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88-235/01061

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 87-6220-CIV-GONZALEZ

IN RE: THE INTEREST OF G.C.,
a minor on his own behalf,
and by W.S., his mother and
next of friend on behalf of
her son; and all others
similarly situated,

Plaintiffs,

v.

GREGORY COLER, as Secretary
of the Department of Health
and Rehabilitative Services;
RON FRYER, in his official
capacity as Superintendent
of the Broward County Regional
Juvenile Detention Center,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by the parties listed below in order to resolve all claims asserted by the Plaintiffs in the Complaint and as amended through the Second Amended Complaint and to resolve all claims for injunctive and declaratory relief which could have been raised.

I. PARTIES

The parties to this Settlement Agreement are:

- A. — The Plaintiffs, G.C., Diane Doe, Anne Coe, and Francis Roe by and through their next friend, Joseph Smith, on behalf of themselves and all other similarly situated

as "all juveniles who are, or will be in the future, confined in the Broward County Regional Juvenile Detention Center." The Plaintiffs, including the certified class, may be hereinafter collectively referred to as "the Plaintiffs."

- B. The Defendants, acting in their official capacities, are Gregory Coler, as Secretary of the Department of Health and Rehabilitative Services for the State of Florida, and Ron Fryer, as Superintendent of the Broward County Regional Juvenile Detention Center. The Defendants are responsible for the operation of the Broward County Regional Juvenile Detention Center (hereinafter "the Detention Center"). The Defendants are hereinafter collectively referred to as "HRS."

II. REPRESENTATIONS OF THE PARTIES

A. Whereas, the original Complaint was filed on March 30, 1987, on behalf of the Plaintiffs and all other similarly situated, and ultimately the Second Amended Complaint which was filed on February 1, 1988, asserted, inter alia, violations of Plaintiffs' rights under 42 U.S.C. Section 1983 with respect to conditions at the Broward County Regional Juvenile Detention Center; and

B. Whereas, on April 26, 1988, the Court certified the Plaintiff class as "all juveniles who are, or will be in the future confined in the Broward County Regional Juvenile Detention Center;" and

C. Whereas, the Defendants have denied allegations of the Second Amended Complaint, have challenged the constitutional dimension of the allegations and have challenged the jurisdiction of this Court to enter a decree on the issues raised by the Second Amended Complaint; and

D. Whereas, the parties acknowledge that since September 15, 1988, progress has been made in improving conditions at the Broward County Regional Juvenile Detention Center and all parties have displayed a professional and cooperative spirit throughout the mediation period in reaching this Settlement Agreement; and

E. Whereas, the parties recognize and agree that HRS alone does not control the admission or release of juvenile residents at the Broward County Regional Juvenile Detention Center, and the population at the Detention Center is controlled among other things by statutory criteria set forth in Chapter 39, Florida Statutes, and other factors, a number of which are outside HRS's control, including the individual facts and circumstances of each case, the policies and practices of the State Attorney's office for Broward County, Florida, the lack of representation of juvenile residents at detention hearings, and the case by case rulings of various Circuit Judges for the Seventeenth Judicial Circuit in and for Broward County, Florida, with respect to the application of Chapter 39; and

F. Whereas, the parties recognize and agree that HRS has been and is actively seeking solutions to reduce the number of juveniles in custody at the Broward County Regional Juvenile Detention Center along with the State Attorney's office of

Broward County, Florida, and the Center for Study of Youth Policy of Florida Atlantic University/University of Michigan; and

G. Whereas, undersigned counsel are authorized by their clients to enter into this Settlement Agreement and to take all actions required by this Agreement; and

H. Whereas, the Plaintiffs, through their next friend, Joseph Smith, and their attorneys consider it desirable, in their best interests, and in the best interests of all of the members of the class to settle their claims by entering into this Settlement Agreement; and

I. Whereas, the parties agree that the contents of this Settlement Agreement governing the care and custody of children at the Broward County Regional Juvenile Detention Center are consistent with the applicable law but this agreement may not in itself solve problems created by persons or entities who are not parties to this Settlement Agreement; and

J. Whereas, 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 Federal Rules of Civil Procedure 23(e); and

K. Whereas, by entering into this Settlement Agreement, HRS does not admit that it violated any law or limitation of the United States Constitution; and

L. Whereas, this Court has jurisdiction to entertain the subject matter of this action pursuant to Section 42 U.S.C. Section 1343, 28 U.S.C. Section 2201 and 2202, and 28 U.S.C. Section 1331(a).

Now, therefore, in consideration of the foregoing recitals and the following covenants, the parties agree as follows:

III. SETTLEMENT CLASS AND NOTICE

A. This Settlement Agreement shall apply to all juveniles who are, or will be in the future, confined in the Broward County Regional Juvenile Detention Center.

B. Pursuant to Federal Rules of Civil Procedure 23(e), HRS shall within fourteen (14) days after approval of this Settlement Agreement pursuant to Paragraph XV, conspicuously post the notice attached hereto as Appendix A in each modular unit and the indoor recreation area of the Broward County Regional Juvenile Detention Center. The parties further agree that counsel for the Plaintiffs may meet with the residents of the Broward County Regional Juvenile Detention Center to answer questions concerning the Settlement Agreement, and HRS agrees to give reasonable notice to the residents as to the dates and times of counsels' visits to the Broward County Regional Juvenile Detention Center at reasonable times and arrange for facilities in which counsel may meet with the residents to answer questions and to explain the Settlement Agreement. Consistent with reasonable security needs, HRS will provide an opportunity for counsel to meet with all residents. All parties who have any objections to the settlement shall file their objections no later than thirty (30) days for consideration by the Court.

IV. DESCRIPTION OF SETTLEMENT AGREEMENT AND CONSENT DECREE

The parties have entered into this Settlement Agreement and Consent Decree solely as a means to seek a reasonable end to all issues raised in this controversy and to avoid the expense, time, and risks of litigation. Thus, the parties expressly agree that this Settlement Agreement and Consent Decree are a reasonable approach to resolve this litigation and are not an admission of any constitutional violation; nor do the provisions hereof establish any constitutional minimum standard with respect to the claims alleged by the Plaintiff class, including the constitutional operating capacity of the Detention Center and the subject matter jurisdiction of the Court to enforce the terms of this Settlement Agreement. Neither this Settlement Agreement, nor the consent decree which may follow from this agreement, nor anything contained herein or therein shall constitute or be construed as evidence or as an admission or adjudication of any fact or conclusion of law with respect to any matter alleged in or rising out of the Complaint as amended or of any wrongdoing or misconduct on the part of the Defendants, the State of Florida Department of Health and Rehabilitative Services or any of its agents. Furthermore, this Settlement Agreement and the Consent Decree entered pursuant hereto are intended by the parties to supersede the Court's preliminary injunction and all other orders of the Court.

V. POPULATION, INTAKE AND SCREENING

The parties agree to the following with respect to the population of juvenile residents at the Broward County Regional Juvenile Detention Center:

A. HRS' Role in Population Management at the Detention Center

1. HRS staff alone does not control the detention admission or release of juveniles. The population of the detention center at any point in time is also controlled by statutory criteria, the applicable facts of each case, the local procedures of the Broward County State Attorney's Office and the decisions of the Judges of the Circuit Court of the Seventeenth Judicial Circuit. At present, Chapter 39, Florida Statutes, requires HRS to screen all juveniles brought to detention and make recommendations based upon an assessment of risk. If a law enforcement officer who is delivering a juvenile who is in custody to the Broward County Regional Juvenile Detention Center disagrees with the recommendation of the HRS screener, the Broward County State Attorney must be contacted. Under Chapter 39, Florida Statutes, the State Attorney has the final authority as to whether the juvenile shall be securely detained, placed on home detention or released. If the juvenile is detained, a detention hearing is held within 24 hours. If the judge orders continued detention or orders that the juvenile be placed in secure detention (in instances where the juvenile had been screened to and approved for home detention), HRS is required by Chapter 39, Florida Statutes, to abide by the Court's order.

2. Chapter 39, Florida Statutes, also authorizes judges to issue pick-up and detention orders ex parte. Any person can go before a judge, present information and a request, and obtain a judicial detention order. When the juvenile is brought to an HRS detention screener, HRS is still required to conduct the detention screening process; however, HRS is required to abide by the judicial order even if the detention screening process produces a release or home detention recommendation.

3. Juvenile court judges also have the authority to punish juveniles who are in contempt of court for violation of dependency and "Children in Need of Services" orders. This procedure may also result in a judicial order to admit the juvenile to secure detention for a determinate period of time.

4. Chapter 316, Florida Statutes, specifically states that juveniles arrested for felony traffic offenses and not released must be brought to HRS intake, and the procedures of Chapter 39, Florida Statutes, including assessment screening, presumably apply. Again, when presented with a judicial order to detain, HRS is required to abide by its provisions.

5. Juveniles who are being held for criminal court proceedings are eligible for bail; however, if they do not bond out, they may continue to be held in a juvenile detention facility.

6. HRS's ability to influence the admissions of juveniles to the detention facility is further limited by a number of practices and procedures:

- (1) The issuance of a judicial order to detain obviates any action by HRS to release or place on home

detention. Some orders may not meet the requirements of the law if not sufficiently challenged at the juvenile's detention hearing by the juvenile or the juvenile's counsel.

(ii) Representatives of the Broward County State Attorney's Office who have the initial statutory authority to decide whether a juvenile is detained may not regularly practice in the juvenile court system and may not be fully aware of the Chapter 39, criteria and procedures. This occurrence may result in more frequent decisions to securely detain youth who might otherwise be released.

(iii) Detention hearings on weekends and on holidays may be presided over by visiting judges and other judicial personnel who do not deal on a daily basis with the application of Chapter 39 detention criteria and procedures.

(iv) A major problem in Broward County is the deficit of aggressive representation on behalf of the detained juvenile. While this is certainly a problem with respect to "regular" detention hearings, it is a most critical deficit with respect to the weekend magistrate hearings and State Attorneys who do not practice on a daily basis in a juvenile court. Judges often may be unaware of material facts as related to the detention criteria and procedures when they could have been educated by defense counsel. Failing a satisfactory decision, defense counsel could seek appropriate remedies.

7.- Inappropriate and more frequent admissions to secure

detention could in large part be controlled by implementing measures designed to correct all of these conditions.

B. HRS' Obligations

1. HRS shall further implement the provisions and criteria of the detention screening amendment to Chapter 39, Florida Statutes by developing and implementing a training program for its detention screeners at the Detention Center as to the requirements of Chapter 39, Florida Statutes, and this Settlement Agreement within thirty (30) days of the date of the Court's approval of this Settlement Agreement and Consent Decree.

2. HRS shall utilize a detention screening form with respect to all juveniles brought to the Broward County Regional Juvenile Detention Center for the purposes of applying the criteria of Chapter 39, Florida Statutes, and aiding the careful determination as to whether or not secure detention at the facility is required.

3. HRS hereby agrees to cooperate and permit all members of the plaintiff class to have reasonable access to legal representation whether through private counsel or the Public Defender's Office with respect to all decisions in which detention is recommended by HRS or the Broward State Attorney pursuant to Chapter 39, Florida Statutes.

4. In the event HRS' juvenile detention screener disagrees with the law enforcement officer as to the necessity of detention at the Broward County Regional Juvenile Detention Center and the detention screener believes the juvenile should be released, HRS' juvenile detention screener will provide immediate and reliable

information to the State Attorney and the Broward County Public Defender, to the extent practicable, as to the reasons the detention screener believes the child should be released and that secure detention at the Broward County Regional Juvenile Detention Center would be inappropriate.

5. HRS shall hold weekly staff meetings at which time it will review weekly population and the census of juvenile residents at the Broward County Regional Juvenile Detention Center for the purposes of considering the criteria set forth in Chapter 39, Florida Statutes, to determine whether or not any juvenile residents are eligible to have their confinement at the Broward County Regional Juvenile Detention Center reviewed and to identify ways in which individual cases may be expedited.

6. HRS will use its best efforts to review the legal sufficiency of any secure detention order with respect to the Broward County Regional Juvenile Detention Center in accordance with the criteria of Section 39.032, Florida Statutes, and any questionable order will be processed to the detention case manager who will seek to have said order challenged if necessary.

7. HRS shall engage in negotiations with the Broward County Juvenile Judges and the Broward County State Attorney's Office, with a view toward obtaining the permanent assignment of assistant state attorneys and judges for evening, weekend and holiday court hearings.

8. HRS agrees to cooperate with The Center for the Study of Youth Policy Florida Atlantic University/University of Michigan to seek solutions to reduce the population at the

Broward County Regional Juvenile Detention Center by exploring all possible alternatives to secure detention within the general framework of the November, 1988 Project Summary of the Broward County Detention Project and in accordance with the final project description.

9. HRS will use its best efforts to implement appropriate educational programs and seminars for law enforcement agencies in Broward County, the Broward County State Attorney's Office and Broward County Juvenile Judges and court personnel with a view towards increasing their knowledge, familiarity and expertise with respect to the provisions of Chapter 39, Florida Statutes, as amended and with non-secure alternatives to detention.

10. HRS agrees to use its best efforts to meet with representatives from the Public Defender's Office in Broward County, Florida, to encourage their active participation and involvement in representing juvenile residents detained at the Detention Center.

11. The parties agree that the operating capacity of Broward County Regional Juvenile Detention Center as presently constructed is 109¹ subject to the terms of this Settlement Agreement including the following provisions. In the event the

¹During the first six months following execution of this Settlement Agreement and entry of the Consent Decree by the Court, the operating capacity of juvenile residents at the Broward County Regional Juvenile Detention Center shall be 120 until the end of the first full month, 119 until the end of the second full month, 117 until the end of the third full month, 115 until the end of the fourth full month, 113 until the end of the fifth full month, and 111 until the end of the sixth full month at which time it shall be 109 thereafter subject to the terms of this Settlement Agreement.

population at the Detention Center during any consecutive 30-day period exceeds the number of days in any of the following population ranges, the Plaintiff class shall be entitled to the remedies hereinafter set forth.

a. The population ranges and the corresponding number of days shall be:

<u>Population Ranges</u>	<u>Number of Days</u>
up to 119 ²	15
120-135	8
136 or more	5

b. The population of juvenile residents at the Detention Center shall be recorded at 2:00 a.m. on every day except Monday when it shall be recorded at 5:00 p.m. HRS agrees to maintain a population log reflecting these records.

c. In the event the population at the Detention Center exceeds the number of days permitted in the foregoing population ranges in any consecutive 30-day period, HRS

²During the first month after the execution of the Consent Decree, this population range shall not be applicable. During the second month, a day in this range shall not be counted unless the population is 119; during the third month a day shall not be counted unless the population is 117 to 119; during the fourth month, a day shall not be counted unless the population is 115 to 119; during the fifth month, a day shall not be counted unless the population is 113 to 119; during the sixth month, a day shall not be counted unless the population is 111 to 119. At the end of the seventh month, all days on which the population is between 109 and 119 shall be counted in accordance with the grid as stated in paragraph 11(a) above.

shall for a period of 21 days take the following extraordinary, corrective actions during the 21 days:

(i) The Superintendent of the Broward County Regional Juvenile Detention Center shall notify the District Administrator for District X of HRS in Broward County, the Assistant Secretary for Office of Children, Youth & Family Services and the Deputy Secretary for Operations for the Department of Health and Rehabilitative Services who shall jointly use their best efforts to reduce the population at the Detention Center.

(ii) HRS shall meet with those Assistant State Attorneys acting as juvenile prosecutors for the purpose of re-evaluating the decision status of all juvenile residents in accordance with the requirements of Chapter 39, Florida Statutes.

d. After the 21-day period described in sub-paragraph c. above has passed, HRS shall begin again counting the number of days the population is in the applicable ranges pursuant to the procedure described in paragraph 11(b) above. In the event the population of juvenile residents at the Detention Center exceeds the number of days in any population range described in paragraph 11(a) above during the next 30 consecutive days or prior to the expiration thereof, the Plaintiff class shall have the right to immediately proceed and seek judicial relief and any remedy permitted by law. However, in the event that the population for the next 30 consecutive day period does not exceed the thresholds described in paragraph 11(a) above, the Plaintiff class shall not be permitted to seek judicial intervention; provided, however, that HRS shall only be permitted to take the foregoing extraordinary corrective action described in paragraph 11(c) three times during the course of a single

year in order to preclude the Plaintiff class from proceeding with its judicial remedies.

e. In the event HRS has exceeded the population thresholds described in paragraph 11(a) above, and believes it necessary, it may require counsel for the Plaintiff class to engage in good faith mediation with HRS' representatives for the purpose of avoiding judicial intervention. However, this provision does not require the Plaintiff class to delay seeking its right to seek judicial remedies as permitted by the terms of this Agreement or to mediate during the judicial proceedings.

12. In the event the Plaintiff Class seeks any judicial remedy with respect to this section of the Settlement Agreement, HRS shall have the right to assert as defenses that it has substantially complied with the terms of this Settlement Agreement, that the Court does not have subject matter jurisdiction pursuant to the Eleventh Amendment to enforce the terms of the Settlement Agreement, that the terms of the Settlement Agreement or Consent Decree and the violation thereof do not give rise to constitutional claims, and any other defense available to HRS by this Settlement Agreement or permitted by law.

13. HRS may seek to modify the population thresholds as set forth in this Settlement Agreement by making physical modifications to the Broward County Regional Juvenile Detention Center. However, HRS must first provide notice to the Plaintiffs' attorneys and seek approval from the Court prior to operating at new population thresholds.

14. The obligations of this section shall be suspended during any state of emergency for a reasonable period of time thereafter to the extent reasonably necessary to deal with the emergency. A state of emergency shall include the following or events of a similar magnitude:

- (a) destruction, major damage, major disturbance, major disorder or quarantine at the Detention Center;
- (b) detention hearings authorized pursuant to Section 39.032, Florida Statutes, are not held for more than a 24-hour time period through no fault of HRS; or
- (c) any other extraordinary event for which HRS has obtained the permission of Plaintiffs' counsel or if not, the permission of the Court.

C. Plaintiffs' Counsel's Best Efforts

1. Plaintiffs' counsel recognize that the juvenile residents have a constitutional right to counsel when a child is held in secure detention. The Plaintiffs' counsel shall:

(a) provide the educational information to HRS for distribution to juvenile residents concerning the juvenile court process and the right to representation, a copy of which is attached hereto as Appendix "B."

(b) seek, together with HRS, to obtain from the Office of the Public Defender representation at the detention stage of juvenile court proceedings.

2. The Plaintiffs' counsel agree to cooperate with HRS and use their best efforts to assist HRS in implementing the requirements of paragraphs V.B.7. and V.B.8. above.

VI. RECREATION AND EXERCISE

A. HRS shall provide juvenile residents at the Broward County Regional Juvenile Detention Center a minimum of one hour of outdoor exercise each day. In inclement weather as determined solely at the discretion of HRS, HRS shall provide the juvenile residents one hour of large muscle exercise indoors. HRS also shall have the right to determine in its sole discretion if the exercise described above shall not be permitted for any of the following reasons: (a) the particular child is a security risk or for security reasons the entire population shall not be entitled to recreation; (b) the particular child is an escape risk; or (c) the particular child shall not be entitled to exercise because it is medically contra-indicated. To the extent reasonably possible, HRS shall supply alternative recreation.

B. HRS agrees to use its best efforts to design and implement an on-going program of recreation and leisure time activities which are of sufficient appeal and diversity to maintain the interest and the involvement of the detained residents. HRS further agrees that it will use its best efforts to maintain a recreation and exercise program where children will not be subjected to forced idleness.

VII. ACCESS TO EDUCATION

A. HRS shall not deny access to the on-site educational program operated by the Broward County Public School System at the Detention Center except for the following reasons:

1. The particular child is a security risk or for security reasons the entire population shall not be entitled to education;

2. The particular child is an escape risk; or

3. A state of emergency related to war, an act of God, inclement weather, quarantine, or physical impossibility.

B. HRS will use its best efforts within a reasonable time to review the current Broward County Public School system and Department of Education programming to determine whether there presently exists a sufficient range of educational services for all resident juveniles, and if modifications to the current programs are warranted, HRS agrees to use its best efforts to advocate for those modifications.

VIII. FACILITY MANAGEMENT

In order to ensure that the Detention Center is fit for human habitation under basic standards of decency, HRS shall maintain compliance with all state and local health, sanitation and fire safety standards and correct any deficiencies within a reasonable time under the circumstances. Furthermore, HRS shall provide each juvenile resident with a reasonable and sufficient supply of toilet paper for use in their room, soap, toothbrush, toothpaste and a comb unless said resident misuses these articles in HRS's reasonable discretion. All juvenile residents shall be provided reasonable use of razors subject to the reasonable security needs of the Detention Center.

IX. PERSONAL PROPERTY

HRS shall permit resident juveniles to have personal property in their rooms such as books and magazines subject to reasonable security limitations. Pencils and pens present the potential for harm to individual resident juveniles or others, and with respect to these items, HRS shall agree to provide reasonable opportunity during the day for resident juveniles to use these instruments under appropriate supervision. Additionally, in the evening the use of pencils and pens shall be only permitted in the recreation and the common area of the modules, subject to reasonable security limitations.

X. BEHAVIOR MANAGEMENT

A. Isolation and Discipline

1. HRS shall not use isolation in the resident's room, in separate isolation rooms, or elsewhere other than to control a child who is dangerous to himself or others and then for a reasonable amount of time with appropriate safeguards and periodic review of the juvenile detainee by supervisory personnel qualified to assess the use of isolation. Isolation shall not be for a period of time exceeding six (6) hours except under the extreme circumstances described in paragraph 2 below. HRS shall monitor each juvenile resident in isolation every ten (10) minutes and counsel each juvenile resident in isolation each half hour to determine whether the resident is still dangerous and out of control. Isolation will not be used as a response to overcrowding or as a form of group punishment. Juvenile residents shall

not be isolated for the use of abusive language or for other activities which do not involve direct threats of violence and injury.

2. The parties have not yet reached an agreement with respect to the issue of placing a juvenile resident in isolation for a period of time exceeding six (6) hours and appropriate safeguards therefor. However, the parties agree that they will develop an appropriate provision treating this issue which will be submitted to the Court for approval within three (3) months of the entry of the Consent Decree. In the event the parties are unable to reach agreement, they will jointly submit this issue to this Court for resolution.

B. Grievances

HRS shall provide a list of rules to all juvenile detainees accompanied by a list of consequences for infraction of each rule. The Broward County Regional Juvenile Detention Center shall maintain in place a due process/grievance system for contesting the imposition of discipline which shall be clearly explained to each juvenile resident upon admission. HRS shall maintain an effective grievance procedure at the Detention Center. HRS shall ensure that grievances will be processed in a timely manner, and any condition of confinement may be the subject of a grievance. The forms for grievances and explanatory material on the grievance procedure shall be readily available in each unit. HRS shall inform juvenile residents that no retaliatory action will be taken for use of this grievance procedure.

Finally, the Broward County Regional Juvenile Detention Center shall ensure the disciplinary standards for males and females are identical and that the consequences for males and females for infractions of disciplinary standards are also identical.

XI. CLASSIFICATION OF JUVENILE RESIDENTS

HRS shall maintain a system of classifying juvenile residents upon admission to the Detention Center which will ensure that each juvenile resident is protected from the constant threat of harm and violence. In this regard, the HRS officials at the Detention Center shall control, separate and/or segregate dangerous residents from those who are not. Furthermore, HRS shall implement a program in which qualified personnel shall screen all juvenile residents to determine for being at risk of suicide, serious emotional disturbance and a danger to others at the Detention Center.

XII. STAFFING

A. HRS shall provide sufficient staffing both in quantity and quality at the Detention Center to protect each of the juvenile residents health, safety and emotional well being. Specifically, within thirty (30) days of the Court's approval of the Settlement Agreement and the Consent Decree, HRS agrees that each of the boys' units at the Detention Center shall be staffed during the two day shifts by three (3) child care workers, one of whom shall be a senior child care worker, and during the night shift by two (2) child care workers, one of whom shall be a

senior child care worker. With respect to the girls' unit, HRS agrees to staff it during the two (2) day shifts and during the night shift with two (2) child care workers, one of whom shall be a senior child care worker. A senior child care worker shall be a child care worker II or a child care supervisor. Additionally, there shall always be at least one child care supervisor on duty at the Detention Center during each shift. Finally, in the event sufficient staff does not arrive for a particular shift, HRS will take immediate corrective action which is reasonable under the circumstances.

B. HRS shall provide sufficient staffing in both quantity and quality to comply with the requirements of this Agreement as more particularly described in Sections VI(A) and VII(A).

C. HRS agrees to maintain the present staffing numbers at the Detention Center and to upgrade their training by authorizing detention staff in HRS' sole discretion to participate in training programs offered by professional development centers. Professional development centers shall offer training for the full range of pre-service and in-service training programs for juvenile detention staff members.

D. Furthermore, within a reasonable period of time HRS shall ensure that all present employees and all new employees who are hired shall receive forty (40) hours of training in admissions, philosophy of supervision, resident grievance procedures, violent residents, riot, assault and escapes, discipline, isolation, medical procedures, transfer to jail, written communications, staff/child relationships, personal hygiene, nutrition,

security, program development, visitation and telephone privileges, suicidal residents, sex offenders, developmental disabilities, transportation procedures, release procedures, facility maintenance, and non-secure detention.

E. HRS agrees that it shall implement a program to train all of its senior child care workers in: (1) the recognition of symptoms of emotional disturbances, emotional distress, developmental disabilities and other mental health disturbances; (2) intervention and mental health services available at this detention center from The Henderson Clinic and Nova After Hours; and (3) the implementation of recommendations of the foregoing mental health crisis prevention. Finally, within three (3) months of the entry of the Consent Decree, HRS agrees to assign one full-time mental health care counselor with a Bachelor's Degree and a reasonable level of experience in children's mental health care during one day time shift, seven days per week. When the mental health care counselor is not available, staff shall use outside contractors for services to reasonably implement all mental health care recommendations. However, this provision shall not be construed to cause HRS to violate Section 39.0321, Florida Statutes.

F. In the event the population of the Detention Center exceeds 120, HRS agrees that for each ten juvenile residents above said population, it shall increase its child care staff by one person per shift.

XIII. INSPECTION AND REPORTING

A. HRS shall make available for inspection at the end of each month the incident reports, isolation reports, grievances, health department and fire safety reports and module logs general logs in accordance with this Settlement Agreement at the Juvenile Detention Center by the Plaintiffs' attorneys. Additionally, HRS shall photocopy the Superintendent's monthly report and provide it to Michael Dale, Esq.

B. HRS shall provide to Plaintiffs' counsel copies of the following documents which evidence the extent of compliance with the terms of this Settlement Agreement:

1. the Detention screeners staff training program described at V(B)(1);
2. the Detention screening form described at V(B)(2);
3. all written descriptions of the educational programs described in V(B)(9);
4. the Detention Center population log described in V(B)(11)(b) on a monthly basis;
5. written notice of suspension of obligations as described in V(B)(14);
6. recreational log described in VI(A) on a monthly basis;
7. a document describing the program of recreation and leisure time activities described in VI(B);
8. the log evidencing access to the on-site educational program described in VII(A) on a monthly basis;
9. the document evidencing that the Detention Center staff has been familiarized with the terms of this Settlement Agreement;
10. a copy of the isolation policy described in X(A);
11. a copy of the documents describing the grievance system in X(B);

Detention Center and/or its records for the specific violation at a reasonable time.

D. The Plaintiffs' attorneys shall be entitled to contact the Detention Center to ascertain the daily population totals or to review the population logs at the Detention Center upon reasonable notice.

XIV. ENFORCEMENT OF SETTLEMENT AGREEMENT

A. Enforcement Remedies for violations of all other provisions than Section V, titled "Population Intake and Screening" shall be in the manner set forth in the following paragraph:

1. The attorneys for the plaintiff class shall first provide written notice and demand to cure the specific alleged breaches to the Superintendent of the Broward County Regional Juvenile Detention Center, the District X Administrator of the Department of Health and Rehabilitative Services and the Assistant Secretary for the Office of Children, Youth & Family Services for HRS, and said officials shall attempt to cure said violation within twenty-one (21) days of the receipt of notice by the Superintendent and the District Administrator.

2. Thereafter, in the event the Plaintiffs or their attorneys do not believe these violations are cured, then the Plaintiffs or their counsel shall provide written notice to Defendants' counsel of these violations to the Secretary of the Department of Health and Rehabilitative Services who shall attempt to cure said violation within twenty-one (21)

days of his receipt of notice. During this twenty-one (21) day period, either HRS, through its designated authority or the Plaintiffs' attorney shall have the right to require the other by written request to meet personally or mediate in good faith to resolve the dispute.

3. In the event the dispute is not resolved at the end of the period described in paragraph (ii) above, counsel for the Plaintiff class may apply to the Court and seek all remedies permitted by law.

4. However, HRS shall have the right to assert as defenses that it has substantially complied with the terms of this Settlement Agreement and the consent decree, that the violations or breach of provisions hereof and the Consent Decree do not give rise to constitutional claims, that the Court lacks jurisdiction over the subject matter pursuant to the Eleventh Amendment of the United States Constitution and any defense available to HRS by the Settlement Agreement or permitted by law.

5. In the event enforcement proceedings are initiated, the Plaintiff class shall only recover reasonable attorneys' fees and costs in the event that it prevails.

XV. CONSENT DECREE

A. This Settlement Agreement is subject to the provisions of Section 45.062, Florida Statutes (1988), and the procedures therein, and it shall not be effective until the foregoing statutory provisions are satisfied and the Court approves the entire

Settlement Agreement and enters its Decree. Thereafter, counsel for the parties shall jointly submit this Settlement Agreement to the Court for its approval and recommend that the Court approve the Settlement Agreement and enter the decree attached hereto as Appendix "C."

B. After the entry of the Decree, the Court shall retain jurisdiction of this case for only one year for the purpose of enforcing this Settlement Agreement as more specifically provided in Section V. titled "Population, Intake and Screening" and Section XIV titled "Enforcement." However, in the event Plaintiff class must seek judicial intervention and the Plaintiff class prevails, the jurisdiction of this Court to enforce the terms of this Agreement shall automatically be extended for one year from the date of the Court's order enforcing the terms of this Settlement Agreement.

C. Upon final approval by the Court of this Settlement Agreement and the Consent Decree and compliance with Section 45.062, Florida Statutes (1988), the Consent Decree shall become effective immediately. None of the parties may appeal such Consent Decree, and HRS agrees to dismiss the pending appeal.

XVI. RELEASE

Upon approval of this Settlement Agreement and entry of the Consent Decree, the Plaintiff class does hereby release HRS, including all Defendants, the State of Florida Department of Health and Rehabilitative Services, any present or former employee or agent of the Department from all federal claims,

demands, causes of action, and right to further discovery sanctions, administrative or otherwise for injunctive and declaratory relief, based upon the allegations contained in the original Complaint as subsequently amended up to and including the Second Amended Complaint, except for the Plaintiffs' claim for attorneys' fees pursuant to 42 U.S.C. Section 1988 and issues related to Section X(A)(2) herein. Furthermore, the Plaintiff Class agrees to request this Court to withdraw the Order to Show Cause why the Defendants should not be held in contempt and both parties agree that the withdrawal of this Order is a condition precedent to the effectiveness of this Settlement Agreement.

XVII. MODIFICATION

This Settlement Agreement made by the parties and the consent decree may be modified in the form of a mutual joint agreement of the parties or their successors which is approved by the Court upon notice, hearing and order confirming the amendment to the Settlement Agreement and Consent Decree. Additionally, the population thresholds contained in Section V above and other terms of this Agreement may be modified by HRS by a request to the Federal District Court upon a showing that structural modifications or a change in other conditions at the Broward County Regional Juvenile Detention Center would permit a larger number of juvenile residents to occupy the Detention Center without violating any constitutional limitations or other appropriate changes in circumstances upon Court approval. In such event the Plaintiff class may assert all cognizant statutory and constitu-

tional objections which it may have to the modification of this Settlement Agreement and Consent Decree.

XVIII. MERGER CLAUSE

This Settlement Agreement contains the entire agreement of the parties and neither party has made any additional promises to the other party not contained in this Settlement Agreement.

DATED this 15 day of December, 1988.

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[SIGNATURES CONTINUED ON PAGE 31]

[SIGNATURES CONTINUED FROM PAGE 30]

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of Health and Rehabilitative
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GREGORY COLER

RON FRYER,
Superintendent of the Broward
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