

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

S.H., et al.,	:	Case No. 2:04-cv-1206
	:	
Plaintiffs,	:	JUDGE ALGENON L. MARBLEY
	:	
vs.	:	<u>SUPPLEMENTAL MEMO RE</u>
	:	<u>PLAINTIFFS' MOTION FOR</u>
HARVEY REED,	:	<u>EMERGENCY INJUNCTION</u>
	:	<u>PROHIBITING USE OF</u>
Defendant.	:	<u>SPECIAL RESPONSE TEAMS</u>
	:	
	:	

On October 11, 2011, Plaintiffs' filed a motion for a preliminary injunction regarding use of force by DRC staff in DYS facilities. Doc. 277. Pursuant to L.R. 65.1 an informal conference will be held on the motion on October 12, 2011. Further, pursuant to L.R. 65.1 (b), all service requirements have been satisfied since DYS counsel receives ECF filings.

Since that motion was filed all counsel and the Court have received the first of the special inquiry reports drafted by SH Monitor Will Harrell, DOJ Monitor Kelly Dedel and SH Subject Matter Experts Orlando Martinez and Steve Martin. Pursuant to those reports, it appears that there was no basis for the use of OC Spray on youth in this class. OC Spray was used on youth who were compliant as well as youth who were already in restraints. This is completely unacceptable and excessive and must never be repeated. Moreover, many of the youth transferred to Scioto have been placed in a unit that should have maximum programming but instead are receiving minimal programming. This must end promptly as well. Plaintiffs therefore supplement their request for an injunction and seek an order with the following terms:

1. DRC staff shall not be called in to DYS facilities except in a genuine emergency situation in which there is a serious imminent risk to the physical safety of staff and/or youth;
2. Whenever DRC staff are present in a DYS facility they shall be under the direction and control of DYS officials and shall follow the DYS use of force policies and procedures;
3. No OC spray shall be used on youth in DYS facilities;
4. Whenever DRC staff is present in a DYS facility they shall be primarily used as a show of force, backing up DYS staff which shall engage in the primary contact with youth. DRC shall only engage the youth if their help is requested by the DYS staff;
5. Hand held cameras shall be employed to record all uses of force consistent with DYS policy;
6. All use of force reports shall be promptly prepared listing the participants and the weapons used consistent with DYS policy;
7. Class Counsel, DOJ Counsel, the monitors and the Court shall be immediately advised at the time of any deployment of DRC staff in DYS facilities and an explanation for the deployment shall be immediately provided.
8. Immediate steps shall be taken to transition youth from the Sycamore and Cedar units at Scioto to units with fewer restrictions. In the meantime extensive programming, including mental health treatment if appropriate, will be utilized with these youth in order to reduce their propensity for violence and prepare them for less restrictive settings.

Respectfully submitted,

s/ Alphonse A. Gerhardstein
ALPHONSE A. GERHARDSTEIN
(Ohio Bar No. 0032053)
Trial Attorney for Plaintiffs
Gerhardstein & Branch Co. LPA
432 Walnut Street, Suite 400
Cincinnati, Ohio 45202
(513) 621-9100
(513) 345-5543 fax
agerhardstein@gbfirm.com

s/ Kim Brooks Tandy
KIM BROOKS TANDY
(Ohio Bar No. 0076173)
Attorney for Plaintiffs
Children's Law Center, Inc.
104 East 7th Street
Covington, Kentucky 41011
(859) 431-3313
kimbrooks@fuse.net

s/ Jennifer M. Kinsley
JENNIFER M. KINSLEY
(Ohio Bar No. 0071629)
Attorney for Plaintiffs
Sirkin Kinsley & Nazzarine, Co. LPA
810 Sycamore Street, 2nd Floor
Cincinnati, Ohio 45202
(513) 721-4876
jkinsley@skn-law.com

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2010, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Alphonse A. Gerhardstein
Attorney for Plaintiffs