

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO:
)	
THE STATE OF HAWAI'I,)	[CIVIL RIGHTS ACTION]
LINDA LINGLE, GOVERNOR OF HAWAI'I;)	
LILLIAN B. KOLLER, DIRECTOR OF)	COMPLAINT
THE HAWAI'I DEPARTMENT OF HUMAN)	
SERVICES; SHARON AGNEW, DIRECTOR)	
OF THE OFFICE OF YOUTH SERVICES;)	
PATRICIA HAMAMOTO,)	
SUPERINTENDENT OF THE HAWAI'I)	
DEPARTMENT OF EDUCATION; AND)	
KALEVE TUFONO-IOSEFA,)	
ADMINISTRATOR OF THE HAWAI'I)	
YOUTH CORRECTIONAL FACILITY.;)	
)	
Defendants.)	
)	
)	
)	
)	

COMPLAINT

1. This action is brought by the Attorney General, on behalf of the United States, pursuant to the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, to enjoin the State of Hawai'i from depriving youth confined in the Hawai'i Youth Correctional Facility ("HYCF") of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

JURISDICTION, STANDING, AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 14141.

4. Venue in the United States District Court for the District of Hawai'i is proper pursuant to 28 U.S.C. § 1391(b). All claims set forth in the Complaint arose in this District.

DEFENDANTS

5. Defendant STATE OF Hawai'i ("STATE") is responsible for the administration of juvenile justice in the State. The STATE operates, or contracts for the operation of, the only secure juvenile justice facility in the State. This action concerns the administration of HYCF ("the facility"). The facility houses youth in STATE custody who are confined for periods of time by the STATE courts.

6. Defendant Hawai'i DEPARTMENT OF HUMAN SERVICES establishes the general policy to be followed by its juvenile institutions and contractors; provides leadership in developing programs to rehabilitate youth committed to STATE custody; and is responsible for the promulgation of all rules and regulations necessary and appropriate to the administration of the Hawai'i OFFICE OF YOUTH SERVICES, including the operation of HYCF.

7. Defendant Hawai'i OFFICE OF YOUTH SERVICES is responsible for providing for the supervision, detention, education, medical care, mental health care, and rehabilitation of youth committed to the STATE's custody at HYCF.

8. Defendant LINDA LINGLE is the Governor of Hawai'i, and, in this capacity, heads the executive branch of Hawai'i's government. The Governor of Hawai'i, as chief of the executive branch, has the duty to ensure that the departments that compose the executive branch of Hawai'i guarantee the constitutional and federal statutory rights of the youth confined in juvenile justice facilities owned and operated by, or providing services on behalf of, Hawai'i.

9. Defendant LILLIAN B. KOHLER is the Director of the Department of Human Services, and, in this capacity, exercises administrative control of, and has responsibility for, the operation of HYCF.

10. Defendant SHARON AGNEW is the Director of the Office of Youth Services, and, in this capacity, exercises administrative control of, and has responsibility for, the operation of HYCF.

11. Defendant PATRICIA HAMAMOTO is the Superintendent of the Hawai'i Department of Education and, in this capacity, exercises administrative control of, and has responsibility for, the education of youth at HYCF.

12. Defendant KALEVE TUFONO-IOSEFA is the Administrator of HYCF and is responsible for the administration and day-to-day operations of the facility.

13. The individual Defendants named in ¶¶ 8 - 12 above are sued in their official capacities.

14. Defendants are legally responsible, in whole or in part, for the operation of and conditions at the facility; for ensuring that all youth in the facility receive appropriate treatment, training, and education commensurate with their needs and abilities; and for ensuring that programs in the facility are consistent with the Office of Youth Services' mission to provide opportunities for the treatment and rehabilitation of youth.

15. All relevant acts or omissions described below have been undertaken by the STATE, a political subdivision of the STATE, or an official, employee, agent or person acting on behalf thereof.

FACTUAL ALLEGATIONS

16. Defendants are governmental authorities or agents thereof with responsibility for the administration of juvenile justice or the incarceration of youth within the meaning of 42 U.S.C. § 14141.

17. Defendants have engaged, and continue to engage, in a pattern or practice of failing to adequately protect youth from self-harm.

18. Defendants have engaged, and continue to engage, in a pattern or practice of failing to adequately protect youth from harm and from undue risk of harm resulting from staff abuse, youth assaults, and abusive institutional practices.

19. Defendants have engaged, and continue to engage, in a pattern or practice of subjecting youth at HYCF to unreasonable isolation and failing to provide adequate due process for youth.

20. Defendants have engaged, and continue to engage, in a pattern or practice of denying youth access to an adequate grievance system.

21. Defendants have engaged, and continue to engage, in a pattern or practice of failing to ensure that youth at HYCF have access to adequate medical and mental health care.

22. Defendants receive federal financial assistance and, as such, are subject to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder.

23. Youth residing at HYCF include youth with specific learning disabilities who fall within the meaning of "child with a disability" as defined in the Individuals with Disabilities Education Act, 20 U.S.C. § 1401(3)(A), and "individual with a disability," as defined in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 705(20).

24. Defendants have engaged, and continue to engage, in a pattern or practice of failing to provide qualified youth committed to HYCF with access to adequate special education and related services pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401, and Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794.

VIOLATIONS ALLEGED

25. Through the acts, practices, and omissions alleged in ¶¶ 17 - 24, Defendants have engaged, and continue to engage, in a pattern or practice of depriving youth confined at HYCF of rights, privileges, or immunities secured or protected by the Constitution of the United States, including the Eighth and Fourteenth Amendments, and in violation of 42 U.S.C. § 14141(a).

26. Through the acts, practices, and omissions alleged in ¶¶ 23 - 24, Defendants have engaged, and continue to engage, in a pattern or practice of failing to comply with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1401 et seq., and the regulations promulgated pursuant thereto, thereby depriving qualified youth of their rights under that Act and violating 42 U.S.C. § 14141(a).

27. Through the acts, practices, and omissions alleged in ¶¶ 22 - 24, Defendants have engaged, and continue to engage, in a pattern or practice of failing to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., and the

regulations promulgated pursuant thereto, thereby depriving qualified youth of their rights under that Act and violating 42 U.S.C. § 14141(a).

28. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in ¶¶ 17 - 24 that deprive youth confined at HYCF of rights, privileges, or immunities secured or protected by the Constitution of the United States and federal law.

PRAYER FOR RELIEF

29. The Attorney General is authorized, pursuant to 42 U.S.C. § 14141, to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their officers, their agents, employees, subordinates, successors in office, contractors, and all those acting in concert or participation with them from continuing the acts, practices, and omissions set forth in ¶¶ 17 - 24, above, and to require Defendants to take such action as will provide legal and constitutional conditions of care to youth confined at HYCF and any other secure facility to which defendants transfer youth confined at HYCF during the pendency of this action. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

/s/ Edward H. Kubo, Jr.

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