

Benitez v. Collazo



JI-PR-001-002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANA MARIA BENITEZ, et al.

Plaintiffs,

vs.

JENARO COLLAZO COLLAZO,
et al.,

Defendants.

CIVIL NO.
77-662
77-1170
(Consolidated)

Judge C.C.C.

STIPULATED AGREEMENT

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I. TERMS AND DEFINITIONS

1. PLAINTIFFS

A class of all non-delinquent juveniles who are committed to the custody of the defendants and who were, are or may be committed to institutions who can be cared for adequately in settings less restrictive of their liberty than institutions, but who are denied such opportunity because of the failure of the defendants to develop such alternatives.

2. DEFENDANTS

The Secretary of the Department of Social Services for the Commonwealth of Puerto Rico, his agents and employees including those persons who will in the future occupy these positions and responsibilities.

3. INSTITUTIONS

The state homes, social treatment centers, industrial schools, camps or any other residential facility which presently is or which may in the future be owned, operated, leased, or contracted by the Defendants. At the time this decree was entered, the term "institutions" refers to the Industrial School for Boys and Girls at Mayaguez and Ponce respectively, the State Homes for Boys and Girls at Guaynabo and Trujillo Alto respectively, the Agricultural Camp for Boys at Maricao and the Social Treatment Center for Boys at Ponce.

4. DETENTION CENTERS

The secure residential facilities which presently are or which may in the future be owned, operated, leased, or contracted by the Defendants for the purpose of confining juveniles prior to any adjudicatory proceeding against these juveniles. At the time this decree is entered, the term "detention centers" refers to the Hato Rey, Humacao and Ponce detention centers.

5. SECURE FACILITY

One which is designed and operated so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeters of the facility or which relies on locked rooms and buildings, fences, or physical restraints in order to control behavior of its residents.

6. NON-SECURE FACILITY

A facility not characterized by the use of physically restricting construction, hardware or procedures and which provides its residents access to the surrounding community with minimal and/or no supervision as appropriate.

7. IN-HOME SERVICES

Care and treatment services which are provided to the Plaintiffs and their families by the Defendants within the individual Plaintiff's home and family environment. The Plaintiffs would reside with their individual families while these services are being provided.

8. COMMUNITY-BASED SERVICES

Care and treatment services which are provided to the Plaintiffs by the Defendants in any foster homes, emergency shelters, mini-homes, group homes or other similar community based settings. Community-based services may be residential or non-residential, but under no circumstances may they be provided in a secure facility. These forms of services are to be located and provided within the individual Plaintiff's community.

II. HISTORY OF THE CASE

On May, 1977, a complaint was filed in this case pursuant to 42 U.S.C. §1983. A class action was certified comprised of all non-delinquent juveniles committed to juvenile institutions who can be cared for adequately in settings less restrictive of their liberty than institutions, but who are denied such opportunity because of the failure of the Defendants to develop such alternatives. During 1977, the year this suit was filed, there were more than 603 members of the plaintiff class held in juvenile institutions in Puerto Rico. Plaintiffs challenged as violative of their federal constitutional Due Process and Equal Protection Rights their commitment to institutions which, aside from being secure facilities, do not provide treatment services geared to their rehabilitation. Plaintiffs further challenged their commitment to these correctional institutions in the absence of treatment as cruel and unusual punishment. Lastly, Plaintiffs challenged their commitment to correctional institutions as violative of their First Amendment right to freedom of association and as violative of their right not to be deprived of liberty except to the least extent necessary to adequately treat them. Plaintiffs also challenged Defendants' conduct as violative of the Constitution and the laws of the Commonwealth of Puerto Rico on all of the grounds set out above.

Extensive discovery was conducted by the parties, including the taking of many depositions, the submission of various

interrogatories to Defendants and three inspection tours by Plaintiffs' expert Ira Schwartz of all ten institutions administered by the Defendant. A photographic record of the conditions at these institutions was also compiled.

The parties agree that this Court has jurisdiction of this action under 28 U.S.C. §1343 (3) and that declaratory and injunctive relief is authorized pursuant to 28 U.S.C. §2201 and 2202.

Based upon the extensive discovery conducted herein; and

Based upon the constitutional and statutory rights of plaintiffs enumerated herein; 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 treatment alternatives; and

Based upon the agreement of all the parties to this action that their interests can best be served by entering into this Agreement as opposed to continuing the pending litigation;

The parties hereby agree to the entry of this Stipulated Agreement and Proposed Order as the judgment of the Court with respect to the merits of this action. The parties further agree that nothing contained in this Stipulated Agreement shall be construed to abrogate any other substantive rights or procedural protections a child may now or hereafter have under the law. Nothing contained in this Agreed Order shall be construed as an admission of any liability on the part of the Defendants.

III. STATEMENT OF DEFENDANTS'
POLICY REGARDING THE TREATMENT
OF THE PLAINTIFF CLASS

The Defendants have adopted and will continue to recognize the policies and principles hereinafter set forth:

1. Defendants will continue to provide plaintiffs with treatment and care.

2. That this care and rehabilitative treatment shall in all cases be directed at maintaining and strengthening the individual Plaintiff's relationship with his or her family;

3. That toward this end, Defendants will continue to provide the necessary supportive services, care and treatment within the family structure, removing the individual Plaintiff from his or her home only when all other of the aforementioned efforts have been tried and proven to be unsuccessful or when there are plaintiffs who present behavior problems when there is an imminent and serious threat to the plaintiffs' physical well being were he or she to remain in the home.

4. That Defendants will continue to provide the aforementioned supportive services, care and rehabilitative treatment in the manner which is the least restrictive of the Plaintiffs' liberty and the least destructive of the aforementioned principles and goal of maintaining family integrity;

5. That a formal, written and binding hierarchy of supportive and intervention strategies and treatment alternatives will be established and followed by the Defendants, and that Plaintiffs will be placed in open facilities, such as Trujillo Alto and Guaynabo juvenile institutions only in the most extreme cases after all less restrictive methods of treatment have been considered and this is the only adequate resource;

6. That whenever Plaintiffs must be removed from their homes and placed in alternative treatment settings, such

placement will be for as short a period of time as possible in order to effectuate either the individual Plaintiffs' return to his or her family or some other permanent placement in some other home-like setting;

7. That the secure confinement of members of the Plaintiff class is inappropriate and counterproductive to the aforementioned policies and principles of the Defendants;

8. That the deinstitutionalization of Plaintiff class members and that provision of alternative family and community based treatment services is the objective of the Defendants.

IV. STIPULATED AGREEMENTS

A. The Parties agree that Defendants have adopted and will continue to recognize the policies and principles of not placing, holding, detaining, committing, or otherwise causing to confine any member of the Plaintiffs' class for any period of time in any secure detention center presently or in the future operated by or under contract to the Defendants, including but not limited to the facilities known as the Humacao, Hato Rey, and Ponce Detention Centers.

B. The Parties agree that Defendants have adopted and will continue to recognize the policies and principles of not placing, holding, detaining, committing, or otherwise causing to confine any member of the Plaintiffs' class for any period of time in any secure treatment facility presently or in the future operated by or under the contract to the Defendants, including but not limited

to the facilities known as the Social Treatment Center for Boys at Ponce, the Industrial School for Boys at Mayaguez, the Industrial School for Girls at Ponce and the Maricao Boys Camp (Sabana Grande) in accordance with and subject to the general policy statement set forth above.

C. Defendants agree they will not transfer any member of the Plaintiffs' class who voluntarily leaves any facility including but not limited to Trujillo Alto, Guaynabo, or any other open institutions that Defendants may have in the future, to any other facility named or described in paragraphs A and B herein. Instead, disciplinary measures will be written out by Defendants in a separate document specifying the sanction for such conduct. Separation from the group will not be considered or included as a disciplinary measure. This document will be supplied to the Court and Plaintiffs within 30 days of the Order adopting this Agreement. Defendants also agree that any Plaintiffs presently residing in any of the facilities described in Paragraphs A and B above as a result of a transfer thereto for voluntarily leaving the facilities at Guaynabo or Trujillo Alto will be identified and returned to Guaynabo and Trujillo Alto.

D. The parties agree that Defendants may modify the treatment to Plaintiffs in accordance with the latest developments and techniques in the treatment field applicable to the Plaintiffs' class, so long as the modifications are consistent with the principles enumerated in this Agreement. Defendants are not bound to retain their present treatment approaches; Defendants are free to experiment and utilize new techniques in the treatment of the Plaintiffs.

E. Defendants agree they will not place, hold, detain, commit or otherwise cause to confine any members of the Plaintiffs' class at the State Home for Boys at Guaynabo and the State Home for Girls at Trujillo Alto except under the circumstances set out below and subject to the general policy statement set forth above in Section III:

1. Safe, Humane, Caring Environment

The primary goals of the programs at the State Home for Boys at Guaynabo and the State Home for Girls at Trujillo Alto, are to achieve, a safe, humane, caring environment and access to required services that will provide for normal growth and development and allow youth to lead lives as close to normal as possible.

The Department has an affirmative obligation to ensure that all programs provide, and in no way inhibit, this safe, humane, caring environment.

2. The Provision of Services

The Defendants shall ensure that juveniles have access to all services that are required for their individual needs. The Defendants shall also ensure that juveniles obtain any services necessary to prevent clear harm to their physical health.

3. Evaluation, Assessment and Placement of Juveniles

The Defendants will continue conducting a detailed evaluation and assessment of all Plaintiffs currently residing at Trujillo Alto and Guaynabo facilities for the purpose of ultimately removing these Plaintiffs from these facilities and obtaining placements for them in community based programs. These

evaluations and assessments shall include social, medical, and psychological and occasionally, neurological exams. With respect to Plaintiffs' ultimate placement, the principles of maintaining family integrity and permanency shall guide the Defendants' actions. This means that every effort will continue to be made to first try and re-unite the Plaintiffs with their natural parents or relatives before other options are explored and pursued. With respect to those Plaintiffs who either have no home to return to or whose parental rights have been terminated, the Defendants will continue elaborating permanent plans for Plaintiffs. In the case of those Plaintiffs in need of temporary, out-of-home placement, the Defendants shall use other appropriate community based settings (e.g. foster homes, family group homes, group homes, etc.) in accordance with the least restrictive alternative principle and for only as short a period of time as possible.

A complete written report of each evaluation will continue to be kept which shall continue to include all relevant biographical data, a family assessment and individualized placement and follow-up case treatment plans.

The Defendants will continue providing whatever community based support services may be necessary.

The Defendants will continue to make every effort to develop and maintain the number and diversity of community-based services and placements needed in order to meet current and projected needs.

converting these facilities for the following uses:

- A. develop a residential facility for evaluation, diagnosis and short treatment program (3 to 12 months) for children with behavior problems.
- B. develop a residential facility as a pilot project for severe mentally retarded youngsters who also present emotional disorders.
- C. develop a comprehensive day treatment center providing highly specialized treatment, educational and vocational services.
- D. community based group homes for adolescents who had to be prepared for independent living.

5. Plaintiffs' Access to Telephones, Visitors and the Mails

In order to maintain and strengthen the Plaintiffs' ties with their family and community, the following policies have been or will be established by the Defendants:

a) Plaintiffs are to have unlimited access to a telephone maintained by the Defendants for the Plaintiffs' use, conditioned only upon the realization that Plaintiffs' requests to use the phone should be reasonable and not unduly disruptive of the operation of the facility. Long distance calls (i.e. calls outside of Puerto Rico) shall be limited to those authorized by the Social Worker in charge of the plaintiff's case.

b) Plaintiffs are to be afforded privacy for these reasonable calls, which are to be paid for by the Defendants.

c) Defendants are to establish and maintain an open and flexible schedule of visitation by the Plaintiffs' family, relatives and friends. No restrictions shall be placed upon the persons who may visit the Plaintiffs except those requested by the Plaintiff him or herself or by order of the juvenile courts.

d) Plaintiffs are to have unrestricted and uncensored access to the mails. No outgoing mail may be restricted or censored by the Defendants. No incoming mail from the courts or attorneys may be delayed, opened or otherwise interfered with the Defendants. Incoming mail from other persons may be opened if there are reasonable grounds to suspect that the mail contains contraband or other illegal substance or material. Where such a suspicion exists, the Defendants may open the mail in the presence of the affected Plaintiff solely to determine whether there is contraband or any other illegal substance contained therein. If any of the aforementioned materials are found in the mail, restrictive measures against the sender may be taken by the Defendants. Plaintiffs' mail is not to be read, censored, delayed or otherwise interfered with by the Defendants. Defendants are to supply the Plaintiffs with the necessary writing materials and postage.

6. Separation

The use of separation is a very serious measure and should only be used under the following circumstances and conditions.

a) Separation shall not be used for punishment.

Separation is not to be considered, in itself, as a method

a member of the Plaintiffs' class who is a serious and immediate physical threat to him or herself, other students or staff members. Separation shall never be used as a punishment.

b) Separation limited to two hours.

No member of the Plaintiffs' class shall remain in separation in excess of two (2) hours. As soon as the separated Plaintiff no longer presents said threat, he or she shall be released immediately from separation. Any Plaintiff who cannot be brought under control within the two (2) hours maximum period shall be promptly consulted by medical, social and/or psychiatric consultants to determine whether the Plaintiff is in need of medical or psychiatric care.

c) Place of confinement.

The juvenile's own room is the only permissible place of separation.

d) Authorization of room separation.

Separation may be authorized only by the Director or the Acting Director or the highest ranking available officer. Authorization shall be obtained prior to actual placement in separation. When a determination is made to place a Plaintiff in separation, the Director, or Acting Director or the highest ranking available officer shall immediately record in writing the time, date and reason for such determination.

e) Monitoring of juveniles in separation.

Plaintiffs in separation shall be accompanied by a staff member who shall remain in the Plaintiff's room throughout the period of separation. Once the separation period has ended and

no later than forty-eight (48) hours thereafter, the Plaintiff shall be referred to his or her social worker to be interviewed and a report shall be rendered explaining the reason for the separation.

f) Prohibition against certain uses of isolations.

The use of consecutive periods of isolation to evade the spirit and purpose of this section is prohibited.

7. Institutional Rules, Sanctions and Procedures

Within 30 days after the signing of this agreement, Defendants are to promulgate a complete, formal and written description of the rules governing Plaintiff's conduct while residing at Trujillo Alto and Guaynabo and the sanctions which might be imposed for the violations of these rules.

Defendants will orally explain the content and meaning of this approved set of rules and sanctions to each Plaintiff on an individual basis, in order to insure that each Plaintiff understands these rules and sanctions.

This set of approved written rules shall also be posted at various appropriate sites throughout each institution (such as classrooms, dormitories and cafeteria) to serve as a quick reference and reminder to Plaintiffs.

Corporal punishment has no place in a facility for the care and treatment of the Plaintiffs and is hereby prohibited.

Disciplinary action taken by the Defendants in response to violations of the rules by the Plaintiffs shall be limited to the suspension of Plaintiffs' institutional privileges. Under no

circumstances may this disciplinary action take the form of withdrawal of Plaintiffs' meals, of Plaintiffs' mail, of visits from Plaintiffs' family or relatives, or of Plaintiffs' use of the telephone.

Prior to the imposition of any disciplinary sanctions upon the Plaintiffs, the Defendants will formally notify the Plaintiff of the alleged violation and afford the Plaintiff an opportunity to be heard regarding the alleged violation. If reasonable grounds are found to believe the Plaintiff did indeed violate the rules of the institution as alleged, then the Defendants may impose the least severe sanction necessary to correct the Plaintiffs' misbehavior, accompanied with an explanation by the Defendants to the Plaintiff regarding why the particular sanction was chosen.

VI. OTHER PROVISIONS

1. Liberal Construction

The parties agree that the terms, provisions and conditions of this Agreement and Order should be construed liberally to promote the goals of removal of non-delinquents from secure facilities and the provision of appropriate, individualized treatment and services in the least restrictive setting and manner for all Plaintiffs.

Respectfully submitted,

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