

Horton v. Williams



Jl-WA-0002-0036

✓ pb  
3/2/07

**PROGRESS REPORT**

**HORTON VS WILLIAMS STIPULATION & JUDGEMENT**

**First report to the Federal Court - February 1996**

**Orlando L. Martinez  
Monitoring Report  
Case # C94-5428 RJB**

## INTRODUCTION

This is the first monitoring report to the Court, Plaintiffs and State Defendants concerning the progress Green Hill School has made in achieving compliance with the Stipulation and Judgment signed by the Court on September 11, 1995.

The Monitor spent two and one-half days at Green Hill School visiting living units, meeting with juveniles, direct care staff and administrators, reviewing architectural plans for capital improvements to Green Hill School, and meeting with Plaintiffs' and Defendants' attorneys. Prior to the monitoring visit this Monitor viewed videos depicting the use of pepperspray, and read background information regarding the issues resulting in this Stipulation and Judgment.

The following describes the State Defendants' progress in achieving compliance with this Stipulation and Judgment.

## PHYSICAL PLANT

The State Defendants will maintain the present facility in a safe and sanitary condition, and will adequately heat, cool, and ventilate all structures. This provision shall not be construed to require capital improvements in existing structures, other than as planned in reconstruction, absent a condition that adversely affects the health or safety of residents.

Finding - Green Hill School is comprised of old buildings initially constructed to deal with a less serious and aggressive client. Over the years renovations have been made to the buildings to secure them without major modifications. This has created a situation where staff must be continuously aware of good safety practices. Capital improvements planned for this campus will improve safety conditions, however, until these improvements are completed, importance must be given to how these facilities are managed and supervised. It was noted that a sufficient number of staff were present in the living units during the Monitor's visit and that staff understood basic safety procedures when questioned. Administrators indicated that local fire officials inspect the facility and that they are in compliance with local requirements.

Green Hill School underwent a safety inspection by the Department of Social & Health Services in November 1995. Their report entitled "*Annual Loss Control Evaluation*" indicates that GHS achieved a score of 71.69% towards the maximum possible score of 106. An interesting finding is that accidents and injuries were up appreciably when comparing FY 94 to FY95 with most of the increase during the Spring of 1995. According to the evaluators, recent data indicate a return to average or slight improvements in accidents and injuries.

Recommendation - Green Hill School should provide a letter or certificate from an authority having jurisdiction documenting that the facility conforms to applicable federal, state and/or local fire safety codes or that the authority approves any variances,

exceptions or equivalencies that do not constitute a serious life safety threat to the residents of the facility. Where applicable, Green Hill School should provide a plan for addressing deficiencies, i.e. fire alarm and automatic detection system, for approval by the authority.

## **DISCIPLINARY PRACTICES**

The parties agree that they will comply with JRA Bulletin No. 2 and GHS Policy No.4 which comport with the requirements of this Judgment and the State Defendants agree to abide by the terms and conditions of these policies.

### Aerosol Restraint

Since entering into this Settlement and Judgment, Green Hill School has used oleocapsicum pepper spray on resident J.H. on November 28, 1995 and on December 20, 1995 involving residents R.G. and S.N. A video of these incidents was provided by Defendants' attorneys and written incidents reports were provided by Green Hill School and Defendants' attorneys.

In these two incidents it appears that Green Hill School met the requirements of the Stipulation and Judgment and complied with JRA Bulletin No.2 and GHS Policy No.4.

### Mechanical Restraints

Green Hill School has provided thirty (30) written incident reports regarding the use of restraints from 8/29/95 to 1/21/96. Fifteen of the incidents were situations where restraints were used on youth while in his living quarters and the remainder were used for transportation to another cottage. Defendants' attorneys also submitted copies of incident reports regarding the use of restraints for this same time period. Nine reports were included that were not contained in those submitted by GHS. Review of these reports indicates that GHS seems to be complying with JRA Bulletin 2 and GHS Policy 4. Time did not permit this Monitor to field test the incidents of mechanical restraint use nor to conduct follow-ups on submitted reports.

Green Hill School complies with the Aerosol and Mechanical restraint requirements of the Stipulation and Judgment because of their implementation of approved procedures, documentation and video taping. However, the frequency of use is difficult to evaluate because baseline data is not available for comparison over time periods or comparison with use of restraints by similar programs within or outside the State of Washington.

Recommendation - Green Hill School should study each incident of restraint used to determine whether less use is possible given the interventions and techniques currently available to staff. It may well be that this is the best that can be done, however, some juvenile correctional facilities, like Lookout Mountain School, Golden, Colorado, have been able to develop a behavior management system that has almost eliminated the

reliance on mechanical restraints. Lookout Mountain School does not use aerosol restraints.

The following factors are common to well functioning behavior management systems.

*Custody* is the degree of restraint required to reasonably assure that youth will remain at a designated place; not harm others; be protected from harm, and to facilitate constructive program involvement.

*Flexibility* used to reward or sanction based on levels of restrictiveness for those youth whose status or program should be changed to test his behavior, i.e. allowing less restricted movement within the security perimeter. How is the GHS Honors Program administered and does it meet this factor?

*Milieu* or the degree of restrictiveness inherent in the structure and elements of the program. For example, group empowerment could be established to maintain order/program compliance. This is controlled through staff training and staff leadership.

Well trained staff who are supportive of the behavior management system are critical to its success.

#### Disciplinary Procedures

JRA must follow certain procedures when placing a juvenile in lock-up or when denying sentence reductions for misconduct.

Finding - Green Hill School has written a due process policy that includes resident involvement to ensure that release dates are set in accordance with DSHS and JRA policies and two policies addressing Intensive Management Unit-related due process for residents. These new policies go beyond those policies (Exhibits 3 and 4) incorporated in the Stipulation and Judgment and agreed upon by the parties as providing constitutionally adequate due process to youth transferred to lock-up or denied a sentence reduction for misconduct. During an exit meeting with this Monitor on February 7, 1996, State Defendants and Plaintiffs' attorneys agreed that they will meet to resolve some disputed sections of these new policies.

Recommendation - By April 1, 1996, State Defendants and Plaintiffs' attorneys should meet and resolve any disagreements regarding due process policies pertaining to transfer of a juvenile to lock-up or denial of a sentence reduction.

### **EDUCATION, HEALTH AND REHABILITATIVE SERVICES**

#### Education

State Defendants must provide youth in lock-up with access to educational services.

Finding - Green Hill School and the Department of Education have designed an educational program for juveniles in Intensive Management Unit that accounts for those who are in transition from their regular school program in the cottage and temporarily placed in lock-up. Documentation has been submitted for those students that were removed from single class periods for minor infractions of conduct, those removed from class for more than one class period and those students who were suspended from IMU school activities. It is reported that school district due process was used in all of these instances. Because of time limitations, this Monitor was unable to conduct an on-site review of educational services in IMU.

Recommendation - None. This Monitor will review IMU educational services during the next monitoring visit.

#### Health and Rehabilitation Services

The State Defendants shall permit only qualified medical personnel to administer medications to youth, as required by law.

Finding - Because of time limitations this Monitor was unable to conduct a review of medical policies and procedures regarding the administration of medications. The use of psychotropic medications was raised after this Monitor's interview of two IMU residents who were medicated and a written document submitted by the psychiatrist in one of the resident's treatment file stating that he would be pleased to prescribe medication for the resident. A report prepared for this Monitor by the Health Center Supervisor, Dean Demulling, states that 23 residents were on psychotropic medications on 2/2/96 and that the average for 1995 for residents on psychotropic medications was 31. Since medical files were not reviewed, it is unknown whether there is a protocol for the use of psychotropic medication or if juveniles receiving these medications are being seen by nursing personnel and physicians to reassess their mental status and medication side effects.

Recommendation - A review of medical policies and procedures regarding the administration of medications will be conducted by this Monitor during the next site visit. It is requested that Green Hill School provide the monitor with any existing protocols for the use of psychotropic medication and information on any training program which would complement such protocols.

#### **TRANSLATION SERVICES**

State Defendants must provide translation services.

Finding - Green Hill School has translated the Resident Handbook and several documents used in the treatment of residents, employs four bilingual staff who can translate for Spanish speaking youth, and have purchased software programs for translation purposes.

A particular problem was observed with R.G. who was in placement in the Intensive Management Unit when interviewed. R.G., although bilingual, was born in Mexico and expresses himself better in Spanish. He was medicated apparently because of mental health problems and lack of self control, however, there is no mental health professional available to treat him who speaks Spanish nor who understands R.G.'s bicultural situation.

Recommendation - None at this time. The complexities of professional mental health treatment for limited-English speaking youth in a correctional setting require further discussion with both parties and will be addressed further in the last section of this report.

## **GRIEVANCE PROCEDURES**

The State Defendants agree to abide by JRA Bulletin No. 13, relating to Youth Complaints.

Finding - Because of time limitations this Monitor was unable to conduct a test of how JRA Bulletin No. 13 was being implemented. A packet of Youth Complaint - Appeal Request forms completed by residents was shown to the Monitor indicating that a process was being used.

Recommendation - This Monitor will conduct a test of how JRA Bulletin No. 13 is being implemented during the next monitoring visit.

## **ADDITIONAL OBSERVATIONS AND COMMENTS**

The Intensive Management Unit is described by GHS as "A maximum custody unit providing safe housing or dealing with residents presenting a threat of physical harm to self, others, property, or escape". Policies and procedures for the transfer and management of youth requiring housing in the IMU have been developed and are undergoing further negotiation. This Monitor observed during a visit to IMU that juveniles in placement appear to be in need of mental health care and appear different than what would be expected in a maximum custody unit used operationally to segregate acting out juveniles. This observation was substantiated when discussing this issue with an IMU supervisor and administrative staff. This is further supported when the case of R.G. (mentioned above) is considered.

It seems that the program offered does not fit the needs of many of the juveniles placed in IMU. Many in this population are in need of mental health care and according to staff, mental health agencies are unwilling to treat them. This is placing unrealistic demands on GHS staff given that programming for juveniles with mental health problems in segregation is impossible without the necessary resources. For example, segregation is a behavioral control measure (thus subject to administrative responsibility) which may pose medical danger (thus subject to medical responsibility). This danger increases as

segregation is prolonged because IMU is being used to deal with youth having disturbances in mental status that seem to go untreated except with medications.

The appropriate authorities from the Department of Social & Health Services and the Director of Green Hill School should collaborate on and authorize the institution's Intensive Management Unit program for mentally ill juveniles.

**Prepared & Submitted by:**  
**Orlando L. Martinez**  
**March 1, 1996**