

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

J.P., and all others similarly situated, et al.,	:	Case No. 2:04cv692
	:	
Plaintiffs,	:	Judge Marbley
	:	
v.	:	Magistrate Judge King
	:	
Bob Taft, et al.,	:	
	:	
Defendants.	:	

STIPULATION OF SETTLEMENT

Subject to the approval of the Court under Rule 23 of the Federal Rules of Civil Procedure, this Stipulation of Settlement (“Stipulation”) is entered into by the parties to resolve all of the claims asserted in this action by Plaintiffs J.P., S.J., D.B., M.M and T.M. and all others in the Settlement Class.

By entering into this Stipulation of Settlement, the Ohio Department of Youth Services, through Director Tom Stickrath, does not waive, and it is not authorized to waive, the sovereign immunity of the State of Ohio, or the State’s immunity from suit guaranteed by the Eleventh Amendment.

I. RECITALS

A. This action was filed on July 29, 2004. Plaintiffs are or were juvenile inmates who brought claims for declaratory, injunctive and other equitable relief, alleging, among other things, that the Ohio Department of Youth Services violated the First, Sixth, and Fourteenth Amendments to the United States Constitution by denying juvenile inmates meaningful access to the court system.

B. In their Complaint and Amended Complaint, Plaintiffs purport to be proceeding as representatives of a class under Rule 23(b)(2).

C. The Court granted summary judgment on all of the Plaintiffs' claims, except for the claims of Plaintiff T.M. The Court also granted a motion to dismiss filed on all claims asserted against Governor Bob Taft. Thereafter, the Court denied the motion for summary judgment on certain claims of T.M. against the Ohio Department of Youth Services.

D. The parties have conducted extensive investigations and negotiations in the matter since the filing of the Complaint. And, the parties have extensively litigated this matter for over two years. In the interest of providing relief for class members and in an effort to avoid the expense, delay, and risks associated with further litigation and to fully settle all claims alleged in the Complaint and Amended Complaint, the parties now desire to fully and finally settle all claims alleged in this action.

E. Whereas, juvenile inmates' constitutional right of access to the courts includes a right to legal assistance to access the courts.

F. Whereas, a dispute exists as to the extent to which the Department of Youth Services' provision of legal assistance to access the courts meets constitutionally mandated, minimum standards.

G. Whereas, Defendant the Ohio Department of Youth Services agrees through this Stipulation of Settlement to use its best efforts to meet those minimum standards on issues related to conditions of confinement, and to provide a mechanism for challenging the legality of the assistance given on detention credit issues, if appropriate.

H. Whereas, this Stipulation is narrowly drawn to meet those standards, the following terms and conditions are to serve as the basis for the injunctive relief encompassed herein.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this case has been settled upon as follows:

II. GENERAL DEFINITIONS

A. “Effective Date of the Settlement” and “Effective Date” shall mean the date the Consent Decree (attached hereto as Exhibit A) is entered if there have been no objections filed to the Stipulation of Settlement. Otherwise, the “Effective Date” is the date the Consent Decree, having been entered is no longer subject to review by any reviewing court, whether by objection, appeal, or writ of certiorari.

B. “Settlement Notice” means the Notice of Proposed Class Action And Class Action Settlement substantially in the form attached hereto as Exhibit B.

C. “Department of Youth Services” or “DYS” shall mean the Ohio Department of Youth Services.

III. GENERAL PRINCIPLES

A. The Court shall find that at the time Plaintiff's filed their Complaint on July 29, 2004, the Department of Youth Services lacked a system that assured each juvenile under its jurisdiction would have access to the courts as required by the Constitution.

B. Juvenile inmates have a constitutional right of access to the courts that extends to certain issues of conditions of confinement and certain issues of fact and

duration of sentences, as defined by the Supreme Court of the United States. This Settlement provides prospective relief only as to the following: 1) the provision of legal assistance to challenge the constitutionality of their conditions of confinement; and 2) the provision of legal assistance to persons to challenge the calculation of detention credit.

IV. LITIGATION ACTIONS

A. As soon as practicable after this Stipulation of Settlement has been executed, the parties shall jointly move the Court for approval of this Stipulation of Settlement, and for entry of proposed orders providing, inter alia:

- i. providing for preliminary approval of the Settlement, including conditionally certifying the Settlement Class;
- ii. providing that a hearing be held in this Court to determine whether the terms of the Stipulation of Settlement are fair, reasonable, and adequate to the Settlement Class, and setting forth the time and date thereof; and
- iii. directing that Notice be disseminated to the Settlement Class to advise members of the Settlement Class of the terms of the class certification, their right to object, the attorneys' fees sought, and the date of the final fairness hearing.

B. By and through this Settlement, the Department of Youth Services stipulates to class certification for settlement purposes only and for the sole purpose of creating the Settlement Class. The Department of Youth Services' stipulation to class certification is contingent upon: 1) the execution of this Stipulation by the parties; 2) the Court's final approval of this Stipulation by the entering of the Consent Decree attached

herein as Exhibit A; and 3) the Settlement becoming effective by the occurrence of the Effective Date. If the Agreement is not finally approved, does not become effective, or is terminated for any reason, the Department of Youth Services reserves the right to reassert all objections and defenses to certification of any class for trial purposes and this Stipulation of Settlement will not be offered by Plaintiffs or any other class member in support of any motion to certify any class.

C. The Settlement Class under Rule 23(b)(2) shall be defined as follows:

All the individuals under DYS custody currently housed or to be housed at Circleville Juvenile Correctional Facility, Cuyahoga Hills Juvenile Correctional Facility, Freedom Center, Indian River Juvenile Correctional Facility, Marion Juvenile Correctional Facility, Mohican Juvenile Correctional Facility, Ohio River Valley Correctional Facility, Scioto Juvenile Correctional Facility (collectively “the DYS Facilities”), as well as Paint Creek Youth Center, until termination of the Consent Decree.¹

V. **THE PLAN ON CONDITIONS OF CONFINEMENT ISSUES AND LIMITED DETENTION CREDIT ISSUES**

A. Conditions of Confinement Legal Assistance Program: The parties agree that the Department of Youth Services will ensure the constitutionally minimum requirements of access to courts for juveniles to challenge the constitutionality of their conditions of confinement and enforce their federal statutory rights. DYS cannot delegate its constitutional obligation, but DYS’ plan is to attempt to meet its obligation

¹ DYS has no current intention to open a new facility, and this settlement is intended to cover only those now in existence. Opening such would take a significant amount of time, budgeting and planning. Should, however, DYS open a new facility where youth are kept in the physical custody of DYS, DYS will notify the Plaintiffs’ Counsel and the parties will meet and confer as to whether the legal assistance program being offered satisfies the Constitution.

by contracting with a private attorney (the “Contracting Attorney”) who will be obligated to ensure that youth -- who have non-frivolous conditions of confinement claims that rise to the level of constitutional or federal statutory violations -- have access to legal counsel to assist the youth in filing complaints consistent with the strictures of Rule 11 and the Ohio and/or Federal Rules of Civil Procedure.

1. The Legal Assistance Program: It is expected that the Contracting Attorney will meet with youth and first attempt to refer conditions of confinement cases to private lawyers for representation and, if that cannot be accomplished, meet with youth to assist in the preparation and the filing of the complaint. The Contracting Attorney will be obligated to ensure that it has adequate staffing to provide routine in-person contact between itself and youth in DYS Facilities, adequate time for investigation of claims, and the filing of appropriate papers. The Contracting Attorney will also ensure adequate staffing includes an adequate number of attorneys, but it is anticipated that to begin with, only one attorney will be used.
2. Facilities and Assistance to the Contracting Attorney: As part of this Conditions of Confinement Legal Assistance Program, the Department of Youth Services will also:
 - i. provide an office for the legal service provider (likely in a facility adjacent to Scioto Juvenile Correction Facility), a phone and a facsimile;

- ii. adopt uniform procedures for all DYS Facilities to use for the youth to sign up to see the legal service provider (and work with Paint Creek to develop a similar system);
- iii. adopt a uniform, streamlined procedure at DYS Facilities for the Contracting Attorney to access relevant records on incident reports, grievances and court records, so long as there is an attorney-client relationship between the youth whose records are being requested and so long as the youth signs a waiver agreeing to the release of those records (and work with Paint Creek to ensure Paint Creek adopts the same or a similar procedure);
- iv. adopt a uniform procedure for accessing medical, substance abuse, mental health, and education records, so long as the juvenile and the parents or legal guardian (if required by law) for the relevant youth have executed a release for such records (and work with Paint Creek to ensure Paint Creek adopts the same or a similar procedure);
- v. explain the right of access to courts and describe the legal assistance program at orientation;

- vi. conspicuously and continuously post in each DYS Facility, in areas accessible to residents on every ward/unit of the Facility, a description of the Legal Assistance Program (and work with Paint Creek to ensure Paint Creek adopts the same or a similar procedure); and
- vii. ensure that the Contracting Attorney and any attorney for juveniles have access to the facilities during reasonable hours, to afford adequate private space for interviewing youth (and work with Paint Creek to ensure Paint Creek adopts the same or a similar procedure).

3. Minimum Requirements For The Contracting Attorney: The Contracting Attorney shall have not only a paralegal to provide adequate staffing, but also office support, such as a full time administrative assistant or legal assistant. The Contracting Attorney shall also have adequate training and experience in civil rights and conditions of confinement issues, as well as fact and duration issues.

B. Detention Credit Program: DYS does not agree that challenges to detention credit calculations rise to the level of a constitutional violation. The Department of Youth Services, however, desires to see that detention credit is calculated appropriately under State law, and expects, therefore, to continue to provide legal

assistance on non-trivial, non-frivolous claims for detention credit to the scope those services are currently being provided and to expand the provision of legal assistance on detention credit issues to include legal assistance at orientation, and thereafter, on challenges to the calculation of detention credits. Should DYS wish to discontinue the provision of legal assistance or should it later be claimed that DYS' provision of legal assistance on detention credit issues falls below the constitutional minimum standard, if any, DYS is free to come to this Court to modify the Settlement and free to argue that the detention credit challenges do not implicate any constitutional rights of any youth and, therefore, are not within the jurisdiction of the Court or governed by this Stipulation of Settlement and the Consent Decree. Should DYS wish to discontinue the practice of providing counsel on detention credit issues or fail to provide counsel on such issue, it will not be subject to any contempt proceedings unless this Court has first ruled against DYS, on a motion filed by DYS or by the Plaintiffs, that DYS is constitutionally obligated to provide legal assistance to members of the settlement class on detention credit issues..

VI. COMPLIANCE

A. Uniform Sign Up And Tracking: DYS shall ensure a simple system for the youth to request counsel, which also allows DYS to collect and track data on youth requests for legal services and track the number of cases opened, number of hours spent on the provision of certain services by the Contracting Attorney, and other pertinent information.

B. Periodic Review: DYS shall provide for a review every six months of staffing and make appropriate adjustments annually based upon the demand for services

to ensure adequate staffing continues. Chief Counsel for DYS and Plaintiffs' counsel will periodically monitor the program, and Plaintiffs' counsel will have access to all the monthly reports prepared by the Contracting Attorney and the Ohio Public Defender. Plaintiffs' counsel will be sent copies of the monthly reports on the 15th of each month. Chief Counsel for DYS will meet with Plaintiffs' counsel every six months to discuss the reports, upon reasonable request to do so.

VII. MISCELLANEOUS PROVISIONS

A. The parties agree that this Settlement does not and cannot be used to address whether certain circumstances could arise that may require counsel beyond assistance in the preparation of pleadings. DYS strongly denies that any such additional assistance is required under the Constitution. DYS is not agreeing to provide such additional assistance through this Settlement, and no post Settlement contempt proceedings – or other proceedings herein – in this case may impose such an obligation. DYS recognizes that Plaintiffs are not willing to concede that circumstances may not arise where more is required. Under no circumstances, however, may this Stipulation be modified to impose such an obligation.

B. DYS does not admit that anyone suffered any actual injury as a result of any alleged inadequacies in the legal assistance program. In fact, DYS denies that any such injury actually occurred. Nothing in any Stipulation shall be considered as an admission by DYS on any issue for purposes of any case.

C. It may be necessary to temporarily suspend any provision of the Stipulation in the event of an emergency. For purposes of this subsection, an emergency is an event which makes compliance with the terms of the Stipulation impracticable,

impossible or extraordinarily difficult, and is caused by riot, fire, weather events, natural disasters, warfare, strikes, pandemics, labor disputes, or similar events, not caused intentionally by Defendant.

D. It may be necessary to modify DYS' policies and procedures, and nothing in any agreement will limit the ability to modify those policies and procedures so long as modified, such meets the minimum requirements of the United States Constitution, if any.

E. The Stipulation is not intended to waive or otherwise affect, limit or modify the obligations of inmates to comply with the exhaustion requirements of the Prison Litigation Reform Act, any current or future state or federal law governing the rights and obligations of incarcerated persons, and the Ohio Administrative Code and other applicable policies, procedures and regulations. To the extent State law, the administrative code or other State policies or procedures conflict with the Stipulation, the Stipulation shall control to the extent it requires what is constitutionally required.

F. Entire Agreement: The Stipulation will reflect the entire understanding of the parties and supersede any prior written or oral agreements between them. No extrinsic evidence whatsoever may be introduced in any judicial proceeding to provide the meaning or construction of the Stipulation.

G. The Court shall find that this Stipulation satisfies the requirements of 18 U.S.C. § 362(a)(1)(A) and shall retain jurisdiction to enforce its terms and the Consent Decree. The Court shall have the power to enforce the Stipulation and Consent Decree through specific performance and all other remedies permitted by law. Neither the fact of this Stipulation nor any statements contained herein may be used in any other case or

administrative proceeding, except Defendant, or employees thereof, reserves the right to use this Stipulation and the language herein to assert issue preclusion, res judicata, and to preserve the jurisdiction of this Court in other litigation. When these legal defenses are raised, Defendant will send copies of such complaints to Plaintiffs' Counsel.

H. This Stipulation of Settlement fully resolves any and all claims alleged in the Complaint and Amended Complaint in this action against any and all Defendants in this action with prejudice. With respect to Defendants other than Tom Stickrath as the Director of the Department of Youth Services in his official capacity, this litigation is terminated and there is no continuing jurisdiction over the other Defendants.

VIII. ATTORNEYS' FEES

DYS will agree to pay Plaintiffs' counsels' reasonable attorneys' fees. Plaintiffs and Defendant stipulate that the fair and reasonable amount of attorneys' fees that shall be awarded in this action are \$ 190,000. No more fees may be awarded under this Stipulation of Settlement, and/or the Consent Decree, except for fees that may be associated with a successful contempt filing or with a successful emergency filing under Section X(v) described below. Plaintiffs shall not ask for a greater sum than that stipulated amount of attorneys' fees, and Defendant agrees not to object to the request of attorneys' fees in that stipulated amount.

IX. TERMINATION

The parties acknowledge 18 U.S.C.A. Section 3626(b)(1).

X. DISPUTE RESOLUTION

In the event a dispute arises as to whether DYS failed to substantially comply with the terms of this Stipulation, counsel for the parties shall proceed as follows:

- i. Counsel for the parties shall make a good faith effort to resolve any difference that may arise between them over matters of compliance;
- ii. Prior to the initiation of any proceeding to enforce the provisions of this Stipulation, Plaintiffs' counsel shall notify Defendant's counsel in writing of any claim that Defendant is in violation of any provision of this Stipulation;
- iii. Within twenty (20) business days of the receipt of this notice, counsel for Plaintiffs and Defendant shall meet in an attempt to arrive at an amicable resolution of the claim. If, after twenty (20) business days following such meeting, the matter has not been resolved, Defendant's counsel shall be so informed by Plaintiffs' counsel, in writing, and Plaintiffs may then have due recourse to any appropriate legal proceeding; and
- iv. Plaintiffs may not proceed to Court to enforce the Settlement and/or seek contempt remedies until they have gone through the procedures set forth above.
- v. If an emergency occurs, Plaintiffs' counsel will both telephone counsel for DYS and provide DYS with written notice of the issues. Plaintiffs may then seek judicial relief if the matter is not resolved within 72 hours. For purposes of this section, "an emergency" is defined as a situation in which a juvenile is put at risk of physical harm and therefore is presently suffering

irreparable harm and will likely suffer irreparable harm in the future unless provided with immediate access to the courts.

XI. INTERPRETATION

It is the intent of the Stipulation to provide only the minimum level of access to courts required under the United States Constitution. Nothing in the Stipulation may be interpreted to require more of DYS than is necessary to enforce the constitutional rights of youth to access courts. See 18 U.S.C. Sec. 3626(a)(1).

Respectfully submitted,

Jennifer M. Kinsley (0071629)
Sirkin Pinales & Schwartz
105 W. Fourth Street
Suite 920
Cincinnati, OH 45202
Telephone: 513.721.4876
Facsimile: 513.721.0876
Email: jkinsley@sirkinpinales.com
Trial Counsel for Plaintiffs

Kimberly Brooks Tandy (0076173)
Children's Law Center
104 East 7th Street
Covington, KY 41011
Telephone: 859.431.3313
Email: kimbrooks@fuse.net
Counsel for Plaintiffs

Stephen L. Pevar (admitted pro hac vice)
American Civil Liberties Union
Foundation
32 Grand Street
Hartford, CT 06106
Telephone: 860.293.1559
Email: pevaraclu@aol.com
Counsel for Plaintiffs

Brian A. Basil (0064937)
Geoffrey J. Moul (0070663)
Murray Murphy Moul + Basil LLP
1533 Lake Shore Drive
Columbus, OH 43204
Telephone: 614.488.0400
Facsimile: 614.488.0401
Email: moul@mmb.com
Special Counsel to the Ohio Attorney
Generals Office for the Defendants The
Ohio Department of Youth Services and
Director Thomas Stickrath

Agreed to by:

John A. Guthrie
Chief Deputy, Criminal Section
Office of the Ohio Attorney General
30 E Broad Street, 17th Floor
Columbus, OH 43215
Telephone: 614.466.4320
Facsimile: 614.466.5087
Email: jaguthrie@ag.oh.us