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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DANNY O., DINO Z., LAURA L.,
and RALPH W., by and through
their parents as next friends;
TONY T., by and through LYLE
SELLARDS as next friend; and
JOSE R., and all others similarly
situated,

Plaintiffs

v.

ROSE BOWMAN, in her capacity as
Director of the Idaho Department
of Health and Welfare; ARCHIE
SERVICE, FRED E. MARINEAU,
MARVIN J. WITTMAN, DONNA L.
PARSONS, JOHN L. VAN ORMAN,
PAMELA J. BOWEN, and PATRICIA
SARRIUGARTE, in their capacities

No. _____

SETTLEMENT AGREEMENT

as members of the Board of)
Trustees of the State Youth)
Services Center; KURT FRIEDENAUER,)
in his capacity as Superintendent)
of the State Youth)
Services Center; JERRY L. EVANS,)
in his capacity as State Superintendent)
of Public Instruction,)
)
Defendants.)

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement is entered into by and on behalf of all parties to this action.

The dispute addressed herein was initiated on January 25, 1983, when plaintiffs' counsel alleged by letter to the Superintendent of the Idaho Youth Services Center that policies and practices concerning the confinement of juveniles in the institution were unlawful. Plaintiffs' counsel subsequently notified the Director of the Idaho Department of Health and Welfare of these allegations by letter of March 15, 1983, and notified the Idaho Attorney General by letter of March 25, 1983.

In response, the Director of the Idaho Department of Health and Welfare appointed a five member Youth Services Center Review Committee on or about April 4, 1983 to investigate plaintiffs' allegations. The Youth Services Center Review Committee retained consultants who visited the institution, reviewed various standards, interviewed various staff and juveniles, reviewed all correspondence between plaintiffs and defendants, and reviewed all written policies and procedures at the institution. The Youth Services Center Review Committee submitted a Committee Report and Recommendations to the Director of the Department of Health and Welfare on August 15, 1983.

On February 28, 1984, plaintiffs' counsel notified defendants of their

intention to file immediately a Complaint in the United States District Court for the District of Idaho to redress the continuation of alledged unlawful practices at the institution. Thereafter, and specifically in consideration for the plaintiffs' promise to postpone filing their Complaint, the parties agreed to resolve this dispute in conformity with the following procedures:

a. Negotiations between the parties would begin immediately to resolve those issues for which plaintiffs' counsel did not deem essential the advice of consultants.

b. Consultants retained by plaintiffs would promptly tour the institution in order to advise plaintiffs concerning medical and psychiatric care, education, correctional administration and programming, and fire, health and safety issues. The parties would negotiate these issues at the conclusion of the tours by plaintiffs' consultants.

c. At the conclusion of these negotiations, a Complaint would be filed by the plaintiffs in the United States District Court for the District of Idaho together with a Settlement Agreement disposing of all issues upon which the parties could reach agreement;

d. The Settlement Agreement would be subject to enforcement through the United States District Court for the District of Idaho and the defendants would provide a monitor who is acceptable to the plaintiffs to monitor compliance with the terms of the Settlement Agreement.

This Settlement Agreement now submitted to the court in settlement of all claims on behalf of the plaintiff class against the defendants is the result of this agreed procedure and is submitted to the court on behalf of all parties to this action as judgment of the court on the merits of the claims presented herein.

Therefore, based upon the Youth Services Center Review Committee Report

and Recommendations; and based upon numerous interviews by plaintiffs' counsel with juveniles confined at the institution; and based upon significant changes in policy effected by the Department of Health and Welfare during the course of these negotiations; and based upon advice and recommendations of plaintiffs' consultants; and based upon the parties' interest in maintaining continued progress in the provision of a safe, humane, caring environment for children through the utilization of the least restrictive alternative setting and individualized care and treatment; and based upon the Complaint filed in this action; and based upon the consensus of the plaintiffs and defendants that the interests of all parties to this action can best be served by entering into this Settlement Agreement:

It is stipulated and agreed by and between the parties as follows:

I. PROCEDURE

A. The parties agree that the court has jurisdiction of this action under 28 U.S.C. Sections 1331 and 1334(3), and that declaratory and injunctive relief are authorized pursuant to 28 U.S.C. Sections 2201 and 2202 and Rule 65, F.R.Civ.Pro.

B. The parties agree that the requirements of Rule 23 (b)(2) F.R.Civ.Pro. regarding class actions have been met and that this action should be certified as a class action pursuant to Rule 23 (b)(2) F.R.Civ.Pro.

II. DEFINITIONS

A. The parties agree to the following definitions of words and terms as used in this Settlement Agreement:

1. Juvenile

Any person adjudicated as being within the purview of the Idaho Youth Rehabilitation Act, Idaho Code, Title 16, Chapter 1801 et seq. and committed to the custody of the Idaho Department of Health and Welfare.

2. Non-Offender

Any person who has not been adjudicated delinquent pursuant to the Youth Rehabilitation Act, Idaho Code, Title 16, Chapter 1801 et seq.

3. Department

The Department of Health and Welfare for the State of Idaho.

4. Director

The Director of the Department of Health and Welfare for the State of Idaho.

5. Board

The Idaho State Board of Health and Welfare.

6. Mechanical Restraints

Devices used to restrain a person's limbs. Hard restraints, such as handcuffs, are mechanical restraints which are constructed of metal; soft restraints are mechanical restraints which are constructed of leather or other pliable material.

F. Institution

The Idaho Youth Services Center.

III. LEAST RESTRICTIVE ALTERNATIVE

A. The parties recognize and acknowledge the legal right of juveniles to receive individualized care and treatment in the least restrictive setting consistent with the treatment needs of the juveniles and the protection of the public.

B. All recommendations and decisions concerning placement of juveniles shall be governed by the principal of the least restrictive alternative. In determining the appropriate placement for juveniles the presumption shall be that a juvenile's best interests are served by remaining in his/her home community with necessary services to be provided there. Placement of a

juvenile in the institution shall be made only after less restrictive alternative placements have been considered and attempted, and it is determined that placement of a juvenile in the institution is necessary.

C. The Department shall not confine a juvenile in the institution who is capable of surviving safely, without serious danger to himself/herself or others, in a less restrictive facility or by himself/herself with the responsible assistance of others, including the Department.

D. The Department shall not confine any non-offender in the institution, except with respect to Idaho Code Section 19-2601(a).

E. The Department shall take all necessary steps to develop and implement community-based programs in order to implement the terms of this agreement, including but not necessarily limited to group homes, family support services, foster care homes, halfway houses, shelter care facilities and day treatment programs.

IV. SAFE AND CARING ENVIRONMENT

A. The primary goal of the residential treatment program at the institution shall be to achieve a safe, humane, and caring environment with access to needed services that will provide for normal growth and development and allow youth to lead lives as close to normal as possible. Consistent with the necessary limitations imposed by an institutional setting, juveniles in the institution shall have access to all services which would be available to them in the community. The Department shall provide the programs and services necessary to implement each juvenile's individual treatment plan.

V. EVALUATION

A. Every juvenile considered for placement at the institution by the Department shall be evaluated by the Department to determine whether placement in the institution is appropriate for the child, necessary to

protect the safety of the public, and consistent with the principle of placement in the least restrictive alternative setting. This evaluation shall include, but shall not be limited to:

1. A standardized medical examination;
2. Laboratory and diagnostic tests to detect pregnancy and communicable diseases, including hepatitis, venereal diseases and tuberculosis;
3. Medical and psychiatric history;
4. Standardized dental examination;
5. Family and social summary;
6. Educational and vocational evaluation;
7. Psychological evaluation;
8. Neurological appraisal and a complete evaluation where medically indicated;
9. Speech and hearing evaluation.

B. Evaluation policies and procedures shall provide for identification of the least restrictive placement, including community-based programs, consistent with the treatment needs of each juvenile which shall be reduced to a written recommendation. Any decision by the Department not to implement the recommended placement shall be based upon substantial evidence that such placement is inappropriate, and shall be fully documented.

C. The evaluation of every child committed to the institution shall be fully documented, and an individual treatment plan shall be developed identifying the treatment needs of each such child and specifying the methods and programs best suited to meet those needs.

D. No child shall be placed in the institution who has not received a written placement recommendation within six weeks of the date of placement.

VI. MEDICAL CARE

A. The institution or the Department shall contract in writing with a

physician liscensed by the state for the delivery of a health care and medical treatment program at the institution. The physician shall have unrestricted responsibility for the program and shall provide instruction and training for the institutional staff sufficient to implement the program. The institution shall provide sufficient space, equipment, supplies, and materials necessary to implement the program.

B. The physician shall prepare written job descriptions for all medical personnel and shall provide standing orders for medical treatment performed by medical personnel other than a physician.

C. The contract shall provide for the physician to visit the institution at least three times each week and to be on call twenty-four hours a day. The contract shall also provide that the physician shall develop standard operating procedures at the institution for the following:

1. Health screening within forty-eight hours of admission of a juvenile to the institution which shall include screening for pregnancy and hepatitis; a review of earlier diagnostic medical evaluations; additional data needed to complete the medical and psychiatric history; and other tests and examinations as appropriate.

2. Non-emergency medical services including a written plan for the provision of appropriate medical services for juveniles who are diabetic, pregnant or who otherwise require modified diets.

3. Emergency medical procedures including training for institutional staff in recognizing and reacting to emergency situations; a plan for the emergency evacuation of a juvenile from the institution; a plan for transporting a juvenile to an emergency medical facility in an appropriately equipped vehicle; and a written contract with a suitable emergency medical facility for the provision of twenty-four hour a day emergency medical services.

4. Infirmary care which shall insure direct supervision and care from nursing staff. A written medical treatment plan shall be developed by the physician, including directions to medical and non-medical staff, regarding the care and supervision of juveniles requiring close medical supervision.

5. Procedures which insure that a juvenile shall have prompt access to a registered nurse or doctor upon requesting medical attention. In no case shall a juvenile be denied access to a registered nurse or doctor for longer than twenty-four hours from the time the juvenile first requests medical attention. If the juvenile is first seen by a nurse, the nurse must state in writing whether a physician's examination of the juvenile is necessary or appropriate. If examination by a physician is indicated, the juvenile shall be seen by a physician within twenty-four hours.

6. The provision of physical therapy services by a qualified physical therapist for all juveniles requiring such treatment.

7. A medical record filing procedure providing for files for each juvenile containing a completed standardized health screening form; medical evaluations; all findings, diagnoses, treatments, dispositions, prescriptions and administration of medications; notes concerning patient education; notations of place, date and time of medical encounters; and discharges from medical treatment. The method of recording entries in the medical record, and the form and format of the record, shall be determined by the physician.

8. Dental services including a written contract with a dentist licensed to practice in the state for the provision of routine as well as twenty-four hour a day emergency dental services for any juvenile.

11. Obtaining consent for medical treatment.

12. First aid procedures including procedures to insure that all institutional personnel are trained annually in cardiopulmonary resuscitation

(CPR) and basic first aid equivalent to that defined by the American Red Cross. First aid kits shall be appropriately placed within the institution and staff shall be adequately trained in their use.

13. Procedures for the notification of next of kin or legal guardian in case of serious illness, injury or death;

14. Immunization of juveniles.

15. Detoxification procedures which insure that detoxification from alcohol, opiates, barbiturates and similar drugs is performed only under medical supervision.

16. The proper management of pharmaceuticals including compliance with regulations established by the State Board of Pharmacy regarding medications; a formulary which is updated at least annually; a policy regarding the prescription of all medications with particular attention to behavior modifying medications and those subject to abuse; a policy regarding medication dispensing and administration; a policy regarding the maximum security storage and weekly inventory of all controlled substances, syringes, needles and surgical instruments.

VII. MENTAL HEALTH CARE

A. The institution or the Department shall contract in writing with a psychiatrist licensed by the state for mental health services at the institution. The contract shall provide for the psychiatrist to be at the institution one day every two weeks and to be available at other times for telephone consultation on the mental health status of any juvenile.

B. The psychiatrist shall be responsible for providing instruction to cottage personnel in recognizing and responding to severe depression and suicidal tendencies. The psychiatrist shall develop a written individual treatment plan for those juveniles who require close mental health supervision.

VIII. USE OF PSYCHOTROPIC MEDICATIONS

A. Except where prescribed according to standard medical practices in conjunction with surgical procedures or to alleviate pain stemming from medical conditions, phenothiazines, ritalin, tricyclic anti-depressants and other behavior modification drugs shall be prescribed only after a physician has personally examined the juvenile and the juvenile has been placed under the physician's personal care. In general such drugs shall not be prescribed except for psychotic juveniles on a temporary basis until they can be transferred to a psychiatric facility affording appropriate psychiatric care, or as a treatment regime agreed to in writing by the juvenile after opportunity for consultation with counsel and after full disclosure of the symptoms requiring medication, possible side effects of the drug, and estimated length of and dosage of medication.

B. Prescription of such drugs shall be accompanied by a written diagnosis to be placed in the juvenile's file stating the reasons for the prescription, the specified physical or behavioral symptoms targeted for their use, and a tentative prognosis of how long the juvenile is expected to be taking the drug. All prescriptions shall be written with a termination date of not longer than 30 days except for prescriptions for non-medical or surgical use for non-psychotic juveniles which shall terminate within three days.

D. Every juvenile receiving psychotropic medications shall be seen by a physician at least once each week for the first month of treatment or until the juvenile maintains a stable dosage of medication. After such period, the juvenile shall be seen by the psychiatric at least once each month.

E. The psychiatrist shall inform the Superintendent of the institution in writing each month of the names of those juveniles taking psychotropic medications, the kinds of medications, how long each juvenile has been receiving such medications, and how long each juvenile is expected to continue

taking the drugs.

IX. RESTRAINTS

A. The use of mechanical restraints for any purpose is prohibited, except upon a child's hands or legs as specifically provided herein. The practice of attaching a child to any fixed object through the use of mechanical restraints is specifically prohibited.

B. Mechanical restraints may be employed only upon the prior approval of the Superintendent, Administrator on Duty, or a licensed physician, and only in the following situations:

1. When transporting a juvenile to or from any Department facility, mechanical restraints may be used to restrain a juvenile's hands at the side or front of his/her body in a manner which permits the greatest comfort while still providing appropriate security and protection for the juvenile or alternatively, a knee brace specifically designed to prevent the wearer from running may be used.

2. When transporting a juvenile who is violently out of control and is an imminent physical danger to himself or others to a place of confinement within the institution, mechanical restraints may be used but only after less restrictive methods of control have failed.

C. Restraints shall be removed as soon as the juvenile is no longer out of control and a serious physical danger to himself or others. If a restrained juvenile has not regained sufficient control within one hour to permit removal of the restraints, the juvenile shall be transported to a suitable medical or psychiatric facility for appropriate treatment.

E. When a juvenile is placed in restraints a physician, physicians' assistant or nurse shall be immediately summoned and shall remain with the juvenile during the time that the juvenile is restrained.

F. In order to minimize the risk of physical injury, the use of hard restraints is prohibited and all mechanical restraints employed by the institution shall be soft restraints.

G. Every incident requiring the use of mechanical restraints shall be reported on a standardized form which shall include the juveniles's name, the date, the amount of time in restraints, a statement of the circumstances leading to the use of restraints including attempts at less restrictive methods of control, any injuries incurred, the name(s) of the person(s) who applied the restraints, and the signature of the person who authorized the restraints.

X. TIME OUT, ISOLATION AND SECURITY COTTAGE CONFINEMENT

A. TIME OUT refers to the voluntary separation of a juvenile from other juveniles and/or staff in any room, cubicle or building suitable for that purpose. When a juvenile requests time out, the room used for this purpose shall remain unlocked and the juvenile shall be permitted to leave the room upon his or her request.

B. ISOLATION refers to the removal of a juvenile from the regular institutional program or from contact with other juveniles by involuntary confinement in a locked room. Isolation is a serious and extreme measure which may be imposed only in limited situations described herein. No juvenile may be confined in isolation unless the juvenile is out of control and is a serious and immediate physical danger to himself or others, and only after less restrictive methods of control have failed. Isolation may be imposed only with the prior approval of the Superintendent or the Administrator On Duty. Juveniles in isolation shall receive appropriate psychological and medical services. A juvenile placed in isolation shall be released therefrom within three hours. A staff member must be present with any juvenile confined in isolation. A juvenile who is no longer out of

control so as to pose a serious and immediate danger to himself or others must be released from isolation.

C. SECURITY COTTAGE CONFINEMENT refers to the confinement of a juvenile in a separate cottage or building wing which is designed and operated for the segregation of juveniles from the general institutional population and for which ingress and egress are controlled exclusively by staff. A juvenile may be confined in a security cottage when there are reasonable grounds to believe, based upon overt acts, that the juvenile is a serious and continuing escape risk, or where the juvenile is a serious and immediate physical danger to himself or others and staff cannot otherwise provide protection, or where the confinement is necessary to prevent imminent and substantial destruction of property or to restrain behavior that creates substantial disruption of the routine of the facility, or upon the juvenile's own request. A juvenile may be placed in a security cottage only with the approval of the Superintendent, Administrator On Duty, or a child care professional designated by the Superintendent. Juveniles in the security cottage shall receive appropriate medical, psychological, educational, and recreational services. No juvenile shall remain in a security cottage more than twenty-four hours solely on the basis of the behavior for which he or she was admitted to the security cottage nor shall there be any minimum length of time imposed in the security cottage, by policy or routine practice, for designated behaviors or offenses. The use of consecutive twenty-four periods in the security cottage for the purpose of evading the spirit or purpose of this provision shall not be permitted. The following due process protections shall be provided to juveniles who remain in a security cottage longer than twenty-four hours: the juvenile shall be informed of the reasons for the continued confinement, an impartial administrator shall review the reasons for

the confinement and shall make a decision on the facts presented; the juvenile shall be present and participate in the review and shall have an opportunity to make his or her own statement; the juvenile shall be given assistance in presenting his or her position if the juvenile requests such assistance; the administrator's decision shall be based solely on the evidence presented; a written statement of the decision setting forth the reasons for the decision shall be provided to the student; an appeal procedure shall be provided to the student; and the student shall be notified of the outcome of the appeal.

D. A permanent log shall be maintained stating the name of the person who authorized confinement in isolation or a security cottage, the names and times of the persons who visited the juvenile while so confined, and the date and time of the juvenile's placement into security and release therefrom.

XI. EDUCATION

A. The educational program provided by the institution shall meet the following criteria:

1. Teachers assigned to positive peer culture groups shall conduct identifiable educational programs during morning sessions;

2. All thirteen, fourteen, and fifteen year old juveniles in the institution, and those juveniles in the institution sixteen years of age or older and who chose to do so, shall receive academic instruction in afternoon sessions, in classes forms across positive peer culture groups;

3. Academic instruction shall be provided any juvenile in secure cottage confinement who would otherwise receive such instruction;

4. Institutional maintenance responsibilities shall not be assigned so as to interfere with morning educational programs or afternoon academic instruction;

5. The institution shall develop a scheduling system for school activities which shall be regularly communicated to teachers, staff and

juveniles;

6. The institution shall fully comply with the requirements of Public Law 94-142 in identifying juveniles in need of special educational services;

7. The special needs programs made available to juveniles shall supplement rather than supplant the juveniles' regular academic program.

8. A plan for staff development and training, and the identification of resources necessary for its implementation, shall be developed by the institution.

XII. FIRE SAFETY, HEALTH AND SANITATION

A. The institution shall fully comply with the current Life Safety Code of the National Fire Protection Association and the American Correctional Association Standards for Juvenile Training Schools and Services pertaining to fire safety, and any successor codes or standards.

B. The institution shall fully comply with all applicable federal, state and local health and sanitation codes, and with the American Correctional Association Standards for Juvenile Training Schools and Services pertaining to food service, sanitation, safety and hygiene.

XIII. STUDENT ADVOCATE

A. The Department shall contract for the services of an advocate who shall be independent of the institution and who shall visit the institution on a regular and periodic basis in order to investigate grievances by juveniles concerning mistreatment at the institution; serve as surrogate parent in the development of individual education plans pursuant to Public Law 94-142; assist any juvenile in the preparation of a statement or otherwise in the defense of any disciplinary charges brought against the juvenile; assist the juvenile in the representation of the juveniles' interest prior to transfer from the institution to another correctional facility,

mental health facility, or other institution; and assist the juvenile in obtaining review of placement decisions regarding the juvenile.

XIV. MONITORING AND REPORTING

A. The parties agree to retain an independent auditor, who shall be a person acceptable to all parties, to observe and report upon compliance with the terms of this agreement. If the parties are unable to agree upon an individual to serve as auditor, each party will submit the names of three (3) persons willing to serve in this capacity to the court. The court will then appoint the auditor from this proffered list. Fees and expenses of the auditor shall be borne by the defendants and will be limited to a schedule agreed upon by the auditor and the defendants.

B. In carrying out the auditor's duties, consistent with the legitimate requirements of security, the auditor shall:

1. Have unobstructed access to staff, children, and other persons knowledgeable about practices in the institution for interviews or written communication regarding conditions within the institution. Such interviews or other communications may be held in private, and the names of those interviewed may be held in confidence by the auditor if requested by the individual interviewed or if the auditor believes that release of such information poses a substantial risk to the person interviewed. The auditor shall not include in any report information gained from anonymous sources unless that information has been otherwise substantiated. The parties shall be given the content or nature of such interviews or communications in a manner which shall preserve the confidentiality of the source of the information;

2. Have complete and unobstructed access to files, records, reports, memoranda or other documents within the defendants' custody for purposes of compliance with the terms of this agreement;

3. Have the responsibility to recommend to the parties the need to retain experts to evaluate the technical areas of medical-psychiatric care, sanitation, and fire safety when such assistance becomes necessary to adequately assess compliance. The experts' fees and costs will be paid by the defendants and will be limited to reasonable fees and expenses;

4. Have unobstructed access to tour and inspect the institution. Ordinarily, the auditor will inform the institution of his/her plans to visit the institution, but may visit unannounced if necessary;

5. Not be subject to dismissal except upon agreement of both parties, or by the court upon motion of one of the parties and a showing of good cause.

C. The auditing period shall continue for 24 months from the date of the approval by the court of this agreement.

D. Counsel for the parties shall be provided with notice of all communications between the auditor and any party, of all visits by the auditor, and of all materials required by and/or delivered to the auditor by the parties. Counsel for the parties shall also be given a summary of all materials reviewed by the auditor. Upon request by counsel for the plaintiffs, the defendants will provide copies of any documents reviewed by the auditor that would be otherwise relevant and discoverable under the Federal Rules of Civil Procedure.

E. The auditor, with the agreement of the parties, shall have authority to extend the auditing period for an additional twelve (12) months to allow for compliance.

XV. EFFECTIVE DATE

The effective date of this agreement is the date on which it is approved by the court.

Respectfully submitted,

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