

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
NOV 06 2000
[Signature]
CLERK

CHRISTINA A., by and through her Parent and Next
Friend, JENNIFER A., et al,

Civ. 00-4036

Plaintiff,

vs.

SETTLEMENT AGREEMENT

JEFF BLOOMBERG, in his official capacity as
Secretary of the South Dakota Department of
Corrections; and OWEN SPURRELL, in his official
capacity as Superintendent of the State Training School,

Defendants.

1. This Settlement Agreement is entered into by and between counsel for the plaintiffs and counsel for the defendants to resolve the above-entitled class action lawsuit involving conditions and practices at the South Dakota State Training School at Plankinton (hereafter, "Plankinton"). The undersigned counsel are authorized by their clients to enter into this Settlement Agreement and to take all steps required pursuant thereto.

2. The complaint in this action was filed on February 24, 2000, on behalf of the named plaintiffs and all others similarly situated and alleged that defendants violated plaintiffs rights under the federal Civil Rights Act, 42 U.S.C. § 1983, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.* The defendants filed an answer to the complaint on May 12, 2000, and denied any such violations.

Christina A. v. Bloomberg



Jl-SD-0001-0001

3. The parties represent to the Court that this Settlement Agreement is fair, reasonable, and adequate to protect the class in accordance with the standards of Rule 23 (e) of the Federal Rules of Civil Procedure.

4. This Settlement Agreement shall become effective when it is signed by counsel on behalf of the parties and approved by the United States District Court for the District of South Dakota and shall be in effect for a period of one year. This Settlement Agreement is not to be construed as an admission of any liability or violation of law by the defendants. Defendants have entered into this Settlement Agreement for the purpose of settling disputed contentions arising from this action.

5. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and 1343 (4) and personal jurisdiction over the named defendants to this action.

6. Plaintiffs in this action are the named plaintiffs Christina A., by and through her parent and Next Friend, Jennifer A.; Patricia B., by and through her Next Friend, Hillary B.; Philip C., by and through his parent and Next Friend, Robert C.; Shannon D., by and through her parent and Next Friend, Melissa D.; Todd E., by and through his parent and Next Friend, Sandra E.; and Carl F., by and through his Next Friend, Hillary B.; and the plaintiff class, which consists of all juveniles who are now or in the future will be confined at Plankinton. This action is properly maintained as a class action under Rule 23 (a) and (b)(2) of the Federal Rules of Civil Procedure. The defendants are Jeff Bloomberg, in his official capacity as Secretary of the South Dakota Department of Corrections (DOC), and Owen Spurrell, in his official capacity as Superintendent of the State Training School at Plankinton, South Dakota. When this Settlement Agreement becomes effective, it will be binding on the

named plaintiffs, the members of the plaintiff class, the named defendants, and their agents, employees, assignees, and successors.

7. Pursuant to Rule 23(e), the defendants shall, within 15 days after the Court's approval of the proposed notice attached as Exhibit A, post in the Juvenile Prison and other secure units and all cottages at Plankinton, in conspicuous places, the notice in the form approved by the Court. Members of the class shall have 30 days after such posting to submit to counsel for the plaintiffs any inquiries or objections they may have. Counsel for plaintiffs shall promptly forward copies of any such inquiries or objections to counsel for the defendants and to the Court. On the copies to the defendants, the names of the members of the plaintiff class will be deleted if they so request. Following the expiration of the time for submitting any objections, the Court will approve the Settlement Agreement as submitted or schedule a hearing for the purpose of considering approval of the Settlement Agreement.

8. After the effective date of this Settlement Agreement, if youth are self-injurious or suicidal, the defendants will first use non-fixed, therapeutic restraints to stop self-injurious or suicidal behavior and calm the youth down before using fixed restraints. The "therapeutic restraints" used will be those defined by the National Commission on Correctional Health Care in its Standards for Health Services In Juvenile Detention and Confinement Facilities: fleece-lined leather, rubber, or canvas hand and leg restraints. If the youth does not stop the self-injurious or suicidal behavior after such restraints are applied, the defendants will contact a mental health clinician as defined in paragraph 11 for consultation whether fixed therapeutic restraints should be used. The defendants will only use fixed therapeutic restraints after consultation and approval by a mental health clinician. During any time that a youth is in restraints and a mental health clinician is not providing direct face-to-face crisis intervention

with the youth, a juvenile counselor or other staff will be either in the cell with the youth or directly outside the cell, providing constant observation of the youth and interaction as appropriate. If necessary, one staff member can provide monitoring of more than one youth by walking in front of the cells. The defendants will not place a youth in restraints for any minimum fixed period of time such as one hour. Rather, the defendants will release the youth from restraints as soon as the youth's behavior ceases to be self-injurious or suicidal. Within thirty (30) days of the effective date of this Settlement Agreement, the defendants will remove all metal rings used for restraints from the beds in the cells in Unit B, Unit C, and Unit D of the Juvenile Prison and all metal rings used for restraints from the beds in the Female Secure Unit except for the three crisis cells in the Female Secure Unit.

9. Consistent with current policy, the defendants will not keep or maintain "less than lethal" devices inside the fenced perimeter at Plankinton. "Less than lethal" devices include rubber pellets, rubber bullets, bean bag rounds, white shot gun, and stinger ball grenades. This provision does not prohibit the defendants from having "less than lethal" devices inside the fenced perimeter at Plankinton temporarily during a major disturbance or riot for the purpose of security and safety of youth and staff at the facility, with the approval of the superintendent or Secretary of the Department of Corrections.

10. The defendants will not use tethers made of fabric, metal, plastic, or leather while escorting youth to and from their cells. In extreme situations to control aggressive or assaultive behavior that is a clear and present danger to the youth, other youth, or staff at the facility, the staff may use appropriate measures and techniques including the above to protect their personal safety when escorting youth to and from their cells. The defendants will fully document any such situations.

11. The defendants now provide and agree to continue to provide a minimum of 100 hours per week of clinical mental health services for youth at Plankinton, exclusive of psychiatric services. The services will be provided by qualified mental health professionals with at least a master's degree in psychology, social work, counseling, or equivalent field (hereafter, "mental health clinicians"). The 100 hours per week of clinical mental health services will include two full-time mental health clinicians. If the population at Plankinton goes below 80 youth, the defendants will be required to provide clinical mental health services directly proportional to that provided for 80 youth, i.e., at 100 hours for 80 youth. The defendants have entered a contract for and agree to provide a minimum of 16 hours per month of psychiatric services for youth. The defendants will maintain daily records of the number of hours of clinical mental health services and psychiatric services provided at Plankinton. The defendants will continue to provide individual treatment plans for all youth at Plankinton within thirty (30) days of their arrival.

12. For youth who engage in self-injurious or suicidal behavior, the defendants will provide for the following:

(A) If the incident occurs during normal business hours (9:00 am to 5:00 pm), a mental health clinician will immediately provide direct face-to-face crisis intervention and a nurse will immediately examine the youth to determine if the youth needs medical treatment.

(B) For a period of one year from the execution of this agreement, the defendants will videotape all incidents in which youth are placed in restraints, including the youth's behavior that leads to placing the youth in restraints, the application of the restraints by staff, and the release of the youth from restraints, except if done under emergency circumstances when no video is available. The defendants will fully document any such emergency

circumstances. The superintendent of Plankinton or his designee will review all videotapes of the use of restraints and assess whether the restraints were used consistent with DOC policy and this Settlement Agreement. If the restraints were used in a way that is not consistent with DOC policy and this Settlement Agreement, the superintendent will take appropriate steps to prevent future violations, including providing counseling and additional training for the staff involved, and will document such steps. Mental health clinicians, the superintendent, and youth counselor supervisors will regularly review incidents in which youth are placed in restraints. The defendants will maintain videotapes of the use of restraints for one year from the date of the incident. The defendants will maintain records of placement of youth in restraints, including the name of the youth, the date and time the youth was placed in restraints, the reason for placing the youth in restraints, the type of restraints used, the person authorizing placement of the youth in restraints, the staff involved in the incident, and the date and time the youth was released from restraints. The superintendent will maintain the reports on all incidents in which staff place youth in restraints in a file in his office. The superintendent will keep such reports for a minimum of one year.

13. Consistent with current DOC policy, if a youth's behavior is violent or poses a danger to himself or others, or constitutes significant destruction of property, the defendants may place the youth in a cell for confinement. Except as provided in paragraphs 8 and 12 above, the defendants will not place a youth in restraints inside his cell. When the youth's behavior ceases to be violent or a danger to himself or others, or a threat to significant destruction of property, the defendants will release the youth from the cell and return the youth to ongoing programming. The defendants will authorize staff at Plankinton to enter a youth's cell, whether or not the youth is handcuffed, for the purpose of talking with the youth

or using verbal de-escalation techniques. The defendants will use chemical agents such as pepper spray, and cell entry uniforms such as padded vests and helmets, only in extreme situations to control aggressive or assaultive behavior that is a clear and present danger to the youth, other youth, or staff at the facility. The defendants will fully document any such situations. Nothing in this provision shall restrict the defendants from applying the institutional discipline policy to a youth who has violated institutional rules or regulations.

14. Consistent with current DOC policy and Operation Memorandum, prior to any room restriction the defendants will provide youth with an explanation of the reasons for the room restriction and an opportunity to explain the behavior leading to the restriction. During room restriction, staff will have visual contact with youth at least every 15 minutes. The defendants may place youth charged with major prohibited acts in administrative detention for up to 24 hours for the safety of the youth, other youth, or to ensure the safety of the facility.

Confinement for periods of over 24 hours will be reviewed and authorized every 24 hours by the superintendent or his designee who was not involved in the incident. The defendants will not confine any youth in administrative detention for longer than 72 hours prior to a hearing.

A juvenile charged with a major violation of facility rules will be given a written copy of the alleged rule violation within 24 hours of the alleged infraction. The hearing may be held within 24 hours with the juvenile's written consent. Otherwise, juveniles charged with rule violations will be scheduled for a hearing as soon as practical but not later than seven (7) days, excluding weekends and holidays, after the alleged violation. Juveniles will be notified of the time and place of the hearing at least 24 hours in advance of the hearing.

The hearing will be conducted by an impartial person or panel of persons not involved in the incident. At the hearing, the youth will be present unless they present a threat to security and will have the opportunity to make a statement, present documentary evidence, and the opportunity to present evidence from witnesses. The defendants will not confine a youth in disciplinary confinement for longer than an additional five days for any violation of institutional rules or regulations. During any periods of administrative detention, the defendants will provide youth with at least one hour per day outside the cell for recreation and showering, and will provide youth with educational services in accordance with Paragraph 16.

Youth will have up to 15 days after receipt of the decision to submit an appeal to the superintendent. The superintendent will issue his decision on the appeal within 30 days of its receipt and the youth will be promptly notified in writing of the decision.

The defendants will maintain records of placement of youth in cell confinement and administrative detention, including the name of the youth, the date and time the youth was placed in cell confinement or administrative detention, the reason for placing the youth, the person authorizing placement of the youth, the staff involved, and the date and time the youth was released.

15. The defendants are currently providing and will continue to provide direct care staff at the facility with annual training covering the following areas among others: security procedures, supervision of juveniles, signs of suicide risks, suicide precautions, communication skills, counseling techniques, reality therapy, and crisis prevention. The defendants have plans to, and agree within ninety (90) days to, provide direct care staff at the

facility with annual training covering the following areas: interpersonal relations, social/cultural lifestyles of the juvenile population, and cultural diversity.

16. The defendants will provide general and special education services at Plankinton that comply with South Dakota law and special education services that comply with South Dakota law and the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.* The defendants will maintain records documenting educational service delivery and attendance for all youth, including youth in the Juvenile Prison.

17. The defendants will prohibit any youth from reading another youth's correspondence without the permission of the youth sending or receiving the correspondence. The defendants agree to comply with American Correctional Association (ACA) standards 3-JTS-5H-07 concerning correspondence but agree not to censor mail, which is allowed by these standards. Consistent with current policy, there will be no retribution for comments made by youth in correspondence regarding the quality of the staff or the conditions at Plankinton.

18. The defendants agree to continue their current policy regarding telephone conversations between youth and any other persons and agree not to censor any such conversations. The defendants will prohibit any youth from listening to another youth's telephone conversations without the permission of the youth having the telephone conversation. Consistent with current policy, there will be no retribution for comments made by youth in conversations regarding the quality of the staff or the conditions at Plankinton.

19. During the first year following the effective date of this Settlement Agreement, the defendants will permit plaintiffs' counsel and the experts identified by plaintiffs in this litigation to interview youth at Plankinton and to inspect records pertaining to youth on a

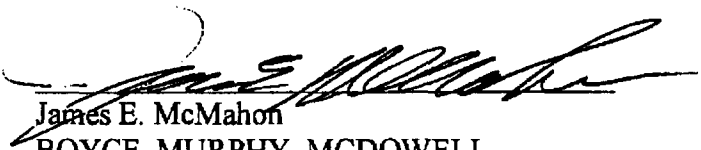
quarterly basis (i.e., approximately every three months). Approval by the court of this agreement will be deemed authorization to allow plaintiffs' counsel and the experts identified by plaintiffs in this litigation to review records of all youth at Plankinton for a period of one (1) year following the effective date of this agreement. The total number of people conducting the interviews and inspecting the records shall not exceed five at any one time, and they may conduct the interviews and inspection of records for no more than four days per quarter. The records that may be inspected are: institutional files, medical files, mental health files, individual treatment plans, and education files on youth at the facility; videotapes and all informational and other reports by staff, mental health clinicians, and medical professionals on use of restraints and other uses of force; records of application of the discipline system; daily records of provision of mental health services; monthly security reports; any other records indicating how long youth spend in the Juvenile Prison and any other secure unit at the facility; daily duty officer's reports; disciplinary log books; control room logs for the Juvenile Prison and any other secure unit at the facility; and OIC (Officer in Charge) logs. All attorney fees, expenses and costs incurred in connection with this paragraph will be borne by plaintiffs and no claim for reimbursement from defendants will be made unless counsel for plaintiffs have to return to court to enforce this agreement during a period of one (1) year following the effective date of this agreement and prevail before the Court. It will then be up to the Court to decide whether any attorney fees, costs or expenses should be paid by defendants.


20. The parties will jointly request that the Court enter an Order of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) and that the terms of this Settlement Agreement be incorporated into such Order. The parties agree that they contemplate that the

only terms and conditions incorporated in the Court's Order dismissing the case will be the terms and conditions set forth in this Settlement Agreement. If any additional terms and conditions are added by the Court in its Order Approving the Settlement Agreement or its Order of Dismissal the parties agree this Settlement Agreement is null and void unless the parties agree to the additional terms and conditions. This Settlement Agreement shall not become effective unless the Court enters such Order of Dismissal. It is the understanding of the parties that a breach of this Settlement Agreement would be a violation of the Order of Dismissal and that in such event the Court would have ancillary jurisdiction only to enforce the Settlement Agreement.

21. The plaintiffs reserve the right to apply for attorneys fees and costs in this matter and the defendants reserve the right to oppose such application.

Dated: 11-6-00

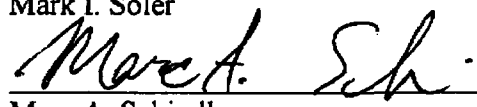

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EXHIBIT A

NOTICE TO CLASS MEMBERS

TO ALL YOUTH AT THE SOUTH DAKOTA STATE TRAINING SCHOOL AT PLANKINTON:

Attached to this notice is the proposed Settlement Agreement in the case of *Christina A., et al., v. Bloomberg and Spurrell*. The case is about conditions and policies in the State Training School at Plankinton. Since you are now at the State Training School, you are one of the plaintiffs in the case. As one of the plaintiffs, you may be affected by the outcome of the case, you should read the proposed Settlement Agreement.

If you have any questions or objections to the proposed Settlement Agreement, you should contact the attorneys for the plaintiffs by mail or toll- free telephone call no later than December _____, 2000.

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Phone 1-888-637-0377

If you write a letter to the attorneys for the plaintiffs, they will send a copy of the letter to the Court and to the attorneys for the defendants. If you would like your name removed on the copy to the attorneys for the defendants, you should tell that to the attorneys for the plaintiffs.

After December ____, 2000, the Court will approve the proposed Settlement Agreement as submitted or schedule a hearing for the purpose of considering approval of the Settlement Agreement.

Dated: November _____, 2000.