

HENDERSON

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

JOHN DOE, et al.)	
Plaintiffs,)	
vs.)	NO. A-7980-I
C. MURRAY HENDERSON, et al.)	
Defendants.)	

AGREED ORDER

This cause came on to be heard this 16th day of February, 1979 before the Honorable Ben H. Cantrell, Chancellor, upon an amended motion of the plaintiffs for temporary injunction and other relief.

The defendants neither admit nor deny the allegations contained in the Plaintiff's amended motion. Before this hearing, the parties, by and through their attorneys, have agreed that in lieu of this hearing on said motion, the following order should be entered:

IT IS THEREFORE ORDERED AND DECREED THAT:

1. Physical abuse of class members at Taft Youth Center, Spencer Youth Center, and the Tennessee Reception and Guidance Center is prohibited. Physical abuse includes, but is not limited to, corporal punishment, including hitting, slapping, shoving, kicking or throwing of juveniles for the purposes of punishment such as the dying cockroach (lying on one's back with arms and legs in the air), standing the wall (placing one's forehead against a wall with hands behind the back and feet at a distance from the wall), or other physically painful punishment. Physical abuse also includes the use of mace or a similar chemical agent for the purpose of punishment or interrogation. Any unreasonable use of physical force or mace in any situation shall also be physical abuse. In addition, no staff member shall direct or directly allow the physical abuse of one juvenile by another.

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2. Mace may be used only at Taft Youth Center and there only in limited emergency situations. Specifically, mace may be used only when there is an immediate danger to the physical well being of either a student or a staff member. The proper use of mace depends upon the exercise of an informed judgment by the staff member, and should always be a last resort which is preceded by a verbal warning of the intended action. Mace may only be used by staff members.

3. Any use by staff members of physical force or mace shall be reported in writing to the superintendent of the institution who will investigate the incident and make a written determination as to whether the use was justified and the reasons for his determination. All such reports and determinations shall be forwarded to the Commissioner of the Department of Corrections for his review.

4. The following forms of physical exercise are the only ones which may be used as disciplinary sanctions: males: push-ups (maximum of 20), laps (maximum of one mile), sit-ups (maximum of 25), or jumping jacks (maximum of 25); females one half of the above. Any other form of physical exercise used as a disciplinary sanction must be approved by the Commissioner of the Department of Correction prior to use. Staff members utilizing the above sanctions shall keep in mind the physical capabilities and well-being of a student and shall not impose a physical exercise which may humiliate the student or be dangerous to the student's health. Physical exercise may be used for minor rule infractions only. The staff member shall file a report on each imposition of physical exercise, and the same must be submitted to the superintendent for review. Any student may have the option to refuse the sanction of physical exercise and shall accept instead a write-up or written disciplinary report. The exercise of such option shall not be construed as a separate offense.

5. There shall be established at all juvenile institutions under the jurisdiction of the defendants a grievance or complaint procedure providing that all students may report orally or in writing any incident of physical or sexual abuse. If a report is made orally then the staff member to whom it is made shall assist the student in reducing it to writing.

A. Investigation of such report shall be initiated within three (3) working days, and completed within ten (10) days, except that any report of a sexual attack or a pending sexual attack shall be investigated substantially within 24 hours.

B. A juvenile will be able to personally present his complaint or a staff member or other interested adult may be selected by the student to help him prepare his complaint and present it for adjudication.

C. Adjudication of the complaint shall be by an impartial person or panel designated by the superintendent unless said superintendent is the person against whom such complaint is made.

D. A juvenile may appeal the adjudication directly to the Commissioner of the Department of Correction for a final determination. A form shall be provided which allows the student to indicate whether he wishes to appeal for review by the Commissioner.

E. All grievance records shall be maintained by the superintendent.

6. A monitoring team composed of three people appointed by the Governor of the State of Tennessee shall:

A. Make regular visits at least bi-weekly to Taft Youth Center, Spencer Youth Center, Tennessee Reception and Guidance Center, to obtain information with respect to staff abuse and homosexual rape, any retaliation against juveniles for making complaints of abuse or homosexual rape and the effectiveness of the complaint or grievance procedure;

B. Speak with students, staff members and administrators in private;

C. Review all relevant records and materials with respect to alleged staff abuse and homosexual rape;

D. Report their findings to the Court once every six weeks;

E. Make equally available to the Governor and attorneys for both parties information obtained; and

F. Receive and review information from attorneys for both sides.

7. The defendants shall notify the monitoring team and the attorneys for the plaintiffs of any disciplinary proceedings taken against employees of the defendants' juvenile institutions when such action results from the employee's abuse or mistreatment of a juvenile in such institution, but said team or attorneys shall not have any right to participate in any such proceedings.

8. Within thirty (30) days of the entry of this order there shall be at least two qualified supervisory personnel on station between 4:00 to 8:00 a.m. in each dormitory or housing area which houses more than twenty (20) students at Taft Youth Center. Within sixty (60) days of the entry of this order the monitoring team shall study the overall security practices at all institutions to insure maximum protection and safety of the students and specifically will examine the feasibility and advisability of installing a lock system on the sleeping rooms at the Tennessee Reception and Guidance Center and will examine the feasibility and advisability of having work stations placed so that all portions of the dormitories are under direct observation of the staff. If any such step is deemed feasible and practicable, such shall be accomplished as soon as is possible.

9. Dormitory supervisors shall not leave their work station except in emergency situations or when relieved for a limited amount of time by another supervisor. The shift supervisor on each shift shall monitor each work station hourly during the hours when children are present for the purpose of ascertaining that personnel are present and alert.

10. Whenever shower or restroom facilities are used by more than one student at a time, they shall be under the continuous surveillance of the dormitory supervisor.

11. All supply rooms, storage closets, and similar type rooms in all dormitories, gyms and other buildings in institutions operated by the defendants for juveniles shall be locked and opened only when the room is in use for authorized purposes.

12. Any student who believes a physical or sexual attack is imminent may request a single occupancy room for the forthcoming night, and if such is unavailable, he shall be given the alternative of spending the night in a room used as a dorm supervisor's office or cell or control unit. If none of these are available, the dorm supervisor shall pay special attention to the welfare of the requesting child by increased observation of the student and those around him. Such a request for single occupancy room or increased observation shall be granted unless the staff member of whom the request is made can determine immediately that there is no factual basis for the request.

13. Students shall not be used to perform security or discipline functions at the institutions for juveniles operated by the defendants.

14. Notice of this order shall be provided in the following fashion:

A. This order shall be included in the policies of the Tennessee Department of Correction, the handbook provided to children at each institution and instructional materials provided to staff at the institutions.

B. This order shall be prominently posted in each dormitory or living area for students.

C. This order shall be discussed in the orientation of all new employees and, within one week of the entry of this order, with all current employees.

D. This order shall be discussed in the orientation of all children coming into the institutions operated by the defendants and, within one week of the entry of this order, with all current residents.

E. A copy of the grievance procedure shall be given to each student in each institution.

15. Attorneys for the plaintiffs shall have access and may interview students upon twenty-four (24) hours notice, such access and said interview shall not interrupt the class time, work-shop time, meal time, or sleep time of the students in the institutions operated by the defendants. The defendants shall allow the students in said institutions reasonable access to the monitoring team by use of defendants' telephone service including the WATS line when none of said team is on the campus. The defendants shall allow the students in said institutions reasonable access to attorneys for the plaintiffs including providing reasonable access to a telephone.

16. For good cause shown, either party may move the Court for amendment or supplement to this order, but the standards for amendments of this order shall be no less stringent than the standards for amendment of any agreed order entered in this Court.

17. This order shall be in force and effect until the final judgment is entered by this Court following the trial upon the merits of this case and may be dismissed or incorporated in the final judgment.

ENTERED this _____ day of _____, 1979.

CHANCELLOR

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