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Entered
Jan. 22, 1981

Manning v. Matheson



JI-UT-003-001

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - NORTHERN DIVISION

----- :
JEFF REED MANNING, ROBERT JEFFREY RAINES, :
and KATHY MORGAN, by their attorney and :
next friend, James T. Massey, on behalf :
of themselves and all others similarly :
situated, :

Plaintiffs, :

-vs- :

SCOTT MATHESON, individually and as Governor :
of the State of Utah; ANTHONY W. MITCHELL, :
individually and as Director of the Depart- :
ment of Social Services of the State of Utah; :
JUDY BUFFMIRE, individually and as Deputy :
Director of the Department of Social Services :
and Acting Director of the Division of Family :
Services; JOHN BILLINGS, individually and as :
Director, Youth Corrections, Division of :
Family Services; and RALPH GARN, individually :
and as Superintendent of the Utah State Youth :
Development Center, :

Defendants. :

: STIPULATED ORDER

: Case No. NC 75-34

Plaintiffs and defendants in this action, by and through
counsel undersigned, jointly enter into this Stipulated Order in
resolution of the issues in this case.

Plaintiffs filed this class action pursuant to 42 U.S.C.
§ 1983 on May 29, 1975. The class is comprised of all juveniles
who are now or may in the future be committed to the State Youth
Development Center at Ogden, Utah (hereinafter YDC). The parties
agree that this Court has jurisdiction under 28 U.S.C. § 1343(3),
and that declaratory and injunctive relief is authorized pursuant
to 28 U.S.C. §§ 2201 and 2202.

The class was certified in an Order dated October 17,
1975, in response to Plaintiff's uncontested Motion for
Certification.

During the pendency of this action the parties have
had numerous and extensive opportunities to exchange views

about the principles of juvenile treatment programs which are the central issues of this action. Independent studies have also been made at the YDC during this period by a Special Master of the Court and by a private agency authorized by the Utah Legislature to study the YDC.

The defendants have made administrative decisions to alter or modify certain practices and programs which were at issue in this litigation. Some of these changes have long since been implemented. Others are now being implemented and still others will be implemented in the future in conformity with the terms of this Stipulated Order. These changes, to which Defendants have agreed voluntarily and in the exercise of their sound policy discretion, form the basis upon which agreement among the parties was achieved and upon which this Stipulated Order is founded.

Additionally, during the pendency of this action the Institute of Judicial Administration-American Bar Association Joint Commission on Juvenile Justice Standards (hereinafter Juvenile Justice Standards Project) and the American Corrections Association published their tentative drafts of standards relating to juvenile programs and facilities. The parties have utilized these standards in formulating this Stipulated Order.

The parties agree that the interests of the Plaintiff class and Defendants can best be served by entering into an agreement with respect to the issues presented by this case, as opposed to continuing the litigation, and the proposed settlement is consistent with policy statements and objectives of the Utah State Legislature, the Utah Board of Juvenile Court Judges and the Utah Department of Social Services as directed by the Board of Family Services.

It is the policy of the State of Utah that Plaintiffs have certain statutory rights under Utah law to receive

individualized treatment in the least restrictive alternative manner and setting, and additional rights of due process and equal protection of the laws, which this Stipulated Order is intended to secure for Plaintiffs. Now, upon all the proceedings had before me and with good cause appearing therefore, it is hereby ORDERED, ADJUDICATED AND DECREED:

I. TERMS AND DEFINITIONS

Wherever in this Stipulated Order the terms "Defendant" or "Defendants," "Division," "Department," "Director" and "Superintendent" appear, the term includes, unless otherwise indicated, the agents, employees, assignees and successors in interest of each such person or entity. It is recognized that the Defendants in this action belong to the executive branch of government and exercise only the delegated powers pertaining to that branch.

As used in this order, the terms below are defined as follows, unless otherwise indicated:

A. JUVENILE

Any youth who is now or may in the future be placed in the custody of the Utah Division of Family Services, pursuant to adjudication under § 78-3a-39(3) and (4) U.C.A. (1953), as amended. Said term, however, does not include youth committed to the YDC pursuant to § 78-3a-39(5) U.C.A. (1953), as amended.

B. DIVISION

The Utah Division of Family Services.

C. DEPARTMENT

The Utah Department of Social Services.

D. DIRECTOR

The Executive Director of the Utah Department of Social Services.

E. SUPERINTENDENT

The Superintendent of the State Youth Development Center.

F. INSTITUTION

The State Youth Development Center and any similar

facility in which juveniles are involuntary placed.

G. NON-INSTITUTIONAL COMMUNITY ALTERNATIVE

Any foster home, halfway house, group home, non-residential day program, youth services bureau, youth runaway shelter, home care service, proctor advocacy service, home placement, or similar modality closely integrated with the juvenile's community. Such alternatives may be operated by the Department, other State agencies or departments, or private vendors.

H. COMMUNITY PLACEMENT

Placement in a non-institutional community alternative with services and follow-up arranged and coordinated by the Division.

I. CUSTODIAL AGENCY

Any agency or person having legal custody of a juvenile.

J. ISOLATION

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

K. SECURE FACILITY

A facility designed and operated so as to ensure that all entrances and exits are under the exclusive control of the staff, whether or not the person being detained has freedom of movement within the boundaries of the facility, or which relies on locked rooms and buildings or physical restraint in order to control the behavior of its residents. A facility is secure if its exit points are open but residents are authoritatively prohibited from leaving at any time without approval. Where the operation involves exit from the facility only upon approval of staff, uses locked outer doors, manned checkpoints, etc., to keep residents inside, the facility is considered secure.

delinquent juveniles in the custody of the Division. The report shall be made available to Plaintiffs' attorneys and other interested parties upon request.

IV. NEW PROGRAM STANDARDS

A. Program Plan

The Division, within sixty (60) days following receipt of such report as may be prepared and submitted by the consulting team, shall recommend to the Board of Family Services a plan for program implementation for the YDC. The Division shall implement the provisions of the plan in accordance with the recommendations contained therein, or to the extent that the plan encompasses features already in place at the YDC, to continue and maintain the same. The plan shall assure that each juvenile confined in the YDC has the right to individualized treatment in the least restrictive manner and setting. The plan shall be made available to Plaintiffs' attorneys and other interested parties upon request.

B. Staff Development Program

The Division shall develop a program of staff qualifications, evaluations, development, supervision and training at YDC within sixty (60) days of completion of the plan developed under Section IV, A. above. An appropriately qualified, trained and supervised staff is essential to guarantee to each juvenile his or her right to receive appropriate, individualized rehabilitative treatment in the least restrictive environment.

This staff development program shall be in writing and copies made available to Plaintiffs' attorneys and other interested parties upon request.

C. Safe, Humane, Caring Environment

The primary goal of the new program will be to

their individual needs in substantial compliance with Juvenile Justice Standards Project Volume and Corrections Administration § 4.10 A, B and C, a copy of which is attached hereto as "Exhibit B." The Division shall also ensure that adjudicated juveniles obtain any services necessary to prevent clear harm to their physical health.

E. Least Restrictive Alternative

1. All decisions and recommendations concerning placement of juveniles which are within the Division's legal authority shall be governed by the principle of the least restrictive alternative. In determining the appropriate placement of the juvenile, the presumption shall be that, the juvenile shall remain in the community, with the provision of necessary services to take place there. When it is determined, pursuant to the evaluation and assessment process to be developed (see below, Section IX, Paragraph A) and after all non-institutional community alternatives have been considered, that placement of the juvenile in an institution is necessary, placement shall be in the least restrictive institution.

After commitment to an institution, the juvenile shall be transferred by the YDC to a less restrictive setting as soon as the institutional treatment team determines that he or she no longer needs to be confined within that institution, provided that such transfer is permitted by state law.

2. Each juvenile shall be entitled to a program of individualized treatment under the least restrictive circumstances possible, within the facility or program to which the juvenile is assigned.

3. The Division shall consider in any placement decision over which the Department has control, the needs of the juvenile and the proximity of the juvenile's home to the institution or program into which the juvenile may be placed. The Division shall inform a juvenile's parents or guardian in

writing at least once every three months of their child's progress within the institution or program.

4. It is the consensus of the parties that a very small percentage of delinquent juveniles need confinement in an institution or secure facility.

5. Confinement in an institution or secure facility is an extremely serious step which should be taken only for offenders who have failed in community-based alternative programs or who present a danger of bodily harm to themselves or others which cannot be controlled in a less secure setting. The Division shall develop standards for the implementation of this paragraph within 60 days of the report submitted by the consulting team pursuant to Part III.

F. Limitations on Techniques that Manipulate Environment of the Juvenile

The YDC will limit the use of behavior modification techniques or techniques that are of an intrusive nature, as more fully set forth in Juvenile Justice Standards Project Volume on Corrections Administration, § 4.10 G and H, a copy of which is attached hereto as "Exhibit C." Such techniques should only be used when:

1. in addition to the informed consent of the juvenile, the informed consent of the parents or guardian of any juvenile under the age of sixteen (16) is obtained; and

2. none of the rights set forth in this Decree is infringed; and

3. there is no reduction in the safe, humane, caring environment required.

Such techniques should be explained clearly to the juvenile. Under no circumstances should such techniques be used for program management or control.

V. ARCHITECTURAL STANDARDS AND MODIFICATIONS

A. Youth who are in the custody of the Division should lead lives as close to normal as possible, which concept

is applicable to the architecture of facilities operated or supervised by the Division. The Division shall design new facilities as needed and modify existing ones with the objective of creating environments which will encourage normalization. The Division shall develop a written architectural program for each facility which will establish space needs based on a clearly articulated set of policy guidelines and operational proposals. Except where good cause for non-conformance can be demonstrated by the Division, the foregoing shall be developed in substantial conformance with the standards and commentary set forth in Juvenile Justice Standards Project, Volume on Standards Relating to Architecture of Facilities, Part III: Architectural Program and Design, a copy of which is attached hereto and marked "Exhibit D." Except where good cause for non-conformance can be demonstrated by the Division, the Division shall design any new facilities and modify existing ones in substantial conformance with the environmental standards and commentary set forth in Juvenile Justice Standards Project, Volume on Standards Relating to Architecture of Facilities, Part IV: Group Homes and Part V; Secure Corrections Facilities, a copy of which is attached hereto as "Exhibit E." Any new secure corrections facility which exceeds a total of 20 beds should have no single living unit with a capacity in excess of 12 beds. Actual design and construction is contingent upon authorization by the State Building Board and appropriation of funds by the Utah Legislature.

B. Open dormitory living is inappropriate for juveniles in that it renders control of physical and psychological abuse of students by other students extremely difficult, and makes it difficult to guarantee the security of student possessions. In the event new facilities are not

developed within a reasonable period of time, the Division shall make all possible efforts to obtain immediate legislative approval and legislative or other funding which will allow the conversion of present dormitory facilities to individual student bedrooms.

Ben Lomond cottage, being large, difficult to supervise, and in poor physical condition, is not an appropriate facility for the program and security needs of juveniles committed to the YDC. The Defendants therefore shall take all necessary steps to continue closure of Ben Lomond Cottage for the placement of any youths, including youths committed pursuant to § 78-3a-39(5) U.C.A. (1953), as amended.

VI. ISOLATION

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

A. Isolation Shall Not be Used as Punishment.

Isolation is not to be considered, in itself, as a method or technique of treatment. It shall be used only in cases in which:

1. The juvenile attempts to escape and continues to be a serious and immediate escape risk; or
2. The juvenile is a serious and immediate physical threat to him or herself, other students or staff members.

B. Isolation Limited to Three Hours.

No juvenile shall remain in isolation in excess of three hours. As soon as a student no longer presents either said risk or danger, he or she shall be released immediately from isolation. Any child who cannot be brought under control within the three hour maximum period shall be promptly transferred to an appropriate facility and examined

by medical and/or psychiatric consultants to determine whether the child is in need of medical or psychiatric care.

C. Place of Confinement--Environmental Needs.

Places of isolation within the institution other than the student's room, which is the preferred confinement location, shall be designated by the Superintendent and approved by the Director or his or her designee. The place of isolation shall be lighted, heated and ventilated the same as other comparable living areas in the institution.

D. Required Furniture and Furnishings Within the Place of Isolation

The place of isolation shall be furnished with the items necessary for the health and comfort of the occupant, including, but not limited to, a bed, mattress, pillow, sheet and blanket, toilet and wash basin.

E. Authorization of Room Isolation.

Isolation may be authorized only by the Superintendent or the Acting Superintendent. Authorization shall be obtained prior to actual placement in isolation. When a determination is made to place a juvenile in isolation, the Superintendent, Acting Superintendent, or officer in charge, whichever the case may be, shall immediately record in writing the time, date, and reason for such determination.

F. Monitoring of Students in Isolation.

Pursuant to the existing policies of the State YDC, students in isolation shall be checked by a resident supervisor and a record of their condition shall be entered in the log maintained at the facility every fifteen minutes. Special attention shall be paid by the supervisor to hygienic and physical or mental health needs of the students. When the isolation is an emergency measure growing out of violent behavior, a staff member should maintain constant visual observation of the juvenile.

G. Prohibition Against Certain Uses of Isolation.

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

VII. GENERAL PROVISIONS REGARDING IMPOSITION OF PROGRAM SANCTIONS.

A. Program Sanctions - What Constitutes.

The provisions of this Section shall apply to any determination or decision which may result in any of the following consequences hereafter collectively referred to as "program sanctions":

1. Transfer of a juvenile to or placement of a juvenile in any form of secure confinement.
2. A substantial reduction of the privileges, activities, liberty, community contacts or other normalizing experiences of a juvenile.
3. An extension of the period of confinement in an institution of two weeks or more.

B. Notice of Rules, Policies.

All juveniles shall be notified orally and in writing of all rules of conduct and policies of the YDC and Division, violations or applications of which may result in one or more program sanctions.

C. Hearing Procedures.

Prior to imposition upon a juvenile of any program sanction, the juvenile shall be afforded the following procedural safeguards:

1. As soon as is practicable, but in no case more than five (5) days after the incident comes to the attention of staff, the juvenile shall be provided with a written notice of the proposed program sanction which shall be signed by the unit coordinator.

2. The notice shall include, but need not be limited to:

- a. The alleged behavior, including as to time and place of occurrence;
- b. The complainant;
- c. An explanation of the hearing rights and procedures outlined in this Section;
- d. The time and place of the hearing;
- e. The possible program sanctions which may result.

3. A hearing shall be held as soon as is practicable after the student is notified as set out in paragraph 2 above, allowing however, adequate time for the student to prepare to represent him or herself in accordance with other provisions of the Decree. A minimum of 48 hours must be allowed to the student to prepare his or her defense to the program sanctions and the hearing must be held within seven days of receipt of notice by the student.

4. The hearing shall be held before a board consisting of an independent administrative hearing officer provided by the Department and two professional staff. The complainant, witnesses, and person(s) requesting the program sanction may not sit on this hearing board but may testify at the hearing.

L. STATUS OFFENDER

A juvenile placed in the custody of the Division by a court for engaging in behavior which, if done by an adult, would not result in the imposition of criminal sanctions.

II. UNITED STATES AND UTAH CONSTITUTIONAL AND STATUTORY RIGHTS OF PLAINTIFFS

Plaintiffs shall have the statutory and constitutional right to receive individualized treatment in the least restrictive alternative circumstances, including the right to receive individualized treatment within an assigned program under the least restrictive alternative circumstances, which rights are guaranteed by the Juvenile Court Act of 1965, §§ 78-3a-1 et seq. U.C.A. (1953), as amended; the State Youth Development Center Act, §§ 64-6-1 et seq. U.C.A. (1953), as amended; and the State Family Services Act, §§ 55-15b-1 et seq. U.C.A. (1953), as amended, and are deemed to meet United States and Utah State Constitutional standards.

III. CONSULTING TEAM

The Division shall retain the services of a consulting team to review the facilities and operations of the YDC, and to advise the Division in the compliance with this Order and in the administration of programs for care and treatment of delinquent juveniles in its custody, and which consultants shall be advisory only. The consulting team shall be composed of three members selected as follows: one selected by Plaintiffs, one selected by the Division, and one selected mutually by the Plaintiffs and the Division. The Defendants shall use their best efforts to seek funding for the implementation of this section.

Within four months of its appointment, the consulting team shall make such written report as it deems appropriate to the Division detailing recommendations respecting further improvement in the program for the care and treatment of

10. The hearing board shall make and preserve a recording of the hearing, and shall make findings of fact in writing relied upon for any decision rendered and a statement of supporting reasons for imposition of any program sanction. Such records shall indicate specifically the offense or rule violation found, if any, and the specific program sanction ordered pursuant to that finding. A copy of said written record shall be provided to the juvenile.

11. Any juvenile found to have committed an institutional violation and upon whom a program sanction is imposed shall have the right to appeal de novo the decision of the hearing board to the Superintendent. The chief officer shall make a written record of his or her decision on such appeal, indicating the actions taken and reasons therefor, and shall base his decision solely on the written record prepared by the hearing body and any evidence presented at the hearing on the de novo appeal.

VIII. MINIMUM CONDITIONS OF CUSTODY.

A. General Provisions.

All juveniles, regardless of their placement or status, shall be entitled to:

1. Rooms equipped with bed frame, mattresses, sheets, blankets, pillows and pillow cases.
2. The opportunity to shower daily.
3. The right to retain personal clothing and other approved effects appropriate to the season.
4. Engage in at least one hour of big-muscle exercise per day.
5. Participate in regular educational, rehabilitation and treatment programs.

6. The same meals, including beverages.

Efforts shall be made to assure that all hot meals are served before they are allowed to become cold.

7. Receive the same number of visits per week from parents, other adult relatives and persons providing spiritual or professional counseling or services. Frequency of such visits shall not be restricted for reasons of placement or status.

8. Access to telephone for purposes of calling attorneys, which access shall neither be restricted nor denied, and reasonable access to telephone for purposes of calling families.

9. Possess reasonable amenities necessary to health and comfort, such as toilet paper, toothbrush or other tooth cleaning device, soap, towels, and wash clothes.

10. Possess a reasonable number of books, magazines, newspapers or other reading materials.

B. Physical, Psychological and Verbal Abuse.

1. Physical, psychological, or verbal abuse by staff is prohibited. Physical abuse includes corporal punishment of juveniles. Incidents of alleged abuse shall be immediately reported to the Superintendent or Acting Superintendent and shall be investigated promptly by institutional authorities. If it appears that a criminal act has been committed, the Superintendent or Acting Superintendent shall immediately notify the appropriate law enforcement agency. The precise nature of the investigation and adjudication of such incidents shall be determined by the plan as follows:

- a. Initial investigation of all alleged incidents will occur within 3 working days;

- b. A staff member may be selected by the student to represent or assist the juvenile in the presentation of his or her complaint;
- c. The juvenile will be entitled to state his or her version of the alleged incident, if he/she so desires;
- d. The staff representative selected by the juvenile may not be compelled to disclose to the institutional administration any conversation held with the juvenile in connection with a complaint;
- e. Adjudication of the complaint by an impartial person or panel;
- f. A written report of all investigations of abuse will be made within 3 working days of the final resolution of the complaint. Each report shall be submitted to the Superintendent and shall be kept in a separate file of complaints concerning abuse. At least monthly, the Superintendent shall forward written summaries of such reports to the Director of the Division;
- g. Staff members who have been accused of abusing juveniles shall be removed from direct contact with juveniles pending final resolution of the complaint once the responsible investigating official finds probable cause to believe that the alleged abuse occurred and that the accused staff member committed the offense. In this context, probable cause means the existence of credible evidence to support the allegations. Such probable cause determination shall be made within 3 working days of the filing of the complaint, and shall be communicated to the staff member. The staff member is then to be immediately detailed to a position not involving contact with juveniles for a period to be determined.
- h. Disciplinary action, up to and including dismissal and referral to appropriate prosecution authorities, shall be taken against employees shown to have abused a juvenile.

IX. EVALUATION, ASSESSMENT AND PLACEMENT OF JUVENILES.

A. Interim Relief.

1. To effectuate the terms of this Stipulated Order, the Division shall immediately undertake and complete a process of identification and placement of all juveniles whose individual rehabilitative treatment needs do not require residence at the Youth Development Center or other institutions.

2. The Division shall adopt for purpose of this identification process a set of criteria and evaluation procedures which at a minimum shall provide that:

- a. The evaluation criteria and procedures shall seek to identify for continued residency at the YDC or other institution only those juveniles who are dangerous as previously described in Section IV, E, 5.
- b. Division personnel involved in this evaluation process must have a full and thorough knowledge and understanding of the Utah Juvenile Court, the YDC, the Division of Family Services, and all community alternatives to institutional confinement.
- c. Status offenders shall in no event be deemed to meet the criteria to be developed for determination of dangerousness. The YDC and other institutional placement are inappropriate for status offenders and contrary to the doctrine of least restrictive alternative incorporated into this Stipulated Order and that to the extent their legal authority allows, the Defendants will not request or recommend commitment to or maintain any status offenders in residence at the YDC or other institution.
- d. A full written report of each evaluation shall be made and kept which shall include all relevant biographical data, a brief chronology of the juvenile's history prior to entering the YDC, all substantive information required by the evaluation process developed by the Defendants and a statement of findings and conclusions of the evaluators including, but not limited to, a statement of reasons for rejecting placement in all settings less restrictive than the YDC.

3. A full and complete written description of the evaluation process and criteria developed for implementation of this Section of the Stipulated Order shall be prepared within sixty (60) days of entry of this order and shall be made available for inspection by Plaintiffs' attorneys and other interested parties upon request.

4. To the extent permitted by State law, all juveniles who are found as a result of the evaluation and assessment process described in this Section not to require residency at the YDC or other institution as a necessary incident of their individual treatment needs shall be removed from the institution and placed in an appropriate, least restrictive non-institutional community-based alternative.

B. Permanent Relief.

1. The evaluation and assessment process and criteria described in and developed pursuant to the last proceeding Section (IX, A), shall be incorporated into the program of the YDC. All juveniles committed to the YDC shall be evaluated pursuant to this procedure for purposes of alternative placement at least once every six months.

2. The Division shall form permanent evaluation and assessment committees as necessary to implement the recommendations of the continuing evaluation process discussed in this Section.

3. The evaluation process and criteria described in this Section shall be adopted and uniformly utilized by the Division in all cases in which Division personnel may make recommendations to or accept custody from, the juvenile court, or initiate or change placement of youth outside their own homes.

4. A full written report of each such evaluation including, but not limited to, all of the information required in Subsection IX, A of this Section shall be maintained by the

Division. Such reports shall be made available for inspection by Plaintiffs' counsel.

X. DEVELOPMENT OF ALTERNATIVE PLACEMENTS AND LIMITATION ON NUMBER OF INSTITUTIONALIZED JUVENILES.

A. The Division agrees to develop and maintain sufficient community-based alternative programs to allow full de-institutionalization of non-dangerous offenders as provided in Section IV, E, 5 above. The parties recognize that compliance with this section is largely dependent upon the availability of funds from the Utah State Legislature and the Office of Juvenile Justice and Delinquency Prevention, and the Defendants actively agree to seek sufficient funding for the operation of community-based alternative programs.

B. It is further recognized by the parties that at the 1979 General Session, the Utah State Legislature adopted the following intent language with respect to de-institutionalization of seriously delinquent juveniles:

It is the intent of the legislature that utilization of community-based alternative programs for severely delinquent youth and concurrent reduced reliance on institutional facilities be encouraged to the maximum extent feasible consistent with public safety. The approved funding level assumes occupancy at the Youth Detention Center will not exceed 150 juveniles for any extended period and is based on an intended average occupancy of 120 juveniles.

It is the intent of the Legislature to reduce the population of the Youth Development Center to 90-100 youth by January 1, 1981, and that funds be diverted from the YDC budget to develop resources in the community to accommodate youth presently at YDC.

It is the intent of the Legislature that the Department of Social Services is authorized to transfer to the State Building Board proceeds from the sale of surplus Youth Development Center (YDC) land pursuant to Section 63-2-30 and Section 65-7-9 which are credited to the Department, and it is the intent of the Legislature that any such proceeds be placed by the State Building Board in a non-lapsing account for planning and construction of small

decentralized secure residential facilities for juvenile offenders who have failed in community-based alternative programs or who present a danger of bodily harm to themselves or others which cannot be controlled in a less secure setting.

In planning for such facilities, the State Building Board shall seek the advice of the Board of Juvenile Court Judges and the Division of Family Services, shall seek recommendations from the people of Weber County and the Department of Development Services concerning the best use of the main YDC campus area, shall consider utilization of a portion of the surplus YDC land for a decentralized secure residential facility in Weber County, and shall evaluate the advantages and disadvantages of utilizing existing YDC buildings in such a decentralized facility in Weber County.

The foregoing intent language reflects the policy of the Defendants, and the intention of the Defendants to carry out this legislative mandate forms a basis for this Stipulated Order.

C. The alternative placements may be in the nature of group homes, intensive day-care programs, proctor-advocate arrangements, college placements or other non-restrictive programs closely integrated with the community.

D. Bed capacity of non-institutional community alternatives shall be no greater than twelve (12). In exceptional rare circumstances, programs having up to nineteen (19) bed capacity may be approved if critical program design needs so require and if the variance is given in accordance with policy established by the Board of Family Services.

E. The Defendants agree to utilize funding assured or received from the Office of Juvenile Justice and Delinquency Prevention in Washington D.C., and the Utah Legislature, as necessary to carry out the provisions of this Section.

F. The Defendants have contracted for and will carry through with a comprehensive evaluation of all student placements which are developed pursuant to this Section. The result of this evaluation and subsequent evaluations conducted by the Division shall be made available to Plaintiff's counsel and other interested parties upon request.

G. Records shall be kept by the Division of the number and type of all community-based alternative programs. The date of all funding requests and receipts, advertising or soliciting proposals or bids, contract awards and placement availability, shall be maintained. The date institutionalized juveniles are placed and the names of the juveniles placed in each such placement shall also be maintained. Such records shall be made available for inspection by Plaintiffs' counsel upon request for a period of one year following the effective date of this Stipulated Order.

H. Copies of all contract awards or other evidence of development of the alternative placements during this one-year period following entry of this Stipulated Order shall be made available for inspection by Plaintiffs' counsel upon request.

XI. MAIL CENSORSHIP.

A. The permanent relief concerning the sending and receiving of mail by juveniles committed to the YDC entered by the Court on June 29, 1975, is hereby adopted and approved by all parties as modified to address expanding numbers of non-institutional alternative placements for juveniles committed to the YDC.

B. Juveniles confined in or committed to the custody of the YDC shall not be prohibited from sending or receiving mail. Outgoing mail shall not be opened or censored.

With the exception of legal correspondence, incoming mail may be required to be opened by the student in the presence of a resident supervisor who may inspect the mail solely for contraband. No mail may be read or censored by staff persons of the YDC during this procedure. Incoming legal mail shall not be opened by the juvenile in the presence of a supervisor unless outward appearances of such mail indicate the probable presence of contraband within the mailing. If outward appearances suggest that contraband is contained in any legal mailing, the opening and inspecting procedure applicable to non-legal mail may be followed.

C. Each provider of or contractor for alternative, non-institutional placements of juveniles committed to the YDC shall be required, as part of its contractual arrangement with the Division, to agree to, and abide by the terms of this Section of the Stipulated Order.

XII. INTERSTATE TRANSFERS.

A. The Division shall not transfer any juvenile committed to the custody of the Division or the YDC out of the State of Utah for institutional placement in a state which is a signatory to the Interstate Compact on Juveniles, §§ 55-12-1 et. seq., U.C.A. (1953), as amended except in compliance with the "Policy of the Board of Juvenile Court Judges on Transfer of Youth Development Center Wards to Other States," adopted February 10, 1978. A copy of said policy is attached hereto and by this reference incorporated herein as "Exhibit F."

B. Any juvenile who is subject to a petition for transfer of custody pursuant to said policy has a statutory right to appointed or retained counsel under the provisions of § 78-3a-35, U.C.A. (1953), as amended, and Rule 33, UJCRPP.

XIV. CONTRACTING REQUIREMENTS.

The Division shall require, as a condition of receiving funding, that all providers of placements for juveniles agree to respect and abide by the provisions of this Stipulated Order concerning conditions of facilities, environmental safety and health, use of isolation, mail censorship and any other applicable area regulated by this Stipulated Order. The Division shall also indicate within each contract that any question or uncertainty among private providers regarding their legal rights and responsibilities under the provisions of this Stipulated Order shall be directed in writing to the Attorney General of the State of Utah. The Attorney General's Office shall respond in writing and will make available copies of both the inquiry and the response to Plaintiff's counsel upon request.

XV. MONITORING AND REPORTING.

Plaintiffs' counsel of their designees may enter and inspect the YDC to monitor compliance with this Stipulated Order. Such monitoring may including interviewing students and staff in appropriate circumstances and will continue for a period of 12 months from the entry of this Stipulated Order. Such monitoring shall be conducted in the least disruptive and intrusive manner possible and shall not unduly interfere with the usual operation of the YDC. Plaintiffs' counsel and their designees will give reasonable prior notice of visits to the YDC to the Division and Division's counsel. Such notice will include the names of those who will visit the YDC, the expected length of their visit, and the purpose of their visit. In the event that apparent violations of this Stipulated Order or other problems relating directly to the care and services offered to juveniles at the YDC come to the attention of Plaintiffs' counsel and their designees, they

will contact the Division and Division's counsel in writing to seek resolution of the problems. The parties shall make every effort to remedy problems and resolve differences relating to this Stipulated Order by negotiation and cooperative action. Legal remedies will be sought only after other alternatives have failed, and any remedy sought shall be limited to the party directly responsible for the conduct or action complained of.

XVI. PRE-ADJUDICATION DETENTION.

Pre-adjudication detention at the YDC of juveniles is prohibited by § 78-3a-30(3) U.C.A. (1953), as amended.

XVII. ATTORNEYS' FEES.

A. Plaintiffs reserve the right to move this Court for the award of attorneys' fees and costs and by the signing of this Stipulated Order do not impliedly waive attorneys' fees and costs.

B. The Defendants, by agreeing to this Stipulated Order, neither expressly nor impliedly consent to the award of any court costs, attorneys' fees or any other sums to Plaintiffs arising out of this action.

XVIII. LIBERAL CONSTRUCTION.

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

XIX. ADDITIONAL PROVISIONS.

A. Nothing in this Stipulated Order may be construed as an admission of liability, either civil or criminal, for any actions of the Defendants, or of any one of them, past or present.

B. Nothing in this Stipulated Order may be construed as changing the substance or effect of any Utah statute, nor construing the constitutionality thereof, nor does anything herein infringe on the legislative authority and power or bind any future legislature in the exercise of its constitutional prerogatives with respect to the making of laws or to the appropriation and expenditure of public funds.

C. The Juvenile Court of the State of Utah is not a party to this action and is not directly bound by any aspect of this Stipulated Order. It is recognized that certain decisions with respect to the placement of juveniles fall entirely within the statutory jurisdiction of that court and are not within the control of Defendants.

Dated this _____ day of _____, 1979.

BY THE COURT:

ALDON J. ANDERSON, Chief Judge
United States District Court

Approved as to Form and
Content:

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