

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND ADVOCACY)	
SERVICES COMMISSION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:08-cv-01317 TWP-MJD
)	
COMMISSIONER, INDIANA DEPARTMENT)	
OF CORRECTION,)	
)	
Defendant.)	

Second Joint Status Report Following Effective Date of Private Settlement Agreement

The parties, by their counsel, as agreed to in paragraph 61(g) of their Private Settlement Agreement (“PSA”), file their status report.

1. Counsel and representatives of the Indiana Department of Correction (DOC) and Wexford Health Services, the new medical provider for the DOC, met on June 14, 2017, to discuss the status of the PSA.
2. Although Wexford is the new medical provider it has kept the same mental health professionals in place in the institutions. Additionally, Wexford has approved the hiring of 23 addiction-recovery specialists who will be used throughout the DOC.
3. Consistent with the PSA the DOC has instituted and continues to follow the policy and practice that prisoners identified as seriously mentally ill, as defined by the PSA, are not housed in restrictive housing for more than 30 consecutive days unless: 1) as allowed by paragraph 32 of the PSA, the DOC concludes that there are present “exceptional circumstances” where removing the prisoner from restrictive housing would pose an unacceptable risk to safety or security, or 2) as noted by paragraph 33 of the PSA, the prisoner refuses to leave restrictive housing and the

DOC determines that it would cause more harm than benefit to the prisoner to force his or her removal.

4. The DOC produced a document showing that there are 18 prisoners who are seriously mentally ill who remain in restrictive housing past the 30-day limit because removing them from restrictive housing would present an unacceptable risk to safety and security. The DOC indicated that these prisoners are periodically reevaluated to determine if they may safely be moved to a mental health unit. Plaintiffs' counsel has requested further documentation concerning these prisoners. Plaintiffs' counsel has requested the names of any seriously mentally ill prisoners who have refused to leave restrictive housing and who have been allowed to remain.

5. Paragraph 39 of the PSA requires the DOC to notify Kenneth Falk of prisoners who have been previously classified as seriously mentally ill and who are reclassified to not being seriously mentally ill and who are then placed in restrictive housing within 6 months of the reclassification and prisoners who while in restrictive housing are reclassified from seriously mentally ill to being not seriously mentally ill. These names have not been provided and plaintiffs' counsel has formally requested them.

6. Numerous prisoners have complained to plaintiffs' counsel concerning the limitation or banning of televisions in the mental health units. The DOC believes this is necessary so that prisoners do not remain in their cells and fail to attend programming and other activities and does not plan to change current policy.

7. Prisoners have claimed that the 10 hours of therapeutic programming requirement is not being met at the Treatment Unit at Pendleton Correctional Facility. The DOC indicates that this is being met even for prisoners who commit a disciplinary infraction and are moved to a separate housing unit. Here they are able to attend therapy, even if they are cuffed.

8. A number of prisoners raised concerns because they were disciplined and lost good-time credit while they were in segregation. The DOC noted that under the terms of the PSA (§ 53) a prisoner may not be disciplined unless, and until, the appropriate mental health professionals are contacted so a determination can be made if the incident causing the discipline was a product of the prisoner's mental illness. The DOC indicates that this course of action is always followed when it is alleged that a seriously mentally ill prisoner in a mental health placement has committed an offense. Even if additional restrictive housing time is assigned as punishment it will generally be suspended when the prisoner completes the mental health programming.

9. Although the goal for most prisoners at the New Castle Psychiatric Unit is to stabilize them so they can safely be moved to another institution, there are approximately 28 persons who the DOC believes cannot be safely released either because of the severity of their illness or because of other limitations. These persons will not be able to make it through the levels at the unit and will remain there indefinitely.

10. A number of prisoners have claimed to plaintiffs' counsel concerning verbal abuse by correctional staff. No specific incidents were discussed. The DOC reiterated that the regular staff on the mental health units volunteer to serve there and are specially trained, although at times, due to staffing shortages, the mental health units may be staffed by officers who are not regularly on the units. Plaintiffs' counsel will inform defendant's counsel of any future claims.

11. Discussion was had about mental health issues and treatment in the new SNAP units that are now in most of the larger male institutions. These are designed as units for vulnerable prisoners, which may include prisoners with mental illness. They are not mental health or restrictive housing units. These units generally have an open setting and are geared towards keeping prisoners out of restrictive housing. The Indiana Women's Prison has the GRACE Unit,

which is also not specifically a mental health or restrictive housing unit, but is designed to be a behavior management unit.

12. The CCU at Wabash Valley Correctional Facility is a restrictive housing unit. Plaintiffs' counsel have received inquiries from prisoners who are housed there who are seriously mentally ill and who believe they should not be there. However, the DOC indicated that there are no seriously mentally ill prisoners there, although there are prisoners who have mental health diagnoses that fall outside of the definition of serious mental illness. There is group therapy available in the unit.

13. Counsel for the plaintiffs raised the possibility of the parties agreeing to jointly selecting an expert or experts to review the program instituted by the DOC, a possibility contemplated by the PSA (§ 65). This will be discussed further.

14. Plaintiffs' counsel, as well as the Court, continue to receive correspondence from prisoners complaining of numerous matters relating specifically to the PSA and more generally to the treatment of mentally ill prisoners within the DOC. When appropriate, plaintiffs' counsel will contact attorneys for the DOC to attempt to resolve issues that arise and the parties continue to communicate often.

15. Upon request the DOC has continued to allow plaintiffs' counsel to review medical records and has responded to inquiries from counsel when inquiries are prompted by the records.

16. The parties believe that both sides are continuing to work to ensure that the terms of the PSA are met.

WHEREFORE, the parties file their Joint Status report.

For the plaintiffs:

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49
Gavin M. Rose
No. 26565-53
Jan P. Mensz
No. 33798-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059
fax: 317/635-4105
kfalk@aclu-in.org
grose@aclu-in.org
jmensz@aclu-in.org

s/ Melissa L. Keyes (w/ permission)

Melissa L. Keyes
No. 30152-49
Thomas E. Crishon
No. 28513-49
Indiana Disability Rights
4701 N. Keystone Ave. - Suite 222
Indianapolis, IN 46205
317/722-5555
Fax: 317/722-5564
mkeyes@indianadisabilityrights.gov
tcrishon@indianadisabilityrights.gov

For the defendant:

s/ David A. Arthur (w/ permission)

David. A. Arthur
No. 2461-48
Deputy Attorney General
IGCS-5th Floor
302 W. Washington St.
Indianapolis, IN 46204
317/232-6286
David.Arthur@atg.in.gov

