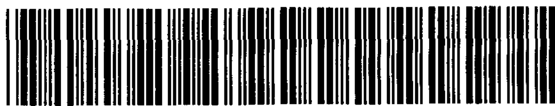
Milonas v. Williams



JI-UT-004-001

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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CIVIL DOCKET CONTINUATION SHEET

NTIFF	DEFENDANT	DOCKET NO. ___ PAGE ___ OF ___ PAGES

TE	NR.	PROCEEDINGS
:3mw		Defs' Motion for Instructions
;3mw		Notice of Hrg. On Motion for Instructions set for 5/31/83 at 9:30 A.M. mailed to counsel
'83mw		Plntfs' Memorandum In Opposition to Defs' Motion for Order of Satisfaction of Judgmts. & Release of Supersedeas Bond
83	lw	Came before the court for hearing on a motion for instructions... Counsel advised the court that they have resolved the matter and would not need the assistance of the court.
83mw		Defs' Satisfaction of Judgmts. & Release of Supersedeas Appeal Bond
'/83mw		Notice of Hrg. on Ex Parte Motion to Withdraw Trial Exhibits set for 11/4/83 at 1:30 P.M. mailed to counsel
83mc		ORDER signed by Judge Jenkins on 11-3-83 that defs' counsel may w/d and retain custody custody of original documents, namely exhibits 8A, 8B, 8L, 8M & no others. provided that defs' counsel promptly substitute photocopies of all original trial exhibits. Copies mailed to counsel.
		Stipulation
		Defs' ExParte Motion to w/d trial exhibits

DC 111A
Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. C78-352
Timothy Milonas et al	Jack L. Williams et al	PAGE 11 OF ___ PAGES

DATE	NR.	PROCEEDINGS
-4-81	cn	Designation material received from defendants' counsel Sent certificate of readiness to 10th Circuit Prepared Supplemental Vol. II -(retained here)
2-10-81	cn	Designation material received from plaintiffs' counsel Prepared Supplemental Vol. III Certificate of Readiness sent to 10th Circuit
2/11/81mw		Supersedeas Appeal Bond filed by Defs. ($160,000.00)
2-19-81	cn	Supplemental Volume IV prepared as requested by Kathryn Collard. Certificate of Readiness sent to 10th Circuit and copy of index sent to counsel.
5-6-81cn		Def. paid fees for Second Amended Notice of Appeal. Receipt #6522 sent to 10th Circuit.
-24-82cn		ENTIRE RECORD ON APPEAL transmitted to 10th Circuit consisting of VOL. I & II - Pleadings; VOL. III - XI - Transcripts; VOL. XII - XIV - EXHIBITS; VOL. XV & XVI - Depositions; SUPP. VOL. I - IV - Pleadings. Copies of index mailed to counsel. Appeal # ... 1564
9/27/82mw		Plntfs' Bill of Costs
9/30/82mw		Plntf's Motion for Award of Attys' Fees, Costs & Expenses for Work on appeal, Affidavit of Mark Soler, Affidavit of Loren Warboys, Affidavit of Carole R. Shauffe and Affidavit of Kathryn Collard
10/1/82mw		Ltr. from Paul Badger to Mr. Soler re: returning bill of costs
10/5/82mw		Defs' Motion to Strike Plntfs' Motion for Award of Attys' Fees, Costs & Expenses for Work on Appeal Memorandum of Points & Authorities Accompanying Defs' Motion to Strike
10/12/82mw		Plntf's Memorandum In Opposition to Defs' Motion to Strike Motion for Award of Atty's Fees, costs & expenses for Work on appeal
/15/83mw		Plntfs' Motion for Award of Attys' Fees & Costs on Appeal Affidavit of Kathryn Collard Affidavit of Mark I. Soler Affidavit of Loren M. Warboys Plntfs' Notice of Hrg. on Motion for Fees & Costs set for 4/28/83 at 1:30 P.M.
/22/83mw		Mandate recvd. from 10th Circuit affirming decision of District Court, notice of Mandate mailed to counsel Ltr. recvd. from 10th Circuit showing Petition for Writ of Certiorari was denied by order of Supreme Court 4/4/83
/25/83mw		Record of appeal return from 10th Circuit consisting of Vols. I-XVI & Supp. Vol. I-IV
/26/83mw		Defs' Motion for Reconsideration of & Relief from Earlier Award of Attys' Fees & Costs Defs' Objection to Plntfs' Motion for Award of Attys' Fees & Costs Incurred On Appeals Defs' Memorandum Supporting Objections to Plntfs' Motion for Award of Attys' Fees Incurred on Appeals & Supporting Defs' Motion for Reconsideration & Relief
4-28-83ds		Came before the Court for hearing on Motion for Attorneys' Fees. The Court took the various motions under advisement and will try to resolve them within the next week.
5/6/83sw		Memorandum Decision signed by Judge Jenkins on 5/6/83 Judgment signed by Judge Jenkins on 5/6/83: (1) Judgment entered in favor of Plaintiff class in the amount of $22,305.60 in attorney's fees to be taxes as costs against defendants Jack L. Williams, Robert H. Crist and E. Eugene Thorne and for the use and benefit of the attorneys for the plaintiff class (2) Judgment entered in favor of the plaintiff class in the amount of $2,153.16 as costs to be taxed against the defendants Williams, Crist and

NOTICE TO CLOSE FILE

Date: September 30, 1980

File Number: 144-77-182

Case Title: Milonas v. Williams

YOU ARE ADVISED THAT THE ABOVE FILE HAS BEEN CLOSED AS OF THIS DATE.

Remarks/Special Information:

This matter should be and is hereby closed. This Section was considering participation in this case at the trial and or appellate stage. We have now determined that our participation is not needed. An excellent decision has been obtained by private counsel on many of the issues presented already.

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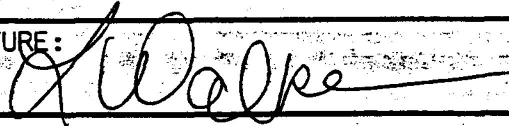
Files Unit Division

SIGNATURE: 

DIVISION: Civil Rights Division

T. 11/19/80

Amicus Participation in
Milonas v. Williams

November 19, 1980

RP:eh
DJ 144-77-182

Brian K. Landsberg, Chief
Appellate Section

Robert Plotkin, Acting Chief
Special Litigation Section

Attached is a memo recommending government participation in Milonas v. Williams, the case concerning conditions of confinement at the Provo Canyon School in Utah. I concur with the recommendation.

I also want to raise the possibility of having Bob Dinerstein prepare this brief under my supervision with, of course, your review and approval. Please advise.

cc: Records
Chrono
Plotkin
Hold

T. 7/30/81

RDD:eh
DJ 144-77-182

Milonas v. Williams
No. 80-1569 (10th Cir.)

JUL 30 1981

Robert Plotkin
Acting Chief
Special Litigation Section

Robert D. Dinerstein
Attorney
Special Litigation Section

This memorandum is in response to Steve Mikochik's memorandum to Jessica Silver recommending against our amicus curiae participation in the above-captioned case. For the reasons briefly outlined below, I believe that we can construct a respectable argument in support of the district court's judgment based on the Education for the Handicapped Act ("EHA"), as amended, 20 U.S.C. §1401 et seq. I might add that I have discussed this approach with Steve and he agrees with the following EHA analysis.

As you know from previous memoranda, the district court enjoined four practices at the Provo Canyon School: polygraph testing, mail censorship, use of the "P-room" for isolation, and excessive use of physical force. The court determined that these four practices were unconstitutional based on Bell v. Wolfish, 441 U.S. 520 (1979). Having found that these practices violated the Wolfish test, the court held a fortiori that they violated "the right to the least restrictive treatment alternative" under the EHA and Section 504.

Steve's memorandum recognizes that the EHA would support the court's ban on the use of polygraph tests. I agree. I disagree with his conclusion that the court's differential treatment of incoming and outgoing mail vitiates the argument that censorship of the latter is inappropriate and non-therapeutic. In fact, we can plausibly argue that in allowing a limited exception to non-interference with incoming mail - that is, allowing staff to search incoming mail for contraband and to intercept letters from outside persons previously identified by the juvenile's parents as inappropriate correspondents - the court gave defendants the benefit of the doubt regarding a possible therapeutic basis for some limitation on the juveniles' mail privileges. At trial,

cc: Records
Chrono
Peabody
Dinerstein
Hold

RDD 7/30/81

defendants apparently argued that incoming mail had to be censored to prevent certain outsiders from exerting a "bad influence" on the confined juveniles. The court's judgment posits that parents would be in the best position to assess whether the juvenile would be subject to such influences, and, if so, from whom. The limited "bad influence" exception, of course, would not apply where the juvenile was seeking to send letters out of the institution. I do not necessarily agree that such a "bad influence" exception is justified or that parents should be allowed to invoke it. But on this record, and with no cross-appeal, we cannot say that the court's distinction between incoming and outgoing mail is irrational or, more to the point, an abuse of discretion.

As for the court's holding placing limitations on the use of isolation and physical force, it is clearly impractical to require due process hearings, as Steve suggests, where, as here, defendants justify such practices as necessary to calm "out-of-control" juveniles. Thus, I do not see the need for or desirability of Turlington hearings, which relate to the much different context of decisions to expel students. The court found that while defendants' policies purported to limit isolation and physical force to "out-of-control" situations, the actual practices at the institution demonstrated that physical force and isolation were being used as punishment. Essentially, all the court required was for defendants to follow their own procedures and rationale for the use of these practices; its judgment merely seeks to define "out-of-control" more rigorously so as to decrease the opportunity for abuse. Thus, we need not address the issue of whether isolation could be used for purposes other than to control obstreperous juveniles or whether the time these juveniles spent in isolation was excessive. (Defendants' own rules limited isolation to no more than three hours, but the record showed that juveniles often spent up to 24 hours in the isolation cells.)

Under the EHA, we could argue that defendants' failure to follow their own regulations on use of isolation and physical force results in denial of juveniles' right to a free appropriate education, as defined in 20 U.S.C. §1401 118) and as required by 20 U.S.C. §1412(1). The definition of free appropriate education in turn incorporates the terms "special education", "related services", and "individualized education program" ("IEP"), which are defined in 20 U.S.C. §§ 1401 (16), (17), and (19), respectively.

These definitions stress that special education and related services and the IEP are to be geared towards meeting the "unique needs" of the handicapped individual. The widespread abuse of isolation and physical force would appear to be inconsistent with attending to the unique needs of the juveniles, and hence would violate EHA. Furthermore, as the court points out in its memorandum opinion at 25, the extent to which these practices are truly serving therapeutic purposes may be by the failure of the juveniles' IEPs even to mention their use as a possible aspect of the juveniles' individualized treatment.

Similarly, the across-the-board censorship of outgoing mail would also run afoul of the EHA's stress on attention to the unique needs of individual juveniles. Arguably, the court's limited exception for interference with incoming mail is calculated to respond to some juveniles' unique needs for non-exposure to "bad influences."

The above suggestion of an EHA theory to support the court's judgment is admittedly sketchy. It also departs from the court's reliance on EHA and 504 for the least restrictive treatment alternative. The court's references to EHA, 504, and the regulations thereunder, however, more properly relate to a requirement that juveniles receive services in the least restrictive environment, defined as that environment which maximizes integration of handicapped and non-handicapped children. See 20 U.S.C. §1412(5)(B); 45 C.F.R. §§121a.550-556; 34 C.F.R.§104.34. The practices at issue here do not implicate the choice of educational environment. Nor does the record appear to support the argument that defendants' practices discriminate against the juveniles on the basis of their handicap. The court found that virtually all of the school's juveniles were handicapped within the meaning of EHA and 504. And the record does not appear to reflect evidence of practices and conditions applied to non-handicapped juveniles in other settings (such as public schools) as a basis for comparison with Provo Canyon's practices.

Thus, I agree with Steve that 504 is not helpful to us in this case, and would further argue that the least restrictive alternative approach is also not fruitful. I also agree, for somewhat different reasons, that this is not the case in which to pursue a constitutional right to treatment (though plaintiffs will be doing so). But I do believe that the suggested EHA

approach has some validity. It is unlikely that plaintiffs will address EHA extensively. Since I think the court came to the right result for the wrong reasons, an amicus brief from us could make a significant contribution to bolstering the court's judgment on appeal. An affirmance would be of significant value in extending the applicability of EHA to private schools such as Provo Canyon.

Finally, I have learned that the briefing schedule has been changed slightly. Defendant-appelants have received a thirty-day extension, and their brief is now due in mid-August. Plaintiff-appellee's brief is due in mid-September, and plaintiffs' counsel indicates that they will need a short extension. We are therefore probably looking at a deadline of late September for any brief that the Division might file.

cc: Arthur Peabody