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THE HONORABLE ROBERT J. BRYAN

Horton v. Williams



JI-WA-0002-0001

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AUG 17 1994

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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JAMES HORTON, JAMES BARNHART,)	
JEROME PAYTON, J.B., through his)	CLASS ACTION
next friend, LORANE WEST, and K.M.,)	
through his mother DEBBIE MOORE, on)	No. C94-5428 RJB
behalf of themselves and all others)	
similarly situated,)	FIRST AMENDED COMPLAINT FOR
)	DECLARATORY AND INJUNCTIVE
Plaintiffs,)	RELIEF
)	
vs.)	
)	
BOB WILLIAMS, in his official capacity)	
as Superintendent of Green Hill School;)	
JEAN SOLIZ, in her official capacity as)	
Secretary of the Department of Social and)	
Health Services; SID SIDOROWICZ, in)	
his official capacity as Assistant Secretary)	
of the Department of Social and Health)	
Services for the Juvenile Rehabilitation)	
Administration; and the Chehalis School)	
District.)	
Defendants.)	

added school district

I. INTRODUCTION

1. This is a class action concerning Green Hill School (GHS), an institution for delinquent youth in Chehalis, Washington. Defendants, acting under color of state law, have subjected Plaintiffs, all of whom are confined at GHS, to unlawful policies, practices and

1 conditions of confinement, thereby causing them physical, psychological, and emotional
2 harm. Plaintiffs seek declaratory and injunctive relief barring Defendants from subjecting
3 them, and the class they represent, to conditions at GHS which violate rights afforded by the
4 Washington and United States Constitutions and laws of the United States and Washington.

5 II. JURISDICTION

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7 2. This Court has jurisdiction of this action under 28 U.S.C. Sections 1343(3)
8 and (4); 28 U.S.C. Section 1331(a); 28 U.S.C. Sections 2201 and 2202; 20 U.S.C. Section
9 1401 *et seq.* and regulations promulgated thereunder; and Federal Rules of Civil Procedure
10 57 and 65. This Court has jurisdiction over Plaintiffs' pendant State law claims under 28
11 U.S.C. §1367. Plaintiffs' claims for relief are authorized by 42 U.S.C. Section 1983 which
12 provides for redress of deprivations under color of state law for rights guaranteed by the
13 Constitution and laws of the United States.

14 III. PLAINTIFFS

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16 3. Plaintiffs J.B. and K.M. have not yet reached their eighteenth birthdays. J.B.
17 brings this action by and through his next friend, Lorane West. Lorane West is a citizen of
18 the United States, over eighteen, and bilingual. Plaintiff K.M. brings this action by and
19 through his mother, Debbie Moore. Plaintiffs James Horton, James Barnhart, and Jerome
20 Payton are over eighteen years old.

21
22 4. All Plaintiffs and their next friends are residents of the State of Washington.
23 The Plaintiffs are all currently confined at GHS and are subject to the practices of
24 Defendants and conditions of confinement complained of herein.

25
26 5. Plaintiffs James Horton and K.M. have been sprayed with aerosol oleoresin
27 capsicum (OC) by staff at GHS. They have been placed in shackles and handcuffs, confined
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1 in disciplinary confinement and had their sentences lengthened without due process.

2 6. Plaintiffs James Barnhart and Jerome Payton have been denied educational,
3 health, and rehabilitative services at GHS. Jerome Payton has been denied special education
4 services for which he is eligible.

5 7. Plaintiff J.B. does not speak or understand English well enough to comprehend
6 the rules, policies, and services available at GHS and he is not provided with Spanish-
7 speaking interpreters.

8 IV. DEFENDANTS

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10 8. Defendant Bob Williams is the Superintendent at GHS. In that capacity he is
11 responsible for the day-to-day administration and management of GHS. He is responsible for
12 formulating, implementing, and approving policies and decisions affecting youth confined at
13 GHS, and for training, directing, and supervising staff at GHS responsible for the care and
14 custody of Plaintiffs. He is sued in his official capacity.

15
16 9. Defendant Jean Soliz is the Secretary of the Department of Social and Health
17 Services. In this capacity she is responsible for developing effective standards for the
18 operation of GHS and for insuring that GHS provides the treatment, supervision, and custody
19 of juvenile offenders as required by RCW 13.40.010. She is sued in her official capacity.

20
21 10. Defendant Sid Sidorowicz is the Assistant Secretary of the Department of
22 Social and Health Services for the Juvenile Rehabilitation Administration. In that capacity he
23 is responsible for the general supervision and management of juvenile institutions in
24 Washington, including GHS, and for implementing applicable regulations, rules, and policies
25 affecting youths confined at GHS. He is sued in his official capacity.¹

26
27 _____
28 ¹ Defendants Williams, Soliz and Sidorowicz are referred to as the GHS
Defendants herein.

1 Washington. The complex is situated on a flood plain and consists of 26 buildings, including
2 residential cottages, a school, a recreation building, administrative offices, maintenance
3 shops, and a steam plant. It has a rated-bed capacity of 80.

4
5 17. GHS opened in 1891 as the Washington State Reform School. Many of the
6 buildings at GHS are in a state of extreme disrepair. The GHS Defendants have failed to
7 properly maintain and repair these buildings, thereby subjecting Plaintiffs to punitive
8 conditions which jeopardize their health and safety.

9
10 18. The GHS Defendants have failed to maintain the residential cottages at GHS in
11 a safe and sanitary condition. These cottages, which were built between 1957 and 1959, are
12 dilapidated, unclean, and unsanitary. They are inadequately heated and cooled, and
13 improperly ventilated. These cottages do not comply with current building code standards
14 and requirements.

15
16 19. The residential cottages at GHS are overcrowded. Defendants' failure to
17 maintain the population at GHS within its designed capacity has burdened recreational,
18 educational, health, and food preparation and service facilities beyond their capacities,
19 resulting in punitive and unsafe conditions of confinement.

20
21 20. The GHS Defendants subject Plaintiffs to punitive and dangerous conditions in
22 other buildings at GHS. Interior walls of the administration and hospital buildings contain
23 numerous cracks, and the exterior walls of the kitchen and dining hall are inadequately
24 secured to the roof and floor diaphragms, compromising their lateral stability as shear walls.
25 Such structural deficiencies make these buildings unsafe and subject to severe damage or
26 collapse during seismic activity. The Commissary, built in 1908, as well as the Laundry,
27 Carpenter Shop and Auto Shop, all built in 1932, are also unsafe and subject to severe
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1 damage or collapse during seismic activity.

2 21. The GHS Defendants have failed to address and correct problems caused by
3 water seepage and drainage throughout GHS, thereby subjecting Plaintiffs to punitive
4 conditions and increased risks of injury and disease. For example, there is severe water
5 leakage in the Intensive Treatment Unit during rain storms. The building is settling and has
6 numerous shrinkage cracks. The gym often has standing water on the floor and in the crawl
7 space. The kitchen and dining hall have water problems caused by leaks and condensation.

8
9 22. The GHS Defendants have failed to maintain kitchen and food service facilities
10 at GHS in a condition which complies with applicable health and safety regulations, rules,
11 and standards. As a result, plaintiff have been, and will continue to be, subjected to punitive
12 conditions, including increased risks of food-borne illnesses.

13
14 23. The GHS Defendants have failed to protect the safety of Plaintiffs in the event
15 of fire or other disaster. No buildings at GHS, including the residential cottages, are
16 equipped with fire sprinkler systems. These Defendants have failed to prepare and
17 implement adequate emergency preparedness and evacuation plans, have failed to properly
18 train staff concerning their responsibilities in the event of fire or other disaster, and have
19 failed to conduct sufficient fire or disaster drills for residents and staff.

20
21 **B. Disciplinary Practices**

22 **a. Use of the Chemical Agent Oleoresin Capsicum**

23 24. The GHS Defendants authorize staff at GHS to spray Plaintiffs with aerosol
24 oleoresin capsicum (OC). This chemical agent causes severe inflammation of mucous
25 membranes and upper respiratory systems, severe irritation and spasmodic contraction of the
26 eyes, and an acute burning sensation and redness of the skin. It causes loss of upper body
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1 motor control and temporary paralysis of the larynx, and induces nausea, gasping, retching,
2 and uncontrollable coughing.

3 25. Staff at GHS routinely spray OC in the faces of residents as punishment for
4 violations of institutional rules. For example, residents are sprayed for such infractions as
5 swearing at staff, failing to follow staff directives, and creating a disturbance, even though
6 the residents, at the time they are sprayed, do not pose a danger to themselves or others and
7 less restrictive means of addressing the behavior are available.

9 26. Staff at GHS have sprayed residents who were restrained in handcuffs and leg
10 shackles, who were locked in their cells, who were sitting passively, and who otherwise
11 posed no risk to their own safety or to the safety of other residents or staff.

12 27. Although the GHS Defendants maintain supplies of 5% OC and 10% OC at
13 GHS, they have no written guidelines or policies governing when either concentration is to
14 be used. As a result, staff arbitrarily and capriciously select the concentration of OC with
15 which they spray residents.

17 28. The GHS Defendants have failed to adequately train staff at GHS in the use of
18 less restrictive alternatives to OC to diffuse crises and address disruptive behavior. Instead,
19 their policies and procedures permit, and even encourage, staff to administer OC as
20 punishment for residents who are disruptive or unruly.

22 29. The GHS Defendants and their agents regularly authorize the use of OC by
23 telephone with no on-site evaluation to determine if its use is warranted.

24 30. The GHS Defendants place some residents on a "spray program" which
25 permits staff to spray these residents with OC at staff discretion without further
26 authorization.

1 31. Staff threaten residents with OC by brandishing canisters on which they have
2 written residents' names.

3 32. The GHS Defendants authorize staff at GHS to spray residents with OC
4 without consulting medical or psychological staff or other mental health professionals.

5 33. The GHS Defendants have failed to provide psychological counseling or other
6 mental health services to residents sprayed with OC.

7 34. As a direct result of the GHS Defendants' policies and practices governing the
8 use of OC, Plaintiffs have suffered, and will continue to suffer, severe physical,
9 psychological and emotional injury.

10
11 **b. Use of Handcuffs and Shackles**

12 35. The GHS Defendants place residents of GHS in metal, police-style handcuffs
13 and leg shackles for violations of institutional rules.

14 36. Any member of the staff at GHS is authorized to summon security staff to
15 handcuff and shackle residents for transportation to a disciplinary cottage.

16 37. Residents who refuse to be handcuffed and shackled, although otherwise in
17 control, are forcibly restrained and shackled.

18 38. Security staff are not adequately trained in the use of handcuffs and shackles
19 and apply them in a manner which causes unnecessary pain and injury.

20
21 **c. Confinement in Disciplinary Cottages**

22 39. The GHS Defendants punish residents who have emotional and behavioral
23 problems by confining them in disciplinary cottages for indeterminate periods of time.

24 40. The GHS Defendants fail to provide residents in the disciplinary cottages with
25 educational, recreational, and other treatment services that are appropriate to their needs.
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1 41. The GHS Defendants punish residents for rule violations by confining them in
2 disciplinary cottages for indeterminate periods of time without affording them with adequate
3 process.

4 42. The GHS Defendants punish residents of the disciplinary cottages by
5 increasing their lengths of confinement in GHS.

6 43. The GHS Defendants fail to release residents from the disciplinary cottages
7 solely because GHS is overcrowded and beds in other residential cottages are unavailable.
8

9 C. Education, Treatment, and Rehabilitative Services

10 a. **Education**

11 44. Defendants have failed to properly evaluate residents of GHS for eligibility for
12 special education and related services.

13 45. Defendants have failed to develop and implement appropriate individualized
14 education plans for residents who are eligible for special education and related services.
15

16 46. Defendants have failed to provide an appropriate process by which residents of
17 GHS, and their parents or surrogates, may participate in the development of individual
18 education plans.

19 47. Defendants fail to provide educational services to residents of GHS which are
20 equivalent to the educational services available to youths who are not confined at GHS.
21

22 48. Defendants exclude youth from educational services without adequate
23 justification and for violations of institutional rules without affording them any process.

24 Defendants fail to provide these residents with alternative educational programs.

25 b. **Treatment and Other Rehabilitative Services**

26 49. Defendants have failed to adequately evaluate Plaintiffs' educational,
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1 vocational, psychological, health, and other treatment needs.

2 50. Defendants have failed to develop and implement individual treatment plans for
3 residents of GHS which identify their treatment needs and direct appropriate educational and
4 treatment services.

5 51. Defendants fail to provide adequate treatment for residents of GHS.

6
7 52. Defendants have failed to provide appropriate mental health, counseling, and
8 social services for residents of GHS.

9 53. Defendants have failed to provide transition services for residents at GHS who
10 are nearing release. As a result, residents are often released from the most secure and
11 restrictive environment at GHS directly to non-secure placements with no intervening
12 services or assistance.

13
14 54. Although some residents at GHS speak only Spanish, Defendants have failed to
15 provide sufficient Spanish-speaking staff who can communicate with these residents. As a
16 result, Defendants have failed to meet the educational, treatment, and security needs of these
17 Spanish-speaking residents.

18 55. The GHS Defendants have failed to provide rehabilitative services and
19 treatment to Plaintiffs in the least restrictive environment appropriate to their needs.

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21 56. The GHS Defendants have failed to hire, train, and supervise a sufficient
22 number of properly trained staff to protect residents at GHS from assault and injury.

23 VII. LEGAL CLAIMS

24 First Claim

25 The GHS Defendants' use of aerosol OC, handcuffs, shackles, and disciplinary
26 cottages as described herein violates rights guaranteed to Plaintiffs by the Fourteenth
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1 Amendment to the United States Constitution and 42 U.S.C. Section 1983.

2 Second Claim

3 The GHS Defendants' failure to provide adequate procedural protections prior to the
4 infliction of harsh and cruel punishments, their failure to protect Plaintiffs from harm while
5 in state custody, and their failure to provide adequate and appropriate health care,
6 educational programs, rehabilitative treatment, classification, evaluation, supervision and
7 placement as described herein, violate rights guaranteed Plaintiffs by the Due Process Clause
8 of the Fourteenth Amendment to the United States Constitution, RCW 13.40 *et seq.*, and 42
9 U.S.C. Section 1983.
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11 Third Claim

12 Defendants' failure to provide adequate educational services for residents of GHS as
13 described herein violate rights guaranteed Plaintiffs by Article 9, Section 1, of the
14 Washington State Constitution, the Due Process and Equal Protection Clauses of the
15 Fourteenth Amendment of the United States Constitution, RCW 28A.190.010 - .050, and 42
16 U.S.C. Section 1983.
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18 Fourth Claim

19 Defendants' failure to properly evaluate Plaintiffs for handicapping conditions and
20 provide special education and related services as described herein, violates Plaintiffs' rights
21 guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. Section 1401 *et*
22 *seq.*, RCW 28A.155.010 - .100, and Article 9, Section 1 of the Washington State
23 Constitution.
24

25 VIII. NO ADEQUATE REMEDY AT LAW

26 As a proximate result of the Defendants' policies, practices, acts, and omissions
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1 complained of herein, Plaintiffs have suffered, do suffer, and will continue to suffer
2 immediate and irreparable injury. Plaintiffs have no plain, adequate, or complete remedy at
3 law to redress the wrongs described herein, and they will continue to be irreparably injured
4 by the policies, practices, acts, and omissions of Defendants unless this Court grants the
5 injunctive relief which Plaintiffs seek.
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7 IX. PRAYER FOR RELIEF

8 WHEREFORE Plaintiffs, on their own behalf and on behalf of all others similarly
9 situated, pray that this Court:

10 A. Assume jurisdiction of this action;

11 B. Issue a judgment, pursuant to 28 U.S.C. Sections 2201 and 2202 and Rule 57
12 of the Federal Rules of Civil Procedure, declaring that the Defendants have violated rights
13 guaranteed Plaintiffs by the Fourteenth Amendment to the United States Constitution, Article
14 9, Section 1 of the Washington State Constitution, RCW 13.40, RCW 28A, and the
15 Individuals with Disabilities Education Act, 20 U.S.C. Section 1401 *et seq.*, by subjecting
16 Plaintiffs to the conditions of confinement described herein;
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18 C. Issue preliminary and permanent injunctions enjoining the Defendants, their
19 agents, assigns, employees, and successors in office, from engaging in the unconstitutional
20 and unlawful acts described herein;
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22 D. Retain jurisdiction over the Defendants until such time as the Court is satisfied
23 that the unlawful policies, practices, acts, and omissions complained of herein no longer exist
24 and will not recur;
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E. Award Plaintiffs the costs of this proceeding, attorneys fees pursuant to 42*
U.S.C. Section 1988, and such other and further relief as this Court deems just and proper.

DATED: August 17, 1994

Respectfully submitted,

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DAVID LAMBERT*

* Mr. Lambert's application to participate in this case was filed on August 17, 1994.