

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

DEC 07 1998
RICHARD T. MARTIN
CLERK

BRIAN B., et al.,

Plaintiffs,

v.

RICHARD STALDER, et al.,

Defendants.

CIVIL ACTION No. 98-886-B-M1

U.S. DISTRICT JUDGE FRANK
J. POLOZOLA

MAGISTRATE JUDGE STEPHEN
C. RIEDLINGER

97-665

98-947

PLAINTIFFS' CONTENTIONS

Plaintiffs, through undersigned Counsel, pursuant to the Court's Order entered November 20, 1998, provide the Court and Defendants with a list of their contentions, including Plaintiffs' contentions regarding liability and the scope of appropriate relief. In addition to the contentions set forth below, Plaintiffs hereby adopt the contentions of the United States, see United State of America v. The State of Louisiana, et al., Civil Action No. 98-947-B-1 and Plaintiffs in Williams, et al. v. McKeithen, et al., Civil Action No. 71-98-B, In Re: Juvenile Facilities, Civil Action No. 97-0001-B-1, and In Re: Tallulah Correctional Center for Youth, Civil Action No. 97-0665-B1.

INTRODUCTION

Plaintiffs generally contend that Defendants' conditions, policies, and practices at TCCY constitute punishment and substantial departures from accepted professional judgment, standards, and policies. They seek declaratory and injunctive relief against Defendants on the grounds that the conditions, policies, and practices to which they are subjected at TCCY deprive Plaintiffs of the rights secured to them by the First, Fourth,



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DATE: 12/07/98

DEPUTY CLERK: hJ

Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, as enforced by 42 U.S.C. § 1983; the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401 *et seq* and regulations promulgated thereunder; Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12133 and regulations promulgated thereunder; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 and regulations promulgated thereunder ("Section 504"); and various provisions of the Louisiana Constitution and Louisiana law.

Plaintiffs' contentions, and the appropriate scope of relief they seek, are set forth in four (4) general areas: Excessive Force and Unreasonable Bodily Restraints, Denial of Basic Needs and Services, Inadequate Programming, and Denial of Access to Courts and Family. In addition, Plaintiffs challenge Defendant Richard Stalder and the Louisiana Department of Public Safety and Corrections' administrative remedy procedure, as applied to Plaintiffs and as applied in this case. All of Plaintiffs' contentions are grounded in the fact that, under Louisiana law, they are not convicted of a crime and hence are protected by, *inter alia*, the Fourteenth Amendment to the United States Constitution.

Plaintiffs' specific contentions are as follows:

A. Excessive Force and Unreasonable Bodily Restraints

Defendants Liable: Plaintiffs contend the following Defendants are liable for the violations set forth in section VI of the Amended Complaint ("Excessive Force and Unreasonable Bodily Restraint"): Richard Stalder, Richard Thompson, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Contentions: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, staff at TCCY routinely use excessive force by hitting, slapping, punching, kicking, shoving, choking, and acting out in other violent ways toward Plaintiffs. This includes both the use of excessive force maliciously and sadistically to cause physical and emotional harm to Plaintiffs and the use excessive force to stop or break up fights between Plaintiffs. TCCY staff also use excessive force in reaction to Plaintiffs who disobey verbal commands and Plaintiffs who act out verbally toward TCCY staff.

Plaintiffs contend that staff at TCCY challenge Plaintiffs to fight staff, encourage Plaintiffs to fight amongst themselves, and use excessive force to break up a fight, and then offer not to write a disciplinary ticket for fighting in return for Plaintiffs not reporting the illegal behavior. Staff at TCCY do not adequately investigate allegations of excessive use of force by staff on Plaintiffs, or violence among Plaintiffs. TCCY staff who investigate allegations of excessive use of force lack sufficient experience and knowledge of appropriate correctional practices for youth to conduct thorough and complete investigations; routinely fail to follow-up on numerous allegations of abuse and situations which are inherently suggestive of abuse, and routinely fail to properly report and discipline staff for abuse of Plaintiffs, coercion of witnesses, and filing of false reports in connection with such abuse. Finally, these Defendants fail to provide an adequate monitoring system to ensure supervision and accountability of staff with respect to excessive use of force.¹

¹ While there are video cameras at TCCY, they are set up to monitor only in specific areas. Staff are familiar with the areas not monitored by cameras, and consequently many abuses occur out of sight of the security cameras.

Plaintiffs contend that Defendants fail to adequately protect Plaintiffs who report staff abuse. Staff who are the subject of investigations for abuse are both informed that they are being investigated and are not removed from contact with Plaintiffs, including Plaintiffs who filed reports of abuse. Staff at TCCY attempt to intimidate Plaintiffs from reporting abuse, and such intimidation is often successful. Some Plaintiffs refuse to even write out statements indicating abuse they have witnessed out of fear of retaliation from staff.

Plaintiffs contend that, with Defendants' knowledge and pursuant to official policy and custom, staff at TCCY regularly use mace or pepper spray as threats and punishments for Plaintiffs. Prior to the Interim Agreement², staff shook cans of mace or pepper spray in a menacing manner, shouting out orders and threatening to spray Plaintiffs to deter behavior, to expedite the movement of Plaintiffs into or out of their cells, to stop youth from banging on their cell doors, and for minor misbehavior such as cutting a corner as Plaintiffs walk to the mess hall. Staff use of mace and pepper spray on Plaintiffs is excessive, punitive, painful, malicious, and sadistic.

Plaintiffs contend that staff at TCCY use handcuffs and shackles on Plaintiffs when such mechanical restraints are excessive, unreasonable, and unnecessary to protect Plaintiffs from injury to themselves or to prevent injury to others. Staff routinely use mechanical restraints in such a way as to cause discomfort and physical injury to Plaintiffs by intentionally or recklessly placing handcuffs on too tight, causing painful bruising, cuts, scratches, and other physical harm to Plaintiffs. Defendants' use of mechanical restraints constitutes unreasonable bodily restraints on Plaintiffs.

² Although the Interim Agreement restricts the use of chemical restraints, Plaintiffs have no assurance that Defendants will not revert to the abuse of such restraints.

Plaintiffs contend that staff at TCCY regularly place Plaintiffs in isolation for arbitrary reasons and for grossly excessive periods, and constitute unreasonable bodily restraints on Plaintiffs. Prior to the Interim Agreement, staff regularly placed Plaintiffs in isolation for 22-23 hours per day for weeks, and sometimes months, at a time. The isolation cells are oppressively small and stark. Plaintiffs must sleep on thin mattresses over metal slabs. The noise levels are very high due to constant echoing throughout the cellblock. Ventilation is poor during both summer and winter months. Staff at TCCY regularly place Plaintiffs in isolation solely as punishment, for the convenience of staff, or in some instances, as a substitute for therapeutic programming. There is no procedure by which qualified professionals determine the need for isolation or the amount of time necessary for isolation. Staff fail to use isolation only for instances where Plaintiffs pose an immediate threat to the health or safety of themselves or others, fail to release Plaintiffs from isolation when they have demonstrated that they are in control of themselves, fail to adequately monitor Plaintiffs in isolation and fail to provide adequate education, counseling, recreation, or other rehabilitative treatment to Plaintiffs in isolation.

Plaintiffs contend that youth held in isolation experience extreme loneliness, anxiety, rage, and depression, among other potentially debilitating emotional and psychological problems. Defendants fail to ensure that prolonged use of isolation does not have adverse psychological consequences on the children. As a result of their continuing policies and practices of prolonged isolation, Defendants subject Plaintiffs to endure seemingly endless hours of mind-numbing solitude.

Plaintiffs contend that Defendants subject Plaintiffs to an arbitrary and punitive disciplinary system. Staff at TCCY arbitrarily issue disciplinary "tickets" for minor or nonexistent behavior incidents. Staff routinely give Plaintiffs tickets for "aggravated disobedience" or "defiance" for conduct such as laughing, horse-playing with other children, and simply asking questions. Defendants' arbitrary practice of over-ticketing leads to excessive punishment for Plaintiffs, including increased isolation. The practice is especially detrimental for Plaintiffs with mental illnesses or learning disabilities. Defendants' failure to adequately train and supervise staff to respond in appropriate ways to Plaintiffs with mental illnesses and mental retardation results in excessive ticketing for such Plaintiffs. Defendants' practice of over-ticketing also significantly limits opportunities for Plaintiffs for early release. This is especially true for Plaintiffs in the Boot Camp program.

Plaintiffs contend that youth with mental illnesses, mental retardation or other disabilities are less capable than non-disabled Plaintiffs of responding to Defendants' disciplinary practices and policies in ways acceptable to Defendants. Defendants subject such disabled Plaintiffs to particular injury by repeatedly sending them to isolation and keeping them confined in the more restrictive Phase II. Defendants fail to exclude Plaintiffs with mental illness and other disorders from the prolonged use of isolation, even when such Plaintiffs are unable to comply with Defendants' demands. Excessive isolation and the arbitrary and punitive use of chemical and mechanical restraints are particularly harmful for Plaintiffs with mental illnesses, and cause the unnecessary and wanton infliction of pain on these Plaintiffs.

Plaintiffs contend that staff at TCCY place "hits" on Plaintiffs whom staff want to punish without performing the actual physical assault themselves. Staff "hire" youth by providing them with food, giving them contraband such as cigarettes and marijuana, granting them extra privileges, and by creating other incentives for children to beat up or harass other Plaintiffs. Staff constantly yell, curse, and berate Plaintiffs and rarely call Plaintiffs by their name. Staff yell out racial epithets in conjunction with curse words when referring to Plaintiffs. Staff maliciously and sadistically abuse their authority over Plaintiffs by forcing them to perform demeaning and cruel activities, such as requiring Plaintiffs to place their foreheads on a desk and remain in that position for hours at a time. Another common abuse of authority is forcing youth to stand *en masse* outside in the hot sun.

Plaintiffs contend that staff sexually abuse youth in their care by, *inter alia*, engaging in sexual relations with youth. Defendants repeatedly subject Plaintiffs to strip searches with little or no justification. Staff at TCCY perform *en masse* searches of cellblocks and arbitrarily confiscate Plaintiffs property, including letters from home and items purchased on commissary.

Plaintiffs contend that Defendants fail to provide adequate staffing levels in TCCY's living areas, thereby endangering the safety and security of Plaintiffs. Only two guards monitor each dormitory of forty youth, which is inadequate to protect Plaintiffs from risk of harm. Guards regularly fall asleep on duty and fail to provide supervision and protection to Plaintiffs. Defendants fail to adequately classify Plaintiffs according to legitimate security and safety needs. Consequently, Defendants do not identify and separate aggressive youth from potential victims.

Plaintiffs contend that Defendants fail to protect Plaintiffs from violence caused by other youth. Guards allow, and encourage, youth to fight one another. Guards engage in a practice referred to as opening "the cut", whereby youth are permitted to physically fight one another. As a result, Plaintiffs suffer considerable injuries, such as swollen jaws, swollen noses, sprained wrists, swollen hands, bruised eyes, lacerations, and hematomas that require medical treatment. Defendants fail to protect Plaintiffs from being "snuck" (attacked by surprise) by other youth. As a result, Plaintiffs suffer considerable injuries.

Plaintiffs contend that Defendants endanger Plaintiffs by inadequately screening and paying the staff they hire; inadequately training staff for their custody and care duties and instead focusing on the use of force, restraints, and pressure points as methods of controlling Plaintiffs; and by inadequately supervising staff at TCCY. Defendants fail to adequately train and supervise staff at TCCY and Plaintiffs are directly injured as a consequence.

Plaintiffs contend that all of the contentions set forth above and Defendants' policies, practices, acts, and omissions complained of herein, constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, the conditions of confinement at TCCY and Defendants' policies, practices, acts, and omissions complained of herein, are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (A) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to provide all of the following:

- (1) adequate and effective policies and practices that ensure that Plaintiffs will not be subjected to use of excessive force by staff;
- (2) adequate and effective means for Plaintiffs to report incidents of use of excessive force by staff, without fear of retaliation by TCCY staff or anyone else;
- (3) adequate and effective investigations of reports of use of excessive force by staff, including investigations by adequately experienced, knowledgeable, and trained individuals; follow-up on all reports of use of excessive force by staff; and discipline and other sanctions for staff who use excessive force on Plaintiffs, coerce witnesses, or file false reports in connection with allegations of abuse;
- (4) an adequate and effective monitoring system to ensure supervision and accountability of staff with respect to the use of excessive force, including an adequate and effective video monitoring system;
- (5) adequate and effective measures to protect Plaintiffs who report staff abuse;

(6) termination of the use of mace, pepper spray, and any other chemical restraints at TCCY;

(7) adequate and effective policies and practices to ensure that staff at TCCY use handcuffs, shackles, and other mechanical restraints only in extraordinary circumstances, when individual Plaintiffs are completely out of control and a physical danger to themselves, other Plaintiffs, or staff, and staff have exhausted all other means to bring Plaintiffs back under control; that staff use such mechanical restraints only so long as the individual Plaintiffs are out of control, and staff remove the restraints as soon as the individual Plaintiffs are back in control or are returned to their rooms; that staff may use mechanical restraints for security purposes in moving individual Plaintiffs from one area of TCCY to another or for moving Plaintiffs to locations outside of TCCY such as hospitals; and that all incidents in which staff use mechanical restraints are documented by the staff directly involved and reviewed by the Superintendent;

(8) adequate and effective policies and practices to ensure that staff at TCCY use isolation to control behavior only when individual Plaintiffs are out of control and a physical danger to themselves, other Plaintiffs, or staff, and staff have exhausted all other means to bring Plaintiffs back under control; that staff use isolation only so long as the individual Plaintiffs are out of control, and staff release Plaintiffs from isolation as soon as the individual Plaintiffs are back in control; that any Plaintiff held in room isolation for more than two hours will be interviewed by medical or mental health staff; that staff may use room confinement as a sanction as part of an adequate disciplinary system that includes full due process protections for Plaintiffs; and that all incidents in which staff

use isolation are documented by the staff directly involved and reviewed by the Superintendent;

(9) an adequate and effective disciplinary system that includes full due process protections for Plaintiffs prior to receiving sanctions for conduct;

(10) adequate and effective policies and practices to ensure that staff do not engage in abusive and demeaning practices toward Plaintiffs, including yelling, cursing, using racial epithets, requiring Plaintiffs to perform abusive and demeaning physical acts;

(11) adequate and effective policies and practices to ensure that staff do not engage in sexual activities with Plaintiffs or otherwise sexually abuse Plaintiffs;

(12) adequate and effective policies and practices to ensure that staff conduct strip searches on Plaintiffs only when justified by legitimate security concerns;

(13) adequate staffing levels in the living areas at TCCY sufficient to protect Plaintiffs from risk of harm;

(14) a system to adequately classify Plaintiffs according to legitimate security and safety needs;

(15) adequate pre-hiring screening, monetary compensation, pre-service and in-service training, and supervision of staff at TCCY.

B. Denial of Basic Needs and Services

Plaintiffs contend that Defendants deny Plaintiffs adequate mental health care, medical care and food. In addition, Plaintiffs contend that Defendants deny Plaintiffs basic privacy, subject Plaintiffs to excessive heat in the summer months and force Plaintiffs to live in unsanitary conditions. Plaintiffs discuss each in turn.

(i) Inadequate mental health care:

Defendants Liable: Plaintiffs contend the following Defendants are liable for the denial of adequate mental health care: Richard Stalder, Richard Thompson, David Hood, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Contentions: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants are deliberately indifferent to the serious mental health needs of youth confined at TCCY. Plaintiffs contend that Defendants fail to conduct or provide adequate psychological assessments of Plaintiffs upon admission to TCCY. Defendants deny access to medical or mental health practitioners qualified to address the mental health problems of Plaintiffs by failing to employ a sufficient number of qualified psychiatrists, psychologists, and social workers to counsel and treat Plaintiffs. Although Defendants contract with a private psychiatrist to monitor medications, Defendants fail to provide any individualized psychiatric treatment, counseling, or psychotherapy to Plaintiffs in need of such services. Defendants also fail to provide adequate or effective group counseling by trained staff.

Plaintiffs contend that Defendants fail to design and implement an adequate treatment plan for Plaintiffs with mental illness. Defendants' failure to develop coordinated clinical care and failure to provide Plaintiffs with comprehensive and appropriate rehabilitative treatment causes Plaintiffs to suffer physical and psychological harm. Defendants fail to provide adequate mental health consultation or treatment for Plaintiffs who are suicidal or homicidal, or Plaintiffs held in isolation. Defendants fail to

take preventative steps to ensure TCCY's physical structures (such as rails in dorms) are sufficiently safe, to prevent suicide attempts by Plaintiffs with mental illness.

Plaintiffs contend that Defendants fail to adequately train and supervise TCCY staff to care for youth with mental health needs. Defendants' failure to provide necessary training and supervision to adequately handle Plaintiffs who are mentally ill or mentally retarded impacts Plaintiffs' ability to participate fully in treatment and behavior modification programs. As a result of these failures, Plaintiffs do not receive necessary mental health treatment and Plaintiffs who are mentally ill, mentally retarded, developmentally disabled, or otherwise mentally disabled, are incarcerated at TCCY with inadequate mental health care.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (B)(I) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to provide adequate mental health services for Plaintiffs, including adequate assessments upon admission, sufficient numbers of qualified mental health professionals at the facility, treatment plans for youth with mental health needs, individual counseling by mental health professionals, group counseling by adequately trained staff, adequate consultation for Plaintiffs who are suicidal or

homicidal or who are held for extended periods in isolation, adequate training for staff to care for Plaintiffs with mental health needs, and preventive measures to remove dangers to Plaintiffs with mental health needs from TCCY's physical structures.

(ii) Inadequate medical care:

Defendants Liable: Plaintiffs contend the following Defendants are liable for the denial of adequate medical care:: Richard Stalder, Richard Thompson, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Contentions: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants are deliberately indifferent to the serious medical needs of youth confined at TCCY. Defendants fail to provide youth with adequate medical care and emergency treatment, and demonstrate deliberate indifference to the serious medical and dental needs of Plaintiffs. Although TCCY operates infirmaries in both Phase I and Phase II, the infirmaries are supervised by a Registered Nurse. A medical doctor is on site only nine (9) hours a week. The doctor does not meet regularly with other health care providers in order to provide consultation on treatment, use of medications, or follow-up care.

Plaintiffs contend that TCCY staff do not distribute medications as prescribed. Staff dispense medications three times a day; however, they do not adequately monitor Plaintiffs to ensure that they receive the proper dosage and that Plaintiffs follow their treatment regimen. Defendants do not provide adequate training to TCCY staff to recognize or to respond to health problems, including situations requiring first aid, mental illness, substance abuse, and suicidal tendencies.

Plaintiffs contend that Defendants' disciplinary customs and policies prevent Plaintiffs from receiving adequate preventative medical care by discouraging Plaintiffs from reporting illnesses. Plaintiffs with painful headaches, nausea, stomach aches, tooth aches, and other ailments must complete a medical care request. However, health care providers examining Plaintiffs issue tickets for "malingering" if they are unable to detect a problem. Consequently, Plaintiffs are reluctant to seek treatment, and often do not seek medical assistance until a condition has worsened, to their physical and psychological detriment.

Plaintiffs contend that Defendants fail to provide Plaintiffs with adequate vision and hearing treatment. Defendants fail to provide regular examinations. When Plaintiffs do receive examinations, TCCY staff fail to follow recommendations for follow-up treatment. Finally, Plaintiffs contend that Defendants fail to provide Plaintiffs with any preventive dental treatment. Defendants fail to provide annual exams, and respond to Plaintiffs complaints of toothaches and other dental problems with only a dose of Tylenol. The only formal dental care provided, regardless of need and standard practice within the dental profession, is extraction.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (B)(ii) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the

United States Constitution. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to provide adequate medical services for Plaintiffs, including sufficient numbers of qualified medical professionals and other staff at the facility to provide timely medical treatment to Plaintiffs with medical needs, adequate monitoring of Plaintiffs who take medications, adequate training for TCCY staff to recognize and respond to health problems of Plaintiffs, elimination of penalties such as "tickets" for Plaintiffs who report illnesses or injuries, adequate vision and hearing examinations and treatment, adequate dental examinations and appropriate treatment.

(iii) Inadequate food and unsanitary food preparation:

Defendants Liable: Plaintiffs contend the following Defendants are liable for the denial of adequate food: Richard Stalder, Richard Thompson, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Contentions: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants fail to ensure that Plaintiffs receive an adequate diet with sufficient nutritional value to preserve health. The lack of nutritional meals is particularly injurious for the physical and mental development of adolescents such as Plaintiffs. In addition, Plaintiffs contend that Defendants fail to assure that food preparation and service are conducted in a sanitary manner. Plaintiffs lose weight during their custody at TCCY, in part because they receive grossly deficient amounts of nutritional food in their meals.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (B)(iii) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to provide a nutritionally adequate diet for Plaintiffs, including sufficient quantities of food for adolescent males and ensure that food is prepared and served under sanitary conditions and practices.

(iv) Lack of basic privacy, excessive heat, and lack of basic sanitation:

Defendants Liable: Plaintiffs contend the following Defendants are liable for the denial of basic privacy, excessive heat and lack of basic sanitation: Richard Stalder, Richard Thompson, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Contentions: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants fail to provide basic privacy to Plaintiffs housed in Phase I, subject Plaintiffs to excessive heat and fail to provide basic sanitation. Plaintiffs housed in are not provided with privacy during use of bathroom facilities. The dormitory is generally configured as one large room with a set of twenty bunk beds to the right, several tables and seats secured to the floor to the left, and the guard area and

bathroom/showers straight to one side of the back. The set of shower stalls opens directly into the main dormitory. Therefore, Plaintiffs in Phase I must shower, use the toilet facilities, and complete their hygiene in front of others in the dormitory.

Plaintiffs contend that Defendants fail to maintain the temperature in the dormitories for Plaintiffs at a reasonable level. Defendants fail to provide any effective system for cooling in the summer months. During the summer, the heat is stifling. As a result, Plaintiffs experience extreme discomfort. The heat also increases the tension level in the dormitories, contributing to a corresponding increase in the incidents of violence involving Plaintiffs.

Plaintiffs contend that Defendants fail to provide sanitary facilities. Toilets, showers, sinks, and the remainder of the dormitories are not adequately cleaned or disinfected on a regular basis. Defendants fail to adequately control vermin. TCCY is infested with vermin, making the facility unsanitary and endangering Plaintiffs health and well-being. Mosquitoes make it impossible for Plaintiffs to get adequate sleep. Plaintiffs routinely find insects in their food. Plaintiffs contend that Defendants do not provide Plaintiffs with adequate personal hygiene items such as toothbrushes and toothpaste, shampoo, or hair brushes. Defendants fail to provide Plaintiffs with adequate clothing and shoes and fail to provide adequate laundry services for Plaintiffs' clothing. The lack of clean clothes often leads to fighting among Plaintiffs: some steal others' clean clothes, even those that do not fit properly. Those Plaintiffs unwilling to fight generally have the most worn and filthy clothing.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (B)(iv) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to make physical changes in Phase I dormitories to provide Plaintiffs with privacy in showers and when using toilets, provide effective means of controlling temperature in the dormitories and keeping it at a reasonably comfortable level, particularly during the summer months and develop adequate and effective sanitation practices in the facility, including regular cleaning of bathrooms and dormitories, control of vermin, and ensure the availability of basic hygiene supplies, adequate clothing and shoes, and adequate laundry services.

C. Inadequate Programming

Defendants Liable: Plaintiffs contend the following Defendants are liable for the violations set forth in section VIII of the Amended Complaint ("Inadequate Programming"): Richard Stalder, Richard Thompson, David Hood, Cecil Picard, Glenney Lee Boquet, Lester Klotz, Samuel Dixon and the Madison Parish School Board, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. These Defendants are liable for the following:

Factual Allegations: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants do not provide youth with adequate, appropriate, individualized academic and vocational education, adequate special education for disabled students, adequate exercise and recreation, and adequate rehabilitative programming. Youth in regular education are placed in one of four basic categories of instruction: Basic Skills I, Basic Skills II, Pre-GED, or GED. Plaintiffs contend that Defendants fail to provide individualized assessments for Plaintiffs or to properly classify and place Plaintiffs in the education categories.

Plaintiffs contend that Defendants fail to provide appropriate learning environments and require teachers to teach and Plaintiffs to study in overcrowded classrooms. Defendants exceed the state-required student teacher ratio minimum of 15 to 1 and fail to provide sufficiently qualified teachers. Plaintiffs contend that Defendants fail to ensure that the education curriculum at TCCY meets minimum state standards for curriculum development.

Plaintiffs contend that Defendants fail to provide teachers with adequate training and supervision in working with special populations, such as incarcerated youth. Defendants fail to meet state requirements for a minimum number of minutes of instruction per day. Plaintiffs currently are scheduled to receive 240 minutes of instruction per day, but receive far less. In addition, Plaintiffs contend that Defendants fail to ensure adequate instruction for Plaintiffs in isolation; indeed, Defendants provide only 60 minutes of instruction to youth placed on "Stage 1" isolation. Assignments and instruction for Plaintiffs in isolation is haphazard, classes are often less than the minimum requirement, they are often canceled, and worksheets are distributed with no teaching

assistance provided. Finally, Defendants fail to provide Plaintiffs with adequate pre-vocational and vocational training, such as carpentry, welding, electrical wiring, plumbing, computer electronics, or other skilled or useful trades. Some TCCY youth participate in work detail; however, these tasks consist primarily of cleaning the buildings, maintaining the grounds, and washing staff vehicles, and the level of work is not adequate for employment preparation.

Plaintiffs contend that Defendants fail to develop and implement policies and procedures to assure that all educationally disabled Plaintiffs up to twenty-one years of age have access to a free and appropriate public education, including related and transition services, in accordance with the I.D.E.A. and state statutory requirements. Defendants fail to adequately identify, screen, and assess Plaintiffs to determine whether they have special needs and how such special needs can be met. Plaintiffs contend that Defendants fail to develop Individual Educational Programs ("IEPs") for all Plaintiffs with exceptionalities, or provide inadequate IEPs. For Plaintiffs who do have IEPs, Defendants fail to provide the services specified in the IEPs.

Plaintiffs contend that Defendants fail to maintain records of the IEPs and their implementation for each youth in custody receiving special education services so that IEPs can be reviewed and, when necessary, revised. Defendants fail to provide a sufficient number of qualified special education, related services, and transition services personnel at the TCCY school to guarantee that all youth in custody eligible for special education receive a free and appropriate public education and fail to assure parental involvement or to appoint surrogate parents in the development of IEPs.

Plaintiffs contend that Defendants fail to implement any system for notifying Plaintiffs of the availability of, and their potential eligibility for, special education and related services and transition services, as well as procedures by which they can exercise their right to such services and contest any deprivation of such right. Defendants deny Plaintiffs all of the appropriate special education, related services, and transition services for which they are both eligible and in need. Finally, Defendants fail to provide sufficient hours of special education instruction, as determined by a youth's IEP. On information and belief, provision of special education classes is limited to approximately one to two hours per day.

Plaintiffs contend that Defendants provide inadequate exercise and recreation, particularly on the weekends when TCCY staff set arbitrary limits on Plaintiffs' opportunities to participate in outdoor activities. Many Plaintiffs sit or lie idle in their dorms all day. Defendants fail to provide adequate rehabilitative treatment and intervention to Plaintiffs. Despite a high incidence of specific rehabilitative needs among Plaintiffs, Defendants fail to provide individualized counseling services, therapeutic substance abuse treatment (as opposed to a purely educational program on substance abuse), family counseling or intervention to promote the stability of the family, sexual victimization or sexual offender treatment, or transitional services or after-care.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (C) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment,

standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should declare that such conditions violate the IDEA and regulations promulgated thereunder, ADA and regulations promulgated thereunder, Section 504 and regulations promulgated thereunder and various provisions of the Louisiana Constitution and Louisiana law. In addition, this Court should issue preliminary and permanent injunctions forcing Defendants to provide the following:

- (1) adequate educational and vocation programming, including adequate assessments at admission, sufficient numbers of qualified and appropriately trained teachers, full days of instruction, an adequate learning environment, adequate education for Plaintiffs in isolation, and an adequate variety of pre-vocational and vocational training;
- (2) a free and appropriate public education, including related and transition services, for Plaintiffs with educational disabilities, including adequate identification, screening, and assessment at admission; development and full implementation of Individual Education Programs; adequate maintenance of Individual Education Programs and other records; sufficient numbers of qualified and appropriately trained special education, related services, and transition services personnel; effective methods to assure parental involvement or appointment of surrogate parents; and appropriate notification of parents of their rights and the rights of Plaintiffs;
- (3) adequate exercise and recreation, particularly on weekends;

(4) adequate rehabilitative treatment, including therapeutic substance abuse treatment, family counseling or intervention to promote the stability of the family and transition back to communities, sexual victimization and sexual offender treatment, and transitional services or aftercare.

D. Denial of Access to the Courts and to Family

Defendants Liable: Plaintiffs contend the following Defendants are liable for the violations set forth in section IX of the Amended Complaint ("Denial of Access to the Courts and to Family"): Richard Stalder, Richard Thompson, Theodore Lindsay and the City of Tallulah, Trans-American Development Associates, Inc., James R. Brown and Warden Gary Gremillion. In addition, Plaintiffs contend that the Administrative Remedy Procedure, as applied to Plaintiffs, is an unconstitutional restriction on their access to the courts. These Defendants are liable for the following:

Factual Allegations: Plaintiffs contend that, with Defendants' knowledge, and pursuant to official policy or custom, Defendants deny meaningful access to the courts by failing to provide youth with access to a law library or assistance from a person trained in the law. The majority of Plaintiffs have a right to petition the Juvenile Court for an early release. Without meaningful access to the courts, such a right is illusory and Plaintiffs are denied early release.

Plaintiffs contend that Defendants' improperly restrict Plaintiffs' access to the courts in other ways. For example, Defendants do not allow a youth to call an attorney unless the attorney's phone number is on the youth's calling list. However, Defendants unreasonably delay placing attorneys' phone numbers on Plaintiffs' calling lists, thereby depriving access to counsel. In addition, all phone calls are recorded, eviscerating

Plaintiffs' right to confidential communications with counsel. Finally, staff interfere with Plaintiffs' access to the courts by improperly questioning Plaintiffs when Plaintiffs meet with their counsel and making derogatory comments about Plaintiffs' counsel.

The Administrative Remedy Procedure ("ARP") remedies are not effectively available to Plaintiffs. It is too complex for Plaintiffs not represented by counsel, given the low maturity and educational level of members of the Plaintiff Class. Moreover, Defendants do not provide posted notice of the ARP's existence in a manner readily accessible to youth, as required by the ARP. Defendants do not provide any assistance from a "classification officer" or "inmate counsel substitute." Furthermore, Defendants fail to provide notice and opportunities to use administrative procedures by which Plaintiffs can exercise their right to such services and contest their deprivation of such right under the IDEA and corresponding state statutes and regulations.

Plaintiffs contend that administrative remedies are also not effectively available to Plaintiffs because Plaintiffs have a well-founded fear of retaliation by guards at TCCY if they file any administrative action. As previously contended, guards physically and verbally abuse Plaintiffs, and many incidents of abuse go unreported due to a legitimate fear of retaliation. Finally, administrative remedies are also unavailable because the majority of Plaintiffs are under the age of seventeen (17) and do not, under Louisiana law, have the legal capacity to seek redress.

Plaintiffs contend that Defendants unreasonably restrict Plaintiffs' ability to maintain contact with their families. The remote location of TCCY places unreasonable and unnecessary burdens on Plaintiffs and their families, particularly in terms of the expense of telephone calls (which must be made collect) and the difficulty of visitation.

Defendants make no provisions to assist families to visit Plaintiffs regularly. When Plaintiffs' families are able to visit, Defendants unreasonably limit the number of visitors Plaintiffs may have and the hours during which visits may occur.

Scope of Appropriate Relief:

This Court should declare that the conditions outlined in section (D) constitute punishment and subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution and are a substantial departure from accepted professional judgment, standards, and policies, and thereby subject Plaintiffs to denial of due process of law, in violation of Plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution. In addition, this Court should declare that the conditions regarding access to the courts violates the First, Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Finally, this Court should issue preliminary and permanent injunctions forcing Defendants to provide meaningful confidential access to attorneys or other persons trained in the law and an accessible and meaningful administrative remedy procedure and order Defendants to facilitate of telephone calls to, and visits from, Plaintiff's families.

CONCLUSION

Plaintiffs contend that Defendants' conditions, policies, and practices at TCCY constitute punishment and substantial departures from accepted professional judgment,

standards, and policies. This Court should order appropriate relief.

Date: November 25, 1998.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the foregoing document by first class United States mail in a properly addressed envelope with adequate postage thereon to the following individuals:

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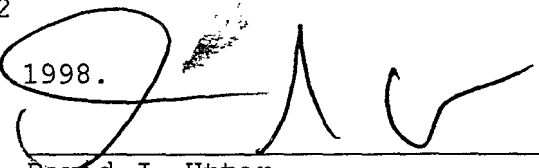
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This 25th day of November, 1998.



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JUPL

U.S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED DEC 07 1998

November 25, 1998
By facsimile and mail

RICHARD T. MARTIN
CLERK

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FRANK J. POLOZOLA
U.S. DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

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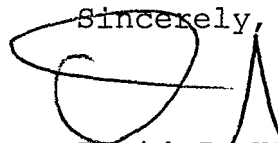
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Re: Brian B., et al. v. Richard Stalder, et al.

Dear Rick and Rick:

Please find enclosed Plaintiffs' Contentions. Please do not hesitate to contact me directly should you have any questions. Thank you and take care.

Sincerely,


David J. Utter

cc: (by mail only)

✓ Chief Judge Frank J. Polozola
Magistrate Judge Stephen C. Riedlinger
Keith B. Nordyke
Judy Preston
Charles Wm. Roberts
John Whitley
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