

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

EDWARD BRAGGS, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO.
v.)	2:14cv601-MHT
)	(WO)
JEFFERSON S. DUNN, in his)	
official capacity as)	
Commissioner of)	
the Alabama Department of)	
Corrections, et al.,)	
)	
Defendants.)	

PHASE 2A OPINION AND ORDER PRELIMINARILY APPROVING
ADA MENTAL HEALTH SETTLEMENT AGREEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), the parties jointly move the court to grant preliminary approval to their proposed ADA mental health settlement agreement in Phase 2A of this litigation; to approve the form of notice to class members of the proposed settlement agreement (attached as Exhibit A); to approve the form for objecting to or commenting on the proposed settlement agreement (attached as Exhibit B); and to approve the process for distributing these

documents and collecting comments, as further set out below. Based on the entire record before the court, the court finds as follows:

First, the court finds that the proposed settlement agreement should be preliminarily approved, that notice should be provided to interested parties, and that a fairness hearing should be conducted.

The court further finds it appropriate to provisionally certify a Rule 23(b)(2) injunctive-relief settlement class composed of "any current or future inmate in the physical custody of the Alabama Department of Corrections who has a disability as defined in 42 U.S.C. § 12012 and 29 U.S.C. § 705(9)(B) relating to or arising from mental disease, illness, or defect." For reasons to be articulated in a final decision regarding whether to approve the settlement, the court preliminarily finds that the settlement class meets the requirements of Rule 23(a)--numerosity, commonality, typicality, and adequacy of representation--as well as the requirement of Rule

23(b) (2) that the issues involved "apply generally to the class," such that "relief is appropriate respecting the class as a whole." The court preliminarily finds that plaintiffs' counsel in this case can capably serve as and should be appointed class counsel, based on the factors outlined in Rule 23(g).

Finally, the court finds that the notice and comment forms attached as exhibits to this order, and the process for distributing and collecting these forms outlined below, constitute sufficient notice of and--together with the fairness hearing described below--opportunity to be heard on the proposed settlement agreement, as is required by due process and Rule 23(e).

It is therefore ORDERED that the joint motions for preliminary approval (doc. nos. 1175 and 1197) are granted as follows:

1. The proposed settlement agreement (doc. no. 1100) is preliminarily approved; final approval will be subject to a hearing and review by this

court of any objections to or comments about the agreement's terms submitted by class members, and to the court's resolution of certain outstanding issues identified in open court at a hearing held on February 16, 2017, and set for briefing below.

2. An injunctive-relief settlement class, defined as "any current or future inmate in the physical custody of the Alabama Department of Corrections who has a disability as defined in 42 U.S.C. § 12012 and 29 U.S.C. § 705(9)(B) relating to or arising from mental disease, illness, or defect," is provisionally certified under Federal Rule of Civil Procedure 23(a) and (b)(2).

3. The Southern Poverty Law Center, the Alabama Disabilities Advocacy Program, and Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, are appointed as class counsel to represent the settlement class under Rule 23(g).

4. The Alabama Department of Corrections (ADOC) is to provide notice of the proposed settlement agreement as outlined below by March 6, 2017, and to collect comments from class members as further outlined below by the submission deadline of April 5, 2017.

a. As a preliminary matter, the proposed settlement agreement (doc. no. 1100) and notice and comment forms (Exhibits A and B) are to be translated into Spanish, and printed in both Braille and large print, and these alternative format documents are to be distributed to each ADOC facility prior to March 6, 2017. Although documents need not be posted in any alternative format, any individual inmate known to or believed by correctional officers to read only Spanish or to be vision-impaired must be provided individual copies of both the notice and

comment forms in an appropriate alternative format, and must be provided the agreement itself in an appropriate alternative format upon request. As to an inmate who is illiterate or partially illiterate or reads only Spanish or is vision-impaired and has difficulty reading any of the different format documents or has difficulty writing, if that inmate requests that the forms or the agreement itself be read to him or her, or requests assistance in completing a comment form, this request must be promptly accommodated by ADOC.

b. Copies of the proposed settlement agreement are to be made available for inmates to review in the law library of each ADOC prison or work-release facility or, for facilities that have no law library, in the area where information for

inmates is made available. At least one copy is to be made available per 100 inmates housed in any particular facility.

c. A copy (including an alternative format copy, as appropriate) of the proposed settlement agreement is to be provided promptly upon request to any inmate who is not authorized or able to access the law library or other area where copies of the agreement are being made available.

d. For inmates housed in dorms at ADOC's prison or work-release facilities, the notice form is to be posted in each of the libraries and dorms of these facilities, wherever information for inmates is ordinarily posted. Sufficient copies of the comment form are to be made available to inmates housed in dorms in their facilities' libraries and in their shift commanders' offices.

e. Any inmate whose housing assignment is other than a dorm is to be provided, by hand delivery: (1) a copy of the notice form, (2) a copy of the comment form, and (3) a letter-sized envelope. A correctional officer employed by ADOC is to distribute these papers. ADOC is to maintain a roster that indicates, by name and AIS number, each inmate to whom these forms have been distributed. Inmates are to sign this roster upon receipt of the forms; in the event that an inmate refuses to sign or rejects the forms, the distributing officer is to note this on the roster.

f. ADOC is to inform all inmates of the notice and opportunity to object or comment by means of a weekly oral announcement, to be made during morning count each Monday of the comment period,

as follows: "Attention. There is a proposed settlement of the Braggs v. Dunn Americans with Disabilities Act lawsuit that affects all inmates. You have until April 5, 2017, to provide written comments about that settlement. You can review the proposed settlement agreement in the law library [for facilities that have no law library, specify alternate location]. If you are not able to access the law library [for facilities that have no law library, specify alternate location], a copy of the agreement will be provided to you if you request one from a correctional officer. By April 5, 2017, you should place all written comments in the ADA Settlement Comment Box, located next to the inmate request slip box. If you need a copy of the comment form, you can get one from the correctional officer supervising your

living area or from the law library. If you cannot access the ADA Settlement Comment Box, you should ask a correctional officer to have your comment form collected and placed in the comment box."

g. At each ADOC prison or work-release facility, a secured box clearly labeled "ADA Settlement Comment Box" is to be placed adjacent to the box where inmate request slips are collected. This box may be a securely taped cardboard box, and must be of sufficient size to accommodate all comment forms that are submitted. This box is to be used exclusively for the collection of comment forms.

h. Inmates who are allowed to move around within a facility are to be allowed to place their comment forms in the designated comment box. Comment forms are to be collected from those inmates who do

not have freedom of movement within a facility as follows, with records of the inmates from whom forms have been collected to be maintained on rosters by those responsible for the collection:

- i. In segregation units, the forms are to be collected by members of the Institutional Segregation Review Board during normal rounds and deposited in the comment box.
- ii. In mental-health units and stabilization units, the forms are to be collected by the Captains who are responsible for those units and deposited in the comment box.
- iii. In segregation units or holding units at work-release facilities, the forms are to be collected by the Wardens of those facilities and deposited in the comment box.

i. The Warden of each ADOC facility is to certify in writing that the facility has complied with the above requirements regarding the provision of notice and the collection of forms, and that all comment boxes have been transmitted to ADOC's general counsel as required below.

j. On the 20th day of the comment period, the Warden at each facility is to transmit to the office of ADOC's general counsel the comment box(es) at the facility, and immediately replace the comment box(es) with a box or boxes of the same design and labeling as the box replaced. At the end of the final day of the comment period, the Warden at each facility is to transmit the replacement comment box(es) to the office of ADOC's general counsel.

k. After each set of comment boxes is received by ADOC's general counsel,

counsel for ADOC will promptly arrange with class counsel a time for the parties to meet at the headquarters of defendant Alabama Department of Corrections in Montgomery, Alabama, in order to confirm that comment boxes from all ADOC facilities have been received and to open those boxes. A representative of the clerk of court for the Middle District of Alabama will be in attendance when the boxes are opened and will personally transport all contents of the boxes to the courthouse for processing pursuant to Section 4(1).

1. Each of these two sets of comments is to be scanned by the clerk of court and docketed as a single filing. At the same time as these comments are docketed, comments received by the clerk of court by mail by that date are also to be compiled

and docketed. Finally, on April 21, 2017, any additional comments received by the clerk of court by mail are to be compiled and docketed. The clerk of court is to retain the original copies of all comments, whether submitted to comment boxes or by mail.

i. To be clear, five compilations of comments are to be docketed and marked as follows:

1. First round of comments submitted to comment boxes.
2. First round of comments submitted by mail.
3. Second round of comments submitted to comment boxes.
4. Second round of comments submitted by mail.
5. Third round of comments submitted by mail.

5. By no later than May 1, 2017, the parties are to confirm in written filings with the court the following agreement, stipulated to during a hearing held in open court on February 16, 2017: This Agreement does not represent a settlement of all potential current and future claims that prisoners may bring under the ADA or Rehabilitation Acts.

6. By no later than May 1, 2017, the parties are to file pre-hearing briefs, both summarizing by topic and responding to the objections to and comments on the proposed settlement agreement that have been submitted by class members. These briefs must include citations to the page numbers on which any referenced objections or comments appear in the docketed compilations of responses.

7. By no later than May 1, 2017, the Alabama Disabilities Advocacy Program (ADAP) will file a brief concerning the reasonableness of the

proposed settlement agreement, which will include one or more expert opinions addressing the adequacy of the settlement.

8. A fairness hearing is set for 10:00 a.m. on June 2, 2017, in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama. At this hearing, counsel for both parties must be prepared to respond to the objections and comments made by class members, as well as to the court's concerns as outlined above.

9. After receiving objections and comments from class members, the court will determine from whom it intends to hear oral testimony. This testimony will be heard by videoconference from various ADOC facilities.

a. By no later than May 5, 2017, the parties are to file with the court their suggestions as to which inmates the court should hear testify. The parties are to

consult with the clerk of court about and file under seal a joint proposal as to arrangements for videoconferencing.

b. By no later than May 10, 2017, the court will inform the parties which class members will testify, and which dates during the week of May 30, 2017, the court will hear testimony.

c. By no later than May 12, 2016, the parties are to file a list of which class members will testify from which facilities.

DONE, this the 22nd day of February, 2017.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

If you are an inmate with a mental health condition, read this notice.

Notice of Proposed Class Action Settlement

You may be affected by the settlement of mental health claims made under the Americans with Disabilities Act (“ADA”) and under Section 504 of the Rehabilitation Act (“Section 504”) in the lawsuit entitled *Braggs v. Dunn*, No. 2:14-cv-00601-MHT-TFM (previously *Dunn v. Dunn*), in the United States District Court for the Middle District of Alabama. This notice summarizes the claims included in this settlement and your rights under the settlement agreement.

1. What issues in the lawsuit have been settled?

- Whether the ADOC has failed to make appropriate accommodations for people with mental health disabilities in its policies and procedures, in violation of the ADA and Section 504;
- Whether the ADOC has discriminated against inmates with mental health disabilities in the provision of and access to programs, benefits, and services; and
- Whether the ADOC has failed to provide appropriate programming designed for persons with intellectual disabilities in ADOC facilities.

The case involves other claims related to medical and mental health care that have not been settled and that will be decided by the Court.

2. Who is affected by this settlement?

All class members are affected by this settlement. A class member is any current or future inmate in the physical custody of the ADOC who has a disability as defined in the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(B), relating to or arising from mental disease, illness, or defect.

Under the ADA, disability is defined as, “a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” 42 U.S.C. § 12102(1). This includes mobility, hearing or vision impairments.

If you have any questions about how this settlement affects you, contact the Class Counsel listed after question No. 6 on the third page of this notice.

3. What is the proposed settlement?

The Plaintiffs and the ADOC have reached a proposed settlement that would release the ADOC from any further liability as to the mental health claims brought under the ADA by the plaintiff class. If the court approves the settlement agreement, you may be prevented in the future from bringing certain ADA mental health claims in federal court, because those claims were resolved by the settlement agreement. You may be required to ask an arbitrator appointed by the court to decide those claims, and you may not be able to appeal the arbitrator’s decision to the court.

The settlement agreement requires the ADOC to make numerous changes, all of which are subject to Court approval, including the following:

- **identifying, screening, and tracking inmates with mental health disabilities;**
- **modifying the procedure for requesting disability-based accommodations;**

- **appointing ADA Coordinators for each facility and statewide;**
- **ensuring that inmates with mental health disabilities have equal access to educational and rehabilitative classes and programs;**
- **offering life skills / adaptive behavior classes for inmates with intellectual disabilities;**
- **putting in place procedures for requesting ADA accommodations and for appealing denials of such requests; and**
- **permitting the Alabama Disabilities Advocacy Program (“ADAP”) to monitor ADOC’s compliance with the Settlement Agreement.**

The settlement agreement requires the ADOC to pay fees to the court-approved monitor and attorneys’ fees to the lawyers who represented the class members.

You have the right to learn more about the settlement agreement. A copy is available in your prison law library. If there isn’t a library, the settlement agreement will be available in the area where other inmate information is made available in your facility. If you are unable to visit the law library or other area, you may request a copy of the settlement agreement from a correctional officer or class counsel and one will be provided to you.

4. Who represents the inmates affected by the settlement?

The lawyers representing the inmates (“Class Counsel”) are Maria V. Morris of Southern Poverty Law Center, 400 Washington Avenue, Montgomery, AL 36104 and William Van Der Pol, Jr. of the Alabama Disabilities Advocacy Program, Box 870395, Tuscaloosa, AL 35487.

5. What are your options?

The United States District Court for the Middle District of Alabama has preliminarily approved the settlement agreement but will hold a hearing to determine whether it is fair, reasonable, and adequate at _____ on _____, 2017, at the United States Courthouse, One Church Street, Montgomery, Alabama. If you wish to testify, say so on the comment form you submit. The court will choose which inmates will be allowed to testify. The inmates who have been selected to testify will speak to the court by videoconference from an ADOC facility, and will not appear in court in person.

You have the right to make objections, comments or statements about the Settlement Agreement through the following methods:

1. You may complete a form called "Response to Proposed Class Action Settlement." If you have not been provided with a copy of the Response form, you may get one from the officer supervising your living area or in your facility's law library. As discussed in the Response form, you must place your completed Response form in the box labeled "ADA Mental Health Settlement Comment Box" located in the area where your facility's inmate request box is located. If you do not have access to the area where the ADA Mental Health Settlement Comment Box is located, you should provide your completed Response form to the following, depending on your housing assignment, who will place your comments in the ADA Mental Health Settlement Comment Box:
 - in Segregation Units, the forms will be collected by members of the Institutional Segregation Review Board during normal rounds;
 - in the Infirmary, Mental Health Units, Stabilization Units, and Death Row, the forms will be collected by the Captain who is responsible for those units;

- in Segregation Units/Holding Units at Work Release Facilities, the forms will be collected by the Warden.
2. You may also mail your completed response form to the following address: Clerk of Court, U.S. District Court for the Middle District of Alabama, P.O. Box 711, Montgomery, AL 36101-0711.
 3. You may use other paper to provide an objection, comment or statement about the Settlement Agreement. If you do so, that paper MUST include the case name and number (Braggs v Dunn, Case No. 2:14-cv-00601-MHT-TFM) at the top of the page. You MUST also include your full legal name, AIS number, all objections, comments or statements you wish to make and the reasons for them, and your signature.
 4. You may submit supporting papers (such as briefs, written evidence, and declarations) to your objection, comment, or statement about the Settlement Agreement. However, do not send originals because those will not be returned to you.

ANY OBJECTIONS, COMMENTS OR STATEMENTS MUST BE PLACED IN THE ADA MENTAL HEALTH SETTLEMENT COMMENT BOX, PROVIDED TO THE RESPONSIBLE CORRECTIONAL OFFICER OR POST MARKED NO LATER THAN _____, 2017, TO BE CONSIDERED.

Any objections, comments, or statements that do not comply with the rules and deadlines listed in this Notice will not be heard or considered by the Court.

6. How can you get more information?

If you have any question about any information in this notice or if you want a copy of the proposed settlement agreement, you may write or call the following offices of Class Counsel:

William Van Der Pol, Jr.
ALABAMA DISABILITIES ADVOCACY PROGRAM
Box 870395
Tuscaloosa, Alabama 35487
(205) 348-4928

ADA Mental Health Settlement Questions
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, Alabama 36104
(334) 956-8200

Response to Proposed Class Action Settlement

You may be affected by the settlement of mental health claims made under the Americans with Disabilities Act ("ADA") and under Section 504 of the Rehabilitation Act ("Section 504") in the lawsuit entitled *Braggs v. Dunn*, No. 2:14-cv-00601-MHT-TFM (previously *Dunn v. Dunn*).

A notice of the terms of the settlement has been posted in your facility and you can review a copy of the Proposed Settlement in the law library or, if there isn't a library, in the area where other inmate information is made available in your facility. If you cannot go to the law library, you can request a copy of the Proposed Settlement from ADOC personnel or by writing to: William Van Der Pol, Jr., Alabama Disabilities Advocacy Program, Box 870395, Tuscaloosa, Alabama, 35487 or ADA Mental Health Settlement Questions, Southern Poverty Law Center, 400 Washington Ave., Montgomery, Alabama, 36104.

If you are a prisoner with a mental health disability, you have a right to comment or object to the Proposed Settlement. If you wish to comment or object, please fill out this form and put it in the comment box at your facility that has been made available for accepting these comments. This box is located by the box where inmate request forms are placed and is marked "ADA Mental Health Settlement Comment Box".

If, due to your housing assignment, you are not allowed access to the box, you should give the completed form (sealed in an envelope, if you wish) to the following persons who will place the form in the box:

- in Segregation Units, the forms will be collected by members of the Institutional Segregation Review Board during normal rounds;
- in the Infirmary, Mental Health Units, Stabilization Units, and Death Row, the forms will be collected by the Captain who is responsible for those units and deposited in the Comment Box;
- in Segregation Units/Holding Units at Work Release Facilities, the forms will be collected by the Warden.

You can also mail the completed form to: Clerk of the Court, United States District Court for the Middle District of Alabama, P.O. Box 711, Montgomery, AL 36101-0711. If you need assistance in completing this form, please notify a Correctional Officer.

You must include your name, AIS Number, and signature on this form or it will not be considered.

ALL COMMENTS MUST BE PLACED IN THE ADA MENTAL HEALTH SETTLEMENT COMMENT BOX, PROVIDED TO THE APPROPRIATE ADOC OFFICER OR REPRESENTATIVE OR POST MARKED BY _____ 2017, TO BE CONSIDERED.

Inmate Name (print) _____ AIS Number _____

Inmate Signature _____ Date _____

Do you object to or wish to comment on any of the following provisions of the Proposed Settlement Agreement? If so, please circle the topic and explain your comment or objection below.

Topics (circle one or more):

Housing / Grouping Prisoners with Disabilities to Provide Services

Life Skills / Adaptive Behavior Training for Prisoners with Intellectual Disabilities

Security Levels

Access to Programs

Emergencies

Access to Facilities

Identification of Disabilities

Quality Assurance / Monitoring

Tracking of Disabilities & Facility Transfers

Attorneys' Fees

ADA Coordinators

Accommodation Request / Grievance Process Other _____

Please write out the reasons for your objection/comment below or it will not be considered. You may attach additional pages and/or supporting documentation. Documents attached will not be returned.

Do you wish to testify under oath (by videoconference from an ADOC facility) about your opinions on the Proposed Settlement? Yes No