

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

THE UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL ACTION NO.: 3:03CV1354HTW

THE STATE OF MISSISSIPPI, ET AL.

DEFENDANTS

**AGREED ORDER TERMINATING SPECIFIC PROVISIONS  
OF THE AMENDED CONSENT DECREE**

In 2005, this Court approved and entered as its Order a consent decree (“Agreement”)(Dkt. #119, 120, May 31, 2005) requiring the State of Mississippi, et al. (the “State”) to implement certain measures to address unconstitutional conditions at the Oakley Training School (“Oakley”) and the Columbia Training School (“Columbia”).<sup>1</sup> On February 26, 2008, this Court approved and entered an amendment to the Agreement that included, *inter alia*, an extension of the termination date of the Agreement to May 31, 2010 and the appointment of three monitors to oversee the Agreement. (Dkt.#135.) On April 30, 2008, this Court approved and entered as an order the Action Plan for suicide prevention. (Dkt. #141.) On July 10, 2008, this Court approved and entered as an order the Action Plan for protection from harm. (Dkt. #144.) On June 21, 2010, this Court entered an Order to Amend Consent Decree. (Dkt. #158.) The Amended Consent Decree essentially addressed the following:

- a) dismissal of Paragraphs 20-22, 24-28, and 29-36;
- b) the addition of three (3) paragraphs to a new subsection IV.D. concerning mental health care and rehabilitative services;

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<sup>1</sup>Columbia Training School was closed in June 2008, and female youths are currently housed at Oakley.

- c) the amendment of Paragraph 38 to require the State to develop a comprehensive action plan for the substantive remedial areas of the Agreement - protection from harm, suicide prevention, and mental health care and rehabilitative services; and Paragraphs 39-40 regarding quality assurance corrective action plans;
- d) the appointment of Kelly Dedel, Ph.D. to monitor the remaining provisions of the Agreement; and
- e) the modification of Paragraph 59, the termination provision.

Paragraph 59 of the Amended Consent Decree provides:

(59) Termination: This Agreement shall terminate when the State is in substantial compliance with each provision of this Agreement and has maintained such substantial compliance for a period of six (6) months. However, nothing herein shall be deemed to waive any rights or protections under the Prison Litigation Reform Act, 18 U.S.C. §3626.

- a. The parties shall request a status conference with the court every six (6) months to apprise the court of the status of the State's efforts at compliance with this Agreement until termination of this Agreement.
- b. The burden shall be on the State to demonstrate this level of compliance.
- c. There are four (4) substantive sections of this Agreement - protection from harm, suicide prevention, medical and dental care, and mental health care and rehabilitative services. A section of the Agreement may be terminated if the State sustains its burden with respect to that section of the Agreement.
- d. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

At this time, all parties, as well as, the court appointed monitor are in agreement that the State has met its burden of substantial compliance for a sustained period of six (6) months with regards to

Subsections IV.A through IV.D and that the following provisions are ripe for dismissal in accordance with Paragraph 59:

**SUBSECTION IV.A. PROTECTION FROM HARM**

- (1) Protection from Harm: The State shall, at all times, provide youth in the facilities with reasonably safe living conditions.
- (2) Protection from Abuse: The State shall ensure that youth are protected from violence and other physical or sexual abuse by staff and other youth.
- (3) Protection from Abusive Institutional Practices: The State shall ensure that abusive institutional practices such as hog-tying, pole shackling, “sitting in a chair,” “guard duty,” making youth eat vomit, making youth run with tires around their bodies, or run with mattresses, cease immediately.
- (6) Protection from Undue Restraints: The State shall ensure that youth are not subjected to unreasonable restraints and that restraints are never used to punish youth. The State shall develop and implement policies, procedures and practices to ensure that only safe methods of restraint are used at the facilities, and only in those circumstances necessary for safety and security.
- (7) Reporting of Staff Misconduct and Other Serious Incidents: The State shall develop and implement appropriate policies, procedures, and practices to ensure that all incidents of staff-on-youth and youth-on-youth violence, inappropriate staff relationships with youth, and abusive institutional practices are reported to appropriate individuals, and that such reporting may be done through confidential means, without fear of retaliation. The State shall ensure that all incidents are adequately documented and reported appropriately and with sufficient detail, including the facts of the incident, any injury that occurred as a result of the incident, and in a way that permits review.
- (8) Health Care Inquiries Regarding Injury: A nurse or other health care provider shall question, outside the hearing of other staff or youth if appropriate, each youth who reports to the infirmary with an injury, regarding the cause of the injury. If, in the course of the youth’s infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall immediately:
  - a. take all appropriate steps to preserve evidence of the injury (e.g., photograph the injury and any other physical evidence);
  - b. report the suspected abuse to the appropriate local officials;

- c. document adequately the matter in the youth's medical record; and
  - d. complete an incident report.
- (9) Uses of Force: The State shall develop and implement comprehensive policies, procedures and practices governing uses of force, ensuring that the least amount of force necessary for the safety of staff, youth residents, and visitors is used on youth.
- (10) Investigations: The State shall develop and implement an adequate system for investigation by senior management of uses of force, alleged child abuse, youth-on-youth violence, and alleged sexual contacts.
- (11) Staff Training in Behavior Management, De-Escalation and Crisis Intervention: The facilities shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.
- (12) Behavior Management Program: The State shall develop and implement an effective behavior management program. The behavior management program shall be implemented throughout the day including during school time. The State shall develop and implement policies, procedures, and practices to ensure that mental health staff provide regular consultation regarding behavior management to custody and other staff involved in the behavior management program, and shall develop a mechanism to assess the effectiveness of interventions utilized.
- (13) Staffing: The State shall ensure that there are sufficient numbers of adequately trained direct care and supervisory staff to supervise youth safely, protect youth from harm, and allow youth reasonable access to medical and mental health services, and adequate time spent in out-of-cell activities.
- (14) Isolation: The State shall develop and implement policies, procedures and practices to ensure that isolation, lockdown, seclusion and other similar restrictions are used only when appropriate and in an appropriate manner, and to document fully the use of isolation. The State shall immediately cease requiring youth to strip and remain naked while in isolation.
- (15) Due Process: The State shall ensure that youths confined for more than 24 hours receive an appropriate due process hearing by an impartial supervisory staff member to determine whether cause exists for continued disciplinary confinement.

- (16) Grievances: The State shall develop and implement policies, procedures, and practices to ensure that the facilities have an adequate grievance system.
- (17) Admissions Intake and Orientation: The State shall develop and implement policies, procedures, and practices to establish a consistent, orderly admissions intake system, conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining their safety. Each youth entering the facility shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and from retaliation for reporting allegations of abuse. Orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in facility programs.
- (18) Employment Practices: The State shall ensure that only individuals fit to work with youth residents are employed at the institutions. The State shall utilize reasonable measures to determine applicants' fitness to work in a juvenile justice facility prior to hiring employees for positions at the facilities. Within 120 days of the Effective Date of this Agreement, the State shall conduct a criminal record check for all current employees at the facilities, taking appropriate actions where new information is obtained. Every two years thereafter, the State shall update record checks for all employees who come into contact with youth.
- (19) Classification: The State shall develop and implement a classification system that places youth appropriately and safely within the facility, and provides for reclassification in appropriate circumstances.

#### **SUBSECTION IV.B. SUICIDE PREVENTION**

- (23) Supervision of Youth at Risk of Self-Harm: The State shall ensure that newly-arrived youth, youth in isolation or seclusion, and other youth at heightened risk of self-harm are sufficiently supervised to maintain their safety.

#### **SUBSECTION IV.D. MENTAL HEALTH CARE AND REHABILITATIVE SERVICES**

- (I.) Transition Planning: The State shall ensure that staff create transition plans for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with information regarding mental health resources available in the youth's home community; making referrals to such services when appropriate; making initial appointments with community service providers; and supplying appropriate psychiatric medications upon release from the facilities. Beyond these requirements, nothing in this Agreement shall

make the Defendants responsible for providing mental health services to youth no longer residing at the facilities.

- (ii.) Notice to Youth of Facility Rules and Incentives/Consequences for Compliance: The State shall explain the facility rules and the positive incentives for compliance as well as the sanctions for violating those rules to each youth during an orientation session. The State shall also explain to all youth during an orientation session the behavior management program and the positive incentives for good behavior, as well as disciplinary measures for misbehavior. The rules for all programs should be posted conspicuously in facility living units.
- (iii.) Disciplinary Process and Accommodations for Youth with Disabilities: The State shall develop and implement policies and procedures to make reasonable accommodations in its disciplinary processes for youth with mental disabilities. Whenever a youth with a mental disability is engaged in the disciplinary process, a qualified mental health professional shall be consulted to ensure that the accommodation is reasonable for that youth.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the State has met its burden of remaining in substantial compliance for a period of six (6) months with regards to all remaining provisions in Subsections IV.A, IV.B and IV.D.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said provisions shall be and are hereby dismissed. All remaining provisions of the Amended Consent Decree that do not conflict with this Order, including but not limited to Section V (Compliance and Quality Assurance), shall remain in full force and effect.

SO ORDERED this the 27<sup>th</sup> day of September, 2013.

s/ HENRY T. WINGATE  
HENRY T. WINGATE  
UNITED STATES DISTRICT COURT