

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

THE UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL ACTION NO. 3:03cv1354WSu

THE STATE OF MISSISSIPPI, et al.

DEFENDANTS

consolidated with

**K.L.W., by and through his next friend,
ROSETTA WILLIAMS, on his own behalf
and on behalf of those similarly situated**

PLAINTIFFS

vs.

**RICHARD JAMES, in his official capacity as
Acting Administrator of Columbia Training School, et al.**

DEFENDANTS

SETTLEMENT AGREEMENT IN *K.L.W. V. JAMES*

WHEREAS on April 13, 2004, the Plaintiffs filed a class action lawsuit challenging the attorney visitation policy and legal assistance program at Columbia Training School as unconstitutional;

WHEREAS the Plaintiffs and the Defendants have engaged in good faith negotiations and agree that it is in their best interests to resolve this litigation; and


WHEREAS the Court has already entered an order dismissing the case and requiring the parties to consummate the agreement reached in the chambers of United States Magistrate Judge James Sumner on November 24, 2004;

NOW THEREFORE the parties, by and through their respective counsel, hereby stipulate and agree to the following provisions to resolve this litigation:

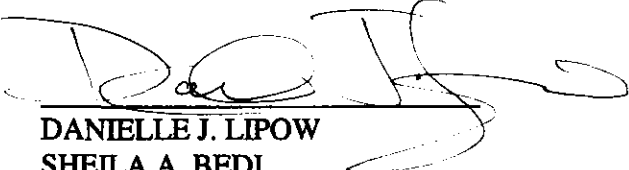
- (1) The Defendants will adopt and implement the policy attached to this Settlement Agreement as Exhibit 1. The terms of that policy are incorporated in this Agreement.
- (2) In the interest of settlement, the Plaintiffs agree to waive all attorney fees associated with the litigation of this action.
- (3) Upon the execution of this Settlement Agreement, Plaintiffs agree to withdraw their Motion to Vacate Order of Dismissal (filed Dec. 16, 2004); Motion for an Extension of Time to Submit Petition for Attorney Fees (filed Dec. 16, 2004); and Objections to Involuntary Dismissal by Magistrate Judge (filed Dec. 21, 2004).
- (4) Plaintiffs and the Defendants agree to file this Settlement Agreement with the United States District Court.


Agreed to this the 12th day of January, 2005, by:

FOR THE DEFENDANTS:


HAROLD E. PIZZETTA, III
Special Assistant Attorney General
State of Mississippi
Carroll Gartin Justice Building
Post Office Box 220
Jackson, Mississippi 39205-0220

FOR THE PLAINTIFFS:


DANIELLE J. LIPOW
SHEILA A. BEDI
Southern Poverty Law Center
Post Office Box 2087
Montgomery, Alabama 36102


DAVID B. MILLER
Mississippi Center for Justice
736 North Congress Street
Post Office Box 1023
Jackson, Mississippi 39215-1023

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES DIVISION OF YOUTH SERVICES	Policy Number	Section
SUBJECT: ATTORNEY ACCESS	DATE:	
<p>POLICY</p> <p>All students housed at the Mississippi Youth Correctional Complex (MYCC), also known as Oakley Training School, and Columbia Training School (CTS) have the right to seek legal assistance and to have uncensored, confidential contact by telephone, in writing, or in person with their legal representative. MYCC and CTS are collectively referred to herein as institution.</p> <p>PROCEDURES</p> <p>Orientation</p> <p>A list of legal resources will be made available to the student during orientation. Each student shall be informed of their right to request legal assistance and to meet with an attorney. These rights will be explained orally and in writing.</p> <p>Communication with Attorneys</p> <p>1. General</p> <p>Contact with an attorney may be initiated by the youth in writing on the form provided in the student handbook. (See the form at Exhibit 1 to this Policy.) The counseling staff will be available to assist students who need help in completing the form. The form will be mailed to the designated attorney within twenty-four hours of its completion.</p> <p>An agent, employee, or other representative of an attorney may meet with a child when the agent, employee, or representative is accompanied by the attorney.</p> <p>Prior to being approved to enter the grounds of the institution, however, the following criteria must be met by the visiting attorney:</p> <ul style="list-style-type: none">i) The visiting attorney must submit evidence that he or she is licensed to practice law in the State of Mississippi, including but not limited to a copy of a current Mississippi State Bar card, certificate of good standing from the Mississippi Supreme Court, or other acceptable evidence from the Mississippi State Bar.ii) An attorney must provide written notice at least forty-eight (48) hours in advance of the visit, as well as any one of the following three items:<ul style="list-style-type: none">a) a pleading evidencing the attorney's appearance on the child's behalf in any state or federal court;		

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<p>b) a consent form signed by the child's legal guardian (See Exhibit 2 to this Policy); or</p> <p>c) a declaration by the attorney that: (i) the legal guardian has been notified of the child's request and has not communicated any objections, and (ii) the child's youth court attorney, guardian ad litem, or youth court judge has been informed of the child's request for legal assistance and does not object to the visit. A declaration submitted pursuant to this subsection must be sworn under penalty of perjury and must include the name of the party authorizing access, contact information, the date the authorization was given, and the nature of the consent given.</p> <p>iii) If the legal guardian does not provide a written authorization for the attorney's meeting with the child but the legal guardian accompanies the attorney in person to the institution, the attorney will be allowed to enter the institution to meet with the child.</p> <p>iv) When the attorney is not able to reach the legal guardian, the attorney will seek authorization from the youth court guardian ad litem (G.A.L.), an attorney who represented the child in youth court, or the youth court having jurisdiction over the child. Consent by any of the foregoing three parties (G.A.L., the youth court attorney, or youth court) need not be in writing. If consent is not provided in writing, the attorney must execute a declaration identifying the name of the party authorizing access, contact information, the date the authorization was given, and the nature of the consent given. If the guardian ad litem or the youth court attorney objects to the visiting attorney's compliance with a child's request for a meeting between the attorney and the child, the visiting attorney may not comply with the request until he or she enters an appearance on the child's behalf in state or federal court.</p> <p>v) If the legal guardian objects to the visiting attorney's compliance with a child's request for a meeting between the attorney and the child, the visiting attorney may not comply with the request until he or she enters an appearance on the child's behalf in state or federal court.</p>		

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<p data-bbox="349 336 511 367">2. Visits</p> <p data-bbox="259 399 1380 462">A log shall be maintained of all visits by attorneys. Visits may be visually observed by the institution, but conversations between students and counsel shall not be monitored.</p> <p data-bbox="349 493 657 525">3. Scheduling Visits</p> <p data-bbox="259 556 1380 619">Visits by attorneys must be scheduled through the institution at least forty-eight (48) hours in advance. Students may refuse to see any attorney.</p> <p data-bbox="259 651 1380 892">The attorney must write to a designated representative of the institution to certify that a particular child has requested a legal visit. The attorney's letter will include the child's name, the legal guardian's name and contact information, the attorney's name and contact information, and a proposed date and time for a meeting between the attorney and child. The letter will include documentation that the visiting attorney meets the criteria specified above in Section 1. Except in emergency circumstances, the attorney must insure that written notification of the proposed visit, and supporting documentation, is received by the designated institution representative at least forty-eight (48) hours in advance of the visit.</p> <p data-bbox="259 924 1380 1081">After the initial visit to the institution, the attorney must schedule subsequent visits with the child by providing the institution's designated representative with notice, in writing, at least forty-eight(48) hours in advance of an intended visit and must present a picture identification upon arrival at the institution but will not be required to resubmit the other supporting documentation required by this Section.</p> <p data-bbox="349 1113 609 1144">4. Time of Visits</p> <p data-bbox="259 1176 1380 1323">Visits by attorneys must normally take place Monday through Friday, excluding holidays, between the hours of 5:00 p.m. and 8:00 p.m. or Saturday and Sunday between the hours of 9:00 a.m. and 3:00 p.m. Upon arrival at the institution, the attorney must present a picture identification, bar credential, and documentation that the attorney meets the criteria specified above in Section 1.</p> <p data-bbox="259 1354 1380 1417">The School Administrator may approve special or other visits by an attorney not in conformity with this Section, when emergency circumstances warrant such visits.</p> <p data-bbox="349 1449 698 1480">5. Limitations on Visits</p> <p data-bbox="259 1512 1380 1659">Any improper acts or unethical behavior with a student during a visit may result in an attorney being denied future requests to visit a child. No more than one student may be seen by an attorney at any one time. Generally, no more than two legal visitors may see a student on any one day. However, the number of legal visitors at one time may be limited based on available space and/or security constraints.</p>		

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<p>Further limitation may be imposed by the School Administrator as circumstances warrant. Where foreseeable circumstances require additional limitations on attorney visitation, the facility, where feasible, will inform the visiting attorney of those limitations at least twenty-four (24) hours in advance of the visit.</p> <p>6. Phone Calls</p> <p>Students will be allowed to phone their attorney under conditions established to protect the confidentiality of communications to and from the attorney. However, calls are usually limited to avoid unnecessary intrusion upon the institution staff and/or due to security concerns. However, if a student indicates important information needs the prompt attention of his or her attorney, further calls may be placed.</p> <p>All calls to attorneys will be collect phone calls.</p> <p>7. Written Communication</p> <p>A student's written message will be mailed or distributed to the attorney. Any student who does not have postage will be provided no more than two (2) postage stamps or free mailings per week by the institution for correspondence with an attorney or otherwise. Written messages will be unopened and uncensored. Further, mail from the court or other legal authority to a student will not be opened.</p> <p>GOVERNING RULES AND REGULATIONS</p> <p>Attorneys are subjects to all applicable rules and regulations of the institution.</p> <p>EXCEPTIONS</p> <p>Nothing contained in this Policy shall apply to attorneys representing the State, the Mississippi Department of Human Services, or the institution.</p> <p>APPLICABILITY</p> <p>All other applicable policies and/or procedures, not in conflict with this Policy, shall continue to govern the subject matter described herein.</p>		

Exhibit 1:

REQUEST FOR LEGAL ASSISTANCE

I, _____, would like to talk to a lawyer. I would like to talk to (please select one):

Mississippi Center for Justice
Southern Poverty Law Center
Post Office Box 1023
Jackson, Mississippi 39215-1023

_____¹

(Other attorney and contact information)

Please give us the name and address of your legal guardian(s) so that the attorney can arrange to visit you:

Name: _____

Relation: _____
(parent/grandparent/other)

Address: _____

Telephone: _____

¹ The State will add names of other applicable legal service entities.

Exhibit 2:

LEGAL VISIT CONSENT FORM

I, _____, am the legal guardian of _____
_____, a child currently confined at the Columbia Training School. My
child has requested legal assistance from attorney/s _____.

Attorney/s _____ has/have my permission to conduct
confidential legal visits with my child at the Columbia Training School. I understand that the State
of Mississippi will not monitor conversations between my child and legal counsel. I further
understand that attorney/s _____ will not charge for any legal advice
or services they provide my child.

I can be reached at the following telephone number(s) to confirm this authorization:

Daytime _____

Evening _____

Date: _____

Signature: _____

CERTIFICATE OF SERVICE

This is to certify that I, David B. Miller, counsel of record for Plaintiffs, have this date caused to be served via United States mail, first class postage prepaid, a true and correct copy of the foregoing upon the following:

Harold E. Pizzetta, III, Esq.
Special Assistant Attorney General
Post Office Box 220
Jackson, Ms 39201

Mitzi Dease Paige, Esq.
Assistant United States Attorney
180 E. Capitol St., Ste. 500
Jackson, MS 39201

Jim Eichner, Esq.
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave.
Washington, D.C. 20530

This the 12th day of January, 2004.


DAVID B. MILLER