-control (2-28-152). At all times the staff person shall have visual and audio contact with the resident, and not rely on intercoms, closed circuit television, or other such devices. (2-28-163).

7. As soon as the director or the staff person designee described in Regulation 2-28-163 feels that the resident is sufficiently calmed down to be permitted back in the general population, the resident shall be released. Under no circumstances may a resident be isolated for more than four (4) hours, unless subsequent authorization is given for a second four (4) hour period by the director pursuant to Regulation 2-28-161.

Furthermore, as provided by this Regulation, isolation shall not exceed sixteen (16) hours in any forty-eight (48) hour period unless a written court order is obtained. When requesting a court order, the Youth Center shall give prior written notice to the child and his attorney, or the Public Defender's Office, (2-28-161).

8. On any occasion when isolation is used, a complete report must be made in a regularly maintained log, as required by Regulations 2-28-157, and 158 of the:

- a) name of resident;
- b) staff member(s) authorizing isolation and staff member who imposed it;

- c) staff member assigned to monitor resident;
- d) date and time during which isolation imposed;
- e) the conduct necessitating the isolation;
- f) Youth Center director's checks;
- g) staff person 15 minute-interval checks as required by Regulation 2-28-166;
- h) times of checks by any other staff including medical personnel and psychiatrist;
- i) physical and emotional condition of the resident during and after release from isolation;
- j) date and time released, and reason.

A complete written incident report must also be made by the staff person designee to the director by the end of the staff's shift as required by Regulation 2-28-157.

9. A resident may only be isolated under the conditions, and with the possessions, specifically provided by Regulation 2-28-164. If any of those items must be removed from the resident because they present an immediate danger to him they must be returned to him as soon as it is believed that the danger has subsided. Whenever such items are removed, a report of that decision shall be made in writing in the isolation log and incident report (2-28-165).

10. Residents' rooms may be locked during the normal eight (8) hours sleeping period. (Regulations 2-28-12). However, during this nighttime lock-up, Youth Center staff must check each resident every 15 minutes, and the time of each check must be recorded in a log specified for such purpose. Furthermore, at no time shall residents be out of audio contact with residents, and staff shall be available at all times to meet the physical needs of the residents. (2-28-31).

A summary of the rationale and procedures for complying with nighttime lock-up, as required by Regulation 2-28-12, attached as Exhibit "C", is incorporated by reference.

11. Residents shall not be routinely isolated or locked in a room alone for any period as part of the Youth Center intake program. (Regulation 2-28-71). A resident may only be isolated during this period when he has demonstrated disruptive behavior presenting a clear and present danger to himself, to other residents, or to staff as provided by Regulation 2-28-153. Such isolation and the reason for it shall be recorded in the child's record.

12. Within thirty (30) days after the signing of this Consent Decree and approval by the Court, the defendants shall submit to the plaintiffs and the Court a proposed handbook for residents. The handbook shall be written in simple language and shall describe with specificity Youth Center's rules expectations, and rights, including grievance procedures. (2-28-72)

The handbook should also describe the Youth Center discipline system as required by Regulations 2-28-137 through 2-28-145.

Each facility shall establish guidelines which outline the grievance or appeal procedure that any child may follow when the child has a grievance or wishes to appeal a course of action taken by staff. These guidelines shall be submitted as part of the annual program description for review to the Department. (2-28-138).

13. As required by Regulation 2-28-63 and 2-28-145, the handbook shall also describe in detail the Youth Center's disciplinary and grievance procedure. In particular this grievance procedure must guarantee to each resident an impartial

atmosphere for the residents to tell their side of the story in contesting imposition of isolation or discipline or presenting a grievance, to question the facts presented against them, and to call persons in their support, 2-28-63, and to appeal a course of conduct taken by Youth Center staff, 2-28-145.

14. Each resident shall receive a copy of the above handbook as soon as he enters the facility. (2-28-72). Within (4) hours of admission his counselor shall go over the handbook with him to be sure that he understands it fully. Additionally, copies of the handbook shall be available to residents at all times and shall be kept in a prominent place in the facility.

15. Following receipt of any set of rules, regulations, handbook, or other written submissions developed pursuant to this Decree, plaintiffs shall have thirty (30) days in which to submit written objections and recommendations to the defendants. The parties shall endeavor to resolve disputes by negotiations, but may move the Court to do so if such negotiation fails.

Following waiver or resolution of objections, or an approval by the Court, the set of rules, regulations handbook, or other written submissions, shall be incorporated herein, shall replace the provision ordering its development and shall become binding upon the parties.

16. Each facility must establish guidelines which outline the grievance or appeal rights of each resident when the resident indicates a desire to appeal a course of action taken by the staff.

17. The procedures regarding resident mail shall be governed generally by Regulations 2-28-114 through 2-28-118. Residents may correspond with others through normal use of the postal service. If the child is without financial resources, the facility shall provide postage.

Under no circumstances may incoming mail be read;

however, if reasonable grounds exist to believe that mail addressed to a resident may contain contraband, it may be examined only in the resident's presence. "Contraband" shall be limited to objects the possession of which constitutes a violation of the Pennsylvania Crime code, 11 P.S. §101, et seq. Under no circumstances may a resident be disciplined or punished for contraband mailed to him.

18. Residents' rights to individual privacy shall be honored while they are confined at the Youth Center. Under no circumstances shall the Youth Center use electronic surveillance monitoring devices, including the existing intercom system, to secretly observe and/or listen to residents, except during sleeping hours. The resident shall be advised of the intercom system upon admission.

19. All Youth Center residents shall be afforded complete access to a full educational program as guaranteed by the Pennsylvania School Code, 24 P.S. §§1301, et seq., and the Regulations of the Pennsylvania Department of Education, 22 Pa. Code Chap. 13, including access to a special education program adequate to their needs.

Under no circumstances shall a resident be prohibited from attending the educational program pursuant to disciplinary sanctions provided for in the handbook for residents. In the event that a resident is isolated for uncontrollable behavior as described in 2-28-153 through 2-28-156, during regular school hours, as soon as the resident calms down he shall be permitted to return to the educational program.

III. IMPLEMENTATION

20. Unless otherwise specified, defendants will be

required to implement all provisions of this Consent Decree upon approval by the Court.

IV. DAMAGES, FEES, AND COSTS

21. In settlement of any and all claims, named minor plaintiff will receive the amount of Five Hundred (\$500.00) Dollars, in consideration for a signed release and order to settle, discontinue, and end all damage claims.

Plaintiffs' attorneys fees will be awarded in the sum of Four Thousand (\$4,000.00) Dollars.

V. MODIFICATIONS

22. This Decree or any portion thereof may be changed, modified, or amended upon agreement of all parties and with approval by the Court.

VI. CHANGES IN RELEVANT LAW

23. This Decree or any part thereof shall be automatically superseded by changes in state or federal law or regulations. If any party deems that a change in federal or state law has affected any portion of this Decree, he shall so notify all parties. If any party believes that modification of this Decree is required because of such a change, he shall so notify the parties, who shall have ten (10) days to file with this Court objections to the proposed modifications.

VII. JURISDICTION

24. This Court shall retain continuing jurisdiction of this action to see that all provisions of this Decree are properly implemented and to enter such further orders as may be required.

VIII. SCOPE

30. All parties have been advised of the specific context of this Decree and agree that they shall be bound by its provisions.

APPROVED:

BY THE COURT



UNITED STATES DISTRICT JUDGE


Dated: March 27, 1981

Consented to:

FOR THE PLAINTIFFS

FOR THE DEFENDANTS


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