

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 V.)
) CIVIL NO. _____
STATE OF ARKANSAS, the)
ARKANSAS DIVISION OF YOUTH)
SERVICES, and the ARKANSAS)
DEPARTMENT OF HUMAN SERVICES)
)
 Defendants.)

)

I. INTRODUCTION

- A. On May 8, 2002, the United States notified State of Arkansas officials of its intent to investigate conditions of confinement at the Alexander Youth Services Center ("Alexander" or "the facility"), pursuant to the Civil Rights of Institutional Persons Act, 42 U.S.C. § 1997, and the pattern or practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.
- B. On June 3-5 and 19-21 2002, the United States toured Alexander with consultants in the fields of juvenile justice management, mental health care, fire safety, and education.
- C. Throughout the course of the investigation, the United States received complete cooperation and access to all facilities and documents from Doyle Herndon, Director of the Division of Youth Services of the Arkansas Department of Human Services, State employees in the Division of Youth Services, Bob McCracken, the Director of Alexander, and the employees of Cornell Companies, Inc., the contractor that runs the facility.
- D. On November 8, 2002, the United States issued a findings letter pursuant to 42 U.S.C. § 1997(a)(1) which concluded that certain conditions at Alexander violate the constitutional and/or statutory rights of juveniles confined at that facility.
- E. The United States acknowledges that the State of Arkansas

has already drafted a plan that is designed to institute a significant number of the measures required by this settlement agreement. That plan also adopts additional suggestions made by the United States to improve conditions at the facility.

- F. Defendants in this action are the State of Arkansas, the Arkansas Department of Human Services, the Arkansas Division of Youth Services, and their successors, contractors and agents. While not named in this action, the parties recognize that the cooperation and assistance of the Arkansas Department of Education, the Arkansas Department of Workforce Education and other state agencies will be required to ensure compliance with this settlement agreement. The State of Arkansas shall ensure that the Arkansas Department of Education, the Arkansas Department of Workforce Education and all other state agencies take any actions required to comply with the provisions of this settlement agreement.
- G. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 14141. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
- H. The Defendants enter into this Court enforceable settlement agreement because, while admitting that the State, through certain state agencies, has violated federal rights of juveniles housed at Alexander, they are firmly committed to remedying these violations, and providing legally adequate conditions, by instituting the remedial measures required by this Court enforceable settlement agreement.
- I. The United States and the Defendants stipulate and agree that all of the prospective relief in this settlement is narrowly drawn, extends no further than necessary to correct violations of federal rights, is the least intrusive means necessary to correct these violations, and will aid public safety and the operation of Alexander.
- J. The parties to this settlement agree and represent to the Court that this settlement agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a), and may serve as the factual and legal basis for a Court order issued pursuant to those provisions.

- K. The issue of liability has not been litigated. The parties ask the Court to approve this settlement agreement without a full hearing on the merits, on the basis of the United States' Complaint and the above stipulation.
- L. This settlement agreement is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this settlement agreement be raised in any proceeding other than this civil action, the parties agree to certify that this settlement agreement was intended to have no such preclusive effect.

II. DEFINITIONS

- A. "Alexander" or "the facility" shall refer to the Alexander Youth Services Center located at 1501 Woody Drive in Alexander, Arkansas as well as any facility that is built to replace or supplement Alexander.
- B. "Cornell" shall refer to Cornell Companies, Inc.
- C. "Case Manager" shall refer to the direct service position at the facility that provides support and structure to juveniles in developing program plans and attaining goals. The position requires the employee to have a Master's Degree in a field related to their employment; a Bachelor's Degree in a field related to their employment and one year of experience; or an equivalent combination of education and work experience.
- D. "DOJ" or "the DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.
- E. "Individual Mental Health Services" shall refer to all mental health services except the provision of psychotropic medication. The term shall include individual and group therapeutic interaction with juveniles by a qualified mental health professional.
- F. "Juvenile" or "juveniles" shall refer to one or more individuals confined at Alexander.
- G. "Qualified Mental Health Professional" shall refer to: i) an

individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work psychiatric nursing, or substance abuse counseling, who is currently licensed by the State of Arkansas to deliver those mental health services they have undertaken to provide; or, ii) a registered nurse with a bachelor's degree in nursing with a minimum of two (2) years psychiatric experience, or a registered nurse with a minimum of five (5) years psychiatric experience.

III. SUBSTANTIVE REMEDIAL MEASURES

A. Mental Health Care

1. The Defendants shall, at all times, provide adequate mental health care to all juveniles who require such services.
2. The Defendants shall develop and implement an effective protocol to ensure that direct care staff have all relevant mental health information about the juveniles including instructions regarding any required suicide precautions and information about critical incidents in which the juveniles were involved. The Defendants shall meet this requirement within 60 days of the Court's entry of this settlement agreement.
3. The Defendants shall develop and implement an effective quality assurance system regarding implementation of and adherence to Alexander's suicide prevention policy. The Defendants shall meet this requirement within 60 days of the Court's entry of this settlement agreement.
4. The Defendants shall revise Alexander's current suicide prevention policy to appropriately clarify what type of staff can place juveniles on suicide precautions, specify what type of staff can remove a juvenile from such precautions, and provide for sufficient and appropriate daily interaction between a qualified mental health professional and every juvenile on suicide precautions. The Defendants shall meet this requirement within 30 days of the Court's entry of this settlement agreement. Within 60 days of the Court's entry of this settlement agreement, the Defendants shall assure adherence to this policy.

5. The Defendants shall provide staff with sufficient training (including both initial training for new employees and ongoing training for experienced employees) on Alexander's suicide prevention policy (as revised by this agreement). This training shall not only cover the revisions to the policy made pursuant to this agreement, but shall also include additional training on the different levels of observation provided for in the policy and the types of precautions that should be taken pursuant to the policy. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.

6. The Defendants shall ensure that a qualified mental health professional has sufficient daily interaction with juveniles on suicide precautions and sufficient weekly interaction with any juvenile who needs such treatment. To carry out this requirement, the Defendants shall:
 - a. Employ at least three full time (or full time equivalent) qualified mental health professionals to provide individual mental health treatment to juveniles.
 - I. These positions shall be in addition to Alexander's psychiatrist, the psychologist referenced in paragraph (A) 17 of this agreement, and 12 case manager positions at Alexander.
 - II. This number of additional positions assumes that the Alexander census remains approximately 140 juveniles. If the average daily census for any three consecutive months is greater than 170 or less than 110 juveniles, either party to this agreement can seek an adjustment to this figure. If the parties cannot agree on an adjustment, the issue shall be submitted to the Court for resolution.

 - b. develop a plan, that shall be submitted to the DOJ for review and approval, for allocating and

utilizing the additional staff required in this paragraph that ensures that all juveniles who need individual mental health treatment receive such treatment.

The Defendants shall meet this requirement within 180 days of the Court's entry of this settlement agreement.

7. The Defendants shall ensure that all mental health services provided to a juvenile, including individual mental health treatment, are properly documented. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.
8. The Defendants shall institute an appropriate case management system that assigns a case manager to be responsible for each and every juvenile. The case manager shall on a systematic, routine and timely basis, provide information to the juvenile about his/her status at Alexander, facilitate the juvenile's entry into specialized treatment programs, keep in contact with the juvenile's parent(s) or guardian, interact with all outside agencies and entities on the juvenile's behalf, and be responsible for the juvenile's transition upon their release from Alexander. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.
9. The Defendants shall provide all case managers at Alexander with adequate additional training (including both initial training for new employees and ongoing training for experienced employees), and support to ensure that they effectively fulfill their case management and other responsibilities. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.
10. The Defendants shall develop and implement a procedure, consistent with all applicable Federal and State privacy laws, to obtain all relevant mental health and medical information about juveniles on a routine, systemic and prompt basis from outside sources. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement. The

Defendants shall develop and implement an effective quality assurance system regarding this procedure. The Defendants shall meet this requirement within 150 days of the Court's entry of this settlement agreement.

11. The Defendants shall keep all relevant mental health and medical information about juveniles in one centralized location available to all appropriate facility employees. The Defendants shall meet this requirement within 180 days of the Court's entry of this settlement agreement.
12. The Defendants shall develop and implement a procedure to ensure that the facility psychiatrist adequately documents the diagnosis and the basis for that diagnosis for each juvenile requiring such a diagnosis. The Defendants shall meet this requirement within 30 days of the Court's entry of this settlement agreement.
13. The Defendants shall ensure that appropriate plans to provide mental health services to those juveniles who require such services are developed and implemented in a timely fashion. The Defendants shall meet this requirement within 150 days of the Court's entry of this settlement agreement.
14. The Defendants shall develop and implement an adequate protocol for reviewing, at required intervals, the appropriateness of all medication prescribed for juveniles. The Defendants shall meet this requirement within 60 days of the Court's entry of this settlement agreement.
15. The Defendants shall develop and implement an adequate protocol for ensuring that all juveniles receive any necessary medical screening or tests before and during prescription of all medication. The Defendants shall meet this requirement within 60 days of the Court's entry of this settlement agreement.
16. The Defendants shall ensure that when the facility psychiatrist meets with a juvenile, he has appropriate access to relevant information from the direct care staff regarding the juvenile. The Defendants shall meet this requirement within 60 days of the Court's

entry of this settlement agreement.

17. The Defendants shall employ a full time (or full time equivalent) qualified and appropriately licensed psychologist to supervise the individual mental health services provided at the facility. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.

B. Fire Safety

1. The Defendants shall, at all times, provide adequate fire safety protection to all juveniles.
2. The Defendants shall install adequate hard-wired smoke detection and fire alarm systems in all housing and education buildings at Alexander. The Defendants shall meet this requirement within 360 days of the Court's entry of the settlement agreement.
3. The Defendants shall provide adequate sprinkler coverage in all housing and education buildings at Alexander. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
4. The Defendants shall provide adequate automatic ventilation or smoke management systems in all housing and education buildings at Alexander. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
5. The Defendants shall effectively remedy the danger posed by any unused gas lines at Alexander. The Defendants shall meet this requirement within 30 days of the Court's entry of this settlement agreement.
6. The Defendants shall effectively remedy the danger at Alexander posed by gas generators sitting atop combustible materials, such as plywood platforms. The Defendants shall meet this requirement within 30 days of the Court's entry of this settlement agreement.
7. The Defendants shall effectively remedy the danger posed by the plywood ceilings in the new dormitory and

education buildings at Alexander. The Defendants shall meet this requirement within 30 days of the Court's entry of this settlement agreement.

8. The Defendants shall ensure sufficient separation between rooms in all housing and education buildings to adequately limit the spread of fire and smoke. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
9. The Defendants shall provide adequate back-up power generation for all housing and education buildings at Alexander. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
10. The Defendants shall appropriately formalize fire safety and emergency procedures and provide staff with adequate training (including both initial training for new employees and ongoing training for experienced employees) on these procedures. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.
11. The Defendants shall provide staff with self-contained breathing equipment (including at least one piece of such equipment in each housing unit and an additional piece of such equipment at the front gate of Alexander) to allow staff to assist juveniles in the case of a fire at Alexander, and train them in their use. The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.

C. Education

1. The Defendants shall, at all times, provide:
 - a. all juveniles with adequate education services;
and
 - b. adequate special education services to all juveniles who require such services.
2. The Defendants shall ensure that all students receive reasonable and appropriate education instruction within

two school days of their arrival at the facility. To satisfy this requirement, the Defendants may operate an adequately staffed intake classroom, taught by licensed teachers, that focuses on basic education skills such as literacy, understanding current events, and math skills. Juveniles may remain in this classroom, while waiting to be transferred to a more permanent educational setting, for up to 30 days. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.

3. The Defendants shall provide all teachers with effective and appropriate monitoring, professional development, and mentoring. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.
4. The Defendants shall ensure that students have access to adequate education materials, including books and other reading materials, at school and in housing units. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.
5. The Defendants shall develop and effectively implement a policy to: a) require that students be provided with appropriate homework assignments; b) mandate that teachers and direct care staff monitor students' progress in completing such assignments and assist and encourage students in performing their assignments; and c) ensure that students have access to any materials (pencils, paper, etc.) required to complete such assignments. The Defendants shall meet this requirement within 60 days of the Court's entry of this settlement agreement.
6. The Defendants shall employ a qualified full time (or full time equivalent) school counselor for Alexander to aid students in education, personal, social, and career development. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.
7. The Defendants shall continue to employ a qualified full time school principal for Alexander. The

Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.

8. The Defendants shall ensure that all academic credits earned at Alexander are accepted by other public schools in the State of Arkansas in the same way as the credits earned at any other school in the State. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
9. The Defendants shall ensure that all teachers at the school at Alexander are appropriately licensed and certified in the subjects that they teach. The Defendants shall meet this requirement within 180 days of the Court's entry of this settlement agreement.
10. The State shall ensure that the Arkansas Department of Education, effectively and on a regular basis, audits and evaluates all education programs at Alexander (including general education, special education and vocational education), to ensure that they are meeting all State requirements and providing effective instruction to all juveniles. The Defendants shall meet this requirement within 180 days of the Court's entry of this settlement agreement.
11. The Defendants shall obtain the ability to issue high school diplomas to juveniles at Alexander. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
12. The Defendants shall provide all juveniles (whether or not they have already received a GED) with an adequate and appropriate vocational program that satisfies the requirements for vocational education found in the Standards for Accreditation of Arkansas Public Schools. The Defendants shall meet this requirement within 360 days of the Court's entry of this settlement agreement.
13. The Defendants shall provide prompt and adequate screening of juveniles for special education needs, including obtaining prior education records from school systems in a timely fashion, conducting adequate testing of juveniles substantive educational knowledge and performing necessary vision and hearing tests. The

Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.

14. The Defendants shall in a timely fashion create and/or implement an adequate Individual Education Plan ("IEP"), as defined in 34 C.F.R. § 300.340, for each juvenile who qualifies for an IEP. As part of satisfying this requirement, Defendants must conduct required re-evaluations of IEPs, adequately document special education services, and comply with requirements regarding parent, surrogate and student participation in the IEP process. The Defendants shall meet this requirement within 240 days of the Court's entry of this settlement agreement.
15. The Defendants shall hire sufficient additional special education instructors to enable the facility to provide adequate special education services to both boys and girls. To satisfy this requirement the Defendants shall:
 - a. employ at least 6 appropriately qualified full time (or full time equivalent) special education teachers at Alexander. This number of additional positions assumes that the Alexander census remains approximately 140 juveniles. If the average daily census for any three consecutive months is greater than 170 or less than 110 juveniles, or if the population's need for special education services changes significantly, either party to this agreement can seek an adjustment to this figure. If the parties cannot agree on an adjustment, the issue shall be submitted to the Court for resolution.
 - b. develop a plan, subject to the review and approval of DOJ, for allocating and utilizing these teachers

The Defendants shall meet this requirement within 240 days of the Court's entry of this settlement agreement.

D. Religious Freedom

1. The Defendants shall develop a policy and protocol,

subject to the review and approval of DOJ, that clarifies the proper role that religious activities can play at the facility. The Defendants shall meet this requirement within 90 days of the Court's entry of this settlement agreement.

2. The Defendants shall effectively implement the policy and protocol described in paragraph D(1). The Defendants shall meet this requirement within 120 days of the Court's entry of this settlement agreement.
3. The Defendants shall provide adequate training (including both initial training for new employees and ongoing training for experienced employees) on the policy and protocol described in paragraph D(1) above. The Defendants shall meet this requirement within 150 days of the Court's entry of this settlement agreement.
4. The Defendants shall, at all times after the implementation of the policy and protocol described in paragraph D(1), monitor facility programs and the decorations on units to ensure that the policy and protocol is being followed.

IV. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

1. Within 90 days of the Court's entry of this settlement agreement, the Defendants shall provide DOJ with an initial status report regarding their compliance with this settlement agreement. Within 180 days of the Court's entry of this settlement agreement, the Defendants shall provide the DOJ with a second status report regarding their compliance with this settlement agreement. Within one year of the Court's entry of this settlement agreement, and within every 180 days thereafter (so long as this agreement remains in effect), the Defendants shall provide the DOJ with a status report regarding their compliance with this settlement agreement.
2. Each status report required by paragraph IV(1.) shall provide:

- a. a description of the Defendants' status in complying with each and every provision of this settlement agreement and the steps taken to achieve compliance with each and every provision of this settlement agreement during the period since the last status report; and
 - b. all relevant documents that demonstrate the Defendants' compliance with this settlement agreement, including, but not limited to, policies, procedures, protocols, training materials, and curriculum vitae.
3. The Defendants shall provide DOJ, and its experts and agents, with unrestricted access to
 - a. all buildings and facilities at Alexander,
 - b. all of the Defendants' staff (including staff at Alexander employed by Cornell)
 - c. all juveniles, and
 - d. any records regarding Alexander, the Defendants' staff (including staff at Alexander employed by Cornell), or juveniles.
4. Within 30 days of receipt of written questions from the DOJ concerning the Defendants' compliance with this settlement agreement, the Defendants shall provide the DOJ with written answers and any requested documents regarding the Defendants' compliance with the requirements of this settlement agreement.
5. The Defendants shall maintain sufficient records to document their compliance with all of the requirements of this settlement agreement. The Defendants shall also maintain (so long as the agreement remains in effect) any and all records required by or developed under this settlement agreement.

V. IMPLEMENTATION and TERMINATION

1. The Defendants shall immediately provide copies of, and

explain the terms of this settlement agreement to, all current and future employees at Alexander (including Cornell employees), in order that they understand the requirements of this settlement agreement and the necessity for compliance with it.

2. This settlement agreement shall constitute the entire integrated agreement of the parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.
3. For any provision of this settlement agreement that requires that a document be submitted to the DOJ for review and approval, such approval will not be unreasonably withheld or delayed.
4. A number of provisions of this settlement agreement require that the Defendants satisfy staffing requirements. The parties recognize that circumstances may arise that prevent the Defendants from meeting these staffing requirements despite aggressive good faith efforts. Should the Defendants believe such circumstances exist, they shall notify the DOJ in writing, and the parties shall meet and confer to determine whether an exception to strict adherence to this settlement agreement is required.
5. The Defendants shall appoint a settlement agreement coordinator to oversee compliance with this settlement agreement and to serve as a point of contact.
6. If DOJ believes that the Defendants have failed to fulfill any obligation under this settlement agreement, DOJ will, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to the Defendants. The Defendants shall have 60 days from the date of such notice to cure the failure, and provide DOJ with sufficient proof of its cure. At the end of the 60-day period, in the event that DOJ determines that the failure has not been cured, DOJ may, without further notice, initiate a Court proceeding to remedy the failure.

7. The Court shall retain jurisdiction of this action for all purposes during the term of this settlement agreement. One year from the date the defendants are required to complete the provision with the latest deadline (i.e. the deadline the greatest number of days from the day of the Court's entry of this agreement), taking into account any modifications to any deadlines granted to the Defendants by DOJ, the parties shall meet and confer regarding whether the defendants are in compliance with each and every provision of this settlement agreement. At that time the parties may agree to continue or terminate this settlement agreement. If the parties do not agree, the burden shall be on DOJ to demonstrate that the Defendants are not in compliance with some provision of this settlement agreement.
8. The parties agree to defend the provisions of this settlement agreement. The parties shall notify each other of any court challenge to this settlement agreement. In the event any provision of this settlement agreement is challenged in any local or state court, removal to a federal court shall be sought.
9. In the event any provision of this settlement agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this settlement agreement.

SO ORDERED:

/s/ United States District Judge

UNITED STATES DISTRICT JUDGE

DATE

FOR THE UNITED STATES:

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