

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIRK HUGHES, et al.,

Plaintiffs,

JOINT SUPPLEMENTAL RESPONSE

vs.

97-CV-6431(CJS)

GLENN GOORD, et al.,

Defendants.

The parties, by their attorneys, hereby file their Joint Supplemental Response to Plaintiffs' Report of Comments dated December 14, 1999, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The parties have reached agreement as to the interpretation of certain provisions of the Stipulation as set forth below. As a result of this agreement, both parties recommend approval of the Stipulation.

1. Hiring of half-time Native American chaplain

Plaintiff's counsel could not recommend adoption of the Stipulation in the Report of December 14, 1999, because, to their knowledge, defendants had failed to exercise their best efforts to hire a half-time Native American chaplain. When plaintiffs' counsel received defendants' Response on January 18, 2000, counsel learned that defendants had hired a half-time chaplain. Defendants' counsel have advised plaintiffs' counsel that Mr. Porter is working at least half time, based in Albany and traveling to facilities. Plaintiffs' counsel are therefore hopeful that the many problems discussed in the Report will be brought to Mr. Porter's attention for resolution. Because this concern has been resolved, plaintiffs' counsel no longer object to the adoption of the Stipulation

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on the grounds that defendants had not complied with this provision.

2. Observation of Native American Spirituality by non Native American Inmates

The parties acknowledge that the accommodations provided to Native American inmates contained in this Stipulation have security, safety and operations ramifications that DOCS believes can be adequately managed based upon the limited number of inmates who are descendants of the original inhabitants of the American continents. The plaintiffs acknowledge that defendants maintain that there are legitimate penological reasons why the terms of this Stipulation are extended only to Native Americans as defined in Section I(A) of the Stipulation. Consistent with its security concerns, DOCS will attempt to address its constitutional obligations to inmates not covered by this Stipulation if the need arises.

3. Burning of Indian tobacco after facilities become smoke-free

The parties acknowledge that Indian tobacco will be subject to the same regulations as any tobacco product.

4. Invited guests to ceremonies

The parties acknowledge that Native American guests may be invited to attend ceremonies as "family members" in accordance with Directive 4022, except that they need not be on an inmate's approved visiting list.

The parties further acknowledge that non Native Americans may be proposed to be invited guests to ceremonies; nothing in the Stipulation limits the discretion of the facility Superintendent afforded under Directive 4022 to grant or deny a request to invite such a guest.

5. Other sacred items

The parties acknowledge that Section IV(G)(7) allows Native American inmates to have in their personal possession religious artifacts or symbols, in addition to those specifically listed, if approved by the Native American or facility chaplain and if a permit is issued for that artifact or symbol in accordance with Sections IV(C) and IV(D) of the Stipulation.


6. Correction of Errors


The parties agree to change Section IV(G)(6)(b) of the Stipulation to delete sweet grass because sweet grass is not smoked and to change Section IV(G)(5) to delete tobacco because tobacco is not smudged.

Rochester, New York
February 16, 2000

Respectfully submitted,

For the Plaintiffs:


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