



JI-WA-001-005

✓
-pb
5/1/01

FILED

90 OCT 13 AM 8:34

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Civil Track I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

T.I., a minor, by and through
his mother and next friend,
D.I.; W.F., a minor, by and
through his mother and next
friend, O.T.; D.I., a minor,
by and through his mother and
next friend, C.I., On Behalf
Of Themselves and Others
Similarly Situated,

Plaintiffs,

v.

HAROLD DELIA, Director,
DEPARTMENT OF YOUTH SERVICES,
et al.,

Defendants.

NO. 90-2-16125-1

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION RE:
DORM SCHOOL AND MID SCHOOL

I. INTRODUCTION

The King County Juvenile Detention Facility is overcrowded. Many of plaintiffs' claims brought in this lawsuit arise as a result of the chronic overcrowding. Plaintiffs now seek a preliminary injunction to stop one of the most obvious and harmful of defendants' unlawful practices arising from this overcrowding.

Plaintiffs ask this Court to provide preliminary relief

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 1

32
EVERGREEN LEGAL SERVICES
INSTITUTIONAL LEGAL SERVICES PROJECT
101 YESLER WAY, SUITE 301
SEATTLE, WASHINGTON 98104
(206) 464-0838

1 concerning defendants' dorm school and mid-school practices and
2 policies which require the removal of youth from regular detention
3 school. Plaintiffs seek to preliminarily enjoin defendants'
4 removal of detained juveniles from the regular detention school
5 program and placement in dorm school or mid school either due to
6 the lack of space in detention school classrooms or to punish
7 youth for out-of-school behavior and without due process of law.¹

8 II. FACTS

9 A. The Facility

10 The King County juvenile detention facility (KCDF) is
11 operated by the Department of Youth Services (DYS). (1989 Annual
12 Report of DYS, attached as Ex. 1,² hereafter referred to as
13 Annual Report.) Defendant Harold Delia is the director of DYS.
14 The detention facility is located at 1211 East Alder in Seattle.
15 All youth incarcerated there are of compulsory school age. Youth
16 are put in detention both pretrial and after adjudication.

20 ¹ The problems created by overcrowding raised in this
21 lawsuit range well beyond the specific issues addressed by this
22 preliminary injunction motion. Plaintiffs intend to bring another
23 preliminary injunction motion with respect to a variety of other
24 issues in the relatively near future once adequate discovery has
25 been obtained with respect to those issues. Plaintiffs present
this issue to the Court now because it is not unduly complicated,
the problem requires immediate attention, and it can be resolved
quickly by the Court. Plaintiffs reserve for later resolution the
question whether the regular detention school program at KCDF is
legally adequate.

26 ² All exhibits referred to herein are attached to the
27 Declaration of Patricia J. Arthur, filed herewith.)

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 2

1 In 1989 KCDF consisted of the Spruce and Alder units. The
2 Spruce unit was demolished this year in order to build a new
3 juvenile detention center on its site.

4 Before Spruce was demolished it had the space and staff to
5 house 40 youth. The Alder unit could house up to 71 youth. The
6 total juvenile population the facility could handle before the
7 demolition of Spruce was 111. (Annual Report, Ex. 1, p.5; see
8 also, "Alder Facility" document dated 10/31/89, attached as Ex.
9 2.) When Spruce was demolished all of the youth detained at the
10 facility were placed in Alder. The total population in detention
11 has been as high as 133. (Memorandum to Harold Delia from Dick
12 Carlson, attached as Ex. 3.) The average daily population at the
13 KCDF in 1989 was approximately 125 youth. (Annual Report, Ex. 1,
14 p.12.) The detention population on October 15, 1990 was 106; on
15 September 28, 1990, there were 111 youth in the KCDF. (Attached
16 as Exs. 19 and 20 are the "Detention Locator Lists" or "day
17 sheets" for these days which reflect the population.)

18 The DYS did not build temporary, substitute housing or
19 facilities to accommodate the detention population and activities
20 once Spruce was destroyed. Instead, Alder was converted to
21 accommodate all youth. A section of the detention school was
22 converted into a 36 bed living unit. (Annual report, Ex. 1, p.8.)
23 Activities and services at the KCDF were consolidated. Only half
24 of the previously available space became available for programming
25 after the transition to Alder. The conversion of Alder resulted
26 in the reduction of program space by 2500 square feet. ("Alder
27

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 3

1 Facility", Ex. 2.) There is currently available only about
2 10,000 square feet of space for all programming in detention
3 including school, gym, library and rec. room. ("Alder Facility",
4 Ex. 2.)

5 The closure of Spruce and transition to Alder occurred before
6 February of 1990. The detention population during demolition and
7 construction exceeds the Alder building capacity. (Memo to Tim
8 Hill from Harold Delia, dated October 9, 1989 Re: Bed Capacity
9 during Transition, attached as Ex. 4.)

10 B. School Programs

11 There are a maximum of four classrooms in the detention
12 school. Each classroom accommodates up to a maximum of 17 youth.
13 (July, 1990 Public Schools Memorandum, p.3, attached as Ex. 5.)
14 These classrooms are used by youth who are in the regular
15 detention school program which is also called night school. The
16 space provided for classroom instruction accommodates less than 70
17 students. Night school hours are supposed to be from 3:30 p.m. to
18 8:30 p.m. (Ex. 5, p.3.) The average daily population at the KCDF
19 far exceeds the classroom capacity of the facility.

20 In February, 1990 employees of the Seattle Public School
21 District and King County promulgated policies related to the
22 provision of educational services at the converted detention
23 facility.³ (This policy is attached as Ex. 6.) The policy
24

25 ³ Plaintiffs reiterate that they do not concede that
26 appropriate education services are provided in the regular school
27 program. To the contrary, Plaintiffs intend at a later time to
28 seek relief regarding the adequacy of the regular school program,
(continued...)

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 4

1 establishes the dorm school and mid school programs. (Ex. 6.) It
2 was updated and revised in April, July, and September of 1990.
3 (Copies of these policy revisions are attached as Exhibits 7, 5,
4 and 8.)

5 Pursuant to these policies, the opportunity to attend regular
6 detention school, or night school, is dependent on the
7 availability of space in the classroom: "[S]tudents will be
8 assigned to Night School depending on space availability." (Ex.
9 5, p.3.) A juvenile's participation in the regular school program
10 is also conditioned upon their "readiness for night school" as
11 determined by detention, not school, staff. (Ex. 8.)
12 Participation in night school is also based on detention staffs'
13 perception of the appropriateness of the youth's behavior in the
14 living unit. (Ex. 8.)

15 Mid school serves youth unable to attend night school due to
16 "high count/lack of space" or "who have completed dorm school
17 assignment/contract." (Ex. 7, p.7.) Those "with appropriate
18 behavior" in mid school are permitted to attend classes in night
19 school, but only for a maximum of 40 minutes a day. (Ex. 7, p.7.)

20 Youth are "automatically assigned" to dorm school for
21 "fighting," "threatening," "unsuccessful behavior contracts" and
22 for receiving "dorm confinement two or more times in one week or
23 16 hours." (Ex. 5, p.5.) In other words, many types of out of
24

25 ³(...continued)
26 including the special educational services provided. This motion
27 is confined to the legal inadequacy of the dorm school and mid
28 school programs.

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 5

1 school conduct may "automatically" cause a youth to be removed
2 from the regular school program and placed in dorm school. (Ex.
3 7, p.9.) Youth cannot earn school credit in dorm school unless
4 they are permanently prohibited from attending mid school or night
5 school. (Ex. 5, p.4.)

6 No classroom instruction is provided to youth in dorm school:
7 Youth have little or no contact or interaction with other youth or
8 teachers. (Declarations of S.K., J.Q., E.G., H.L., D.I., T.I.,
9 attached as Exs. 9, 10, 11, 12, 13, 14.) Students in dorm school
10 are assigned work to do alone. (Exs. 9-14.) Packets of written
11 materials are delivered to students to be done in their living
12 unit. Because youth are not allowed to have pencils in their
13 cells they can only work on their assignments in the day room when
14 they are let out to do so. (Exs. 9-14.) Youth are allowed out
15 irregularly to do their dorm school assignments. (Exs. 9-14.)
16 Usually they are let out for a maximum of 45 minutes per day to
17 work on their dorm-school assignments in the day room. (Exs. 9-
18 14.) The work assigned to them is often repetitive and not
19 appropriate to their level of development or ability. (Ex. 10-
20 14.) Teachers often do not visit youth in the living unit each
21 day. (Exs. 9-14.) When they do visit, it is for not more than
22 15-30 minutes. (Exs. 9-14.) In some cases students do not see a
23 teacher for a period of a week or more. (Ex. 10.) Sometimes
24 youth who are identified as special education students are allowed
25 to go to the special education classroom for an hour, but only if
26 permitted to do so by county or custody staff. (Exs. 10, 13.)
27

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 6

1 Students can be removed from the regular school program and
2 put in dorm-school or mid-school by detention staff (county
3 employees) or school employees. Neither youth nor their parents
4 or guardians are provided with notice of their removal from
5 school. (Exs. 9-14.) Youth are not given a hearing to contest
6 the reasons they are removed from school at which they are
7 afforded the opportunity to call witnesses or cross-examine
8 adverse witnesses or to explain mitigating circumstances. (Ex. 9-
9 14.)

10 There are supposed to be a total of five certified teachers
11 on staff at the KCDF to provide all educational services offered
12 to detained youth in night school, dorm school, and mid school.
13 (Ex. 5, p.3.) Since the beginning of the 1990-1991 school year
14 there have, in fact, been fewer than 5 certified teachers
15 providing educational services.

16 Plaintiffs T.I. and D.I. were confined at the KCDF in the
17 past and have been required to attend dorm school. S.K., E.G.,
18 J.Q., and H.L. have also been or are now confined at the KCDF.
19 They have all been denied the opportunity to attend the regular
20 detention school. (Exs. 9-14.)

21 T.I. was detained in the KCDF for 145 days from February 7,
22 1990, to July 3, 1990. He believes that he was placed in dorm
23 school because the security staff said he "incited a riot," or
24 because they believed he tried to escape. He was also told that
25 he was in dorm school because there was not enough room in the
26 regular school. T.I. was never given any notice regarding these
27

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 7

1 allegations. He did not have a hearing about why he could not
2 attend regular school. His mother was not notified that he had
3 been removed from school.

4 In dorm school, T.I. was given packets of written material to
5 do in his unit. He was not given daily help or instruction from
6 teachers and was not permitted to talk to other students in dorm
7 school. He was not permitted to have a pencil in his room so he
8 could only do assigned work during the 45 minutes per day he was
9 permitted in the day room. Once or twice a week defendant Love
10 Denton brought work for him to do, but it was not at his skill
11 level. Often defendant Denton brought T.I. the same materials
12 over and over again. When he was on dorm confinement, he was in
13 his room every day for up to 23 hours a day. He became depressed
14 and felt excluded. He attempted to commit suicide by hanging in
15 April, 1990, because of his depression. While in detention, T.I.
16 wanted to go to school to get his G.E.D. (Ex. 14.)

17 D.I. was in the KCDF from June 8, 1990, to August 3, 1990.
18 He is 15 years old. He was taken out of night school and put in
19 dorm school. He was not given a hearing concerning the reasons
20 why he was placed in dorm school. He was permitted to attend
21 special education classes for about 1 hour a day on some days when
22 the detention/custody staff told him he could go. He did not see
23 a teacher every day when he was in dorm school. (Ex. 13.)

24 S.K. has been incarcerated at the KCDF since August 19, 1990.
25 He has never been allowed to attend school. He was never informed
26 by anyone why he could not attend the regular school. He believes
27

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 8

1 he cannot attend school because of a judicial order (which he has
2 not seen) which states that he cannot have contact with another
3 youth in the facility. During his entire stay at the facility, he
4 has seen a teacher only once. After approximately 5 weeks in
5 detention, he was first given school work by unit staff to do in
6 his dorm. He saw a teacher for the first time after that.

7 S.K. also has not been outdoors since being put in the
8 facility over a month ago. He has been allowed to go to the
9 library only 4 times since arriving at the facility despite
10 repeated requests to go more frequently. (Ex. 9.)

11 E.G. has been incarcerated at the KCDF since September 18,
12 1990. He is 15 years old. He, too, is not permitted to go to
13 school and to date has not been given any school work at all, not
14 even work to do in his living unit. The last time he was in
15 detention he was placed in dorm school and was given a packet of
16 material to work on each week. He didn't see a teacher every day
17 and when he did it was only for 15 to 30 minutes. E.G. was also
18 not given a hearing associated with his removal from the regular
19 school or his out-of-school behavior that was purportedly the
20 reason for his removal. (Ex. 11.)

21 J.Q. was in the detention facility for more than a month. He
22 was in dorm school. He was not visited by a teacher or given a
23 packet of written material for five school days. He was not
24 allowed out of his room to do school work for these five days.
25 When he was permitted to do school work in the day room, no
26 teachers were present. Some days he was permitted to go to the
27

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 9

1 resource room, run by the special education teacher, but not every
2 day, and at most for only 45 minutes and only when unit staff
3 allowed him to go. He was removed from the resource room half-way
4 through a special education session by detention staff for reasons
5 unrelated to his performance in the class and solely because he
6 was on room confinement. (Ex. 10.)

7 H.L. was in detention from August 24, 1990 until
8 approximately October 12, 1990. He is 14 years old. He was not
9 permitted to go outside for recreation even once during his entire
10 stay at the facility. He was placed in dorm school. Like the
11 others, he was not given any hearing or reasons why he was put in
12 dorm school. Sometimes he was let out of his room for
13 approximately 30 minutes each day to do his school work.
14 Sometimes defendant Love Denton would come to the day room when he
15 did his school work, but other times there was no teacher present.
16 When he was confined in the orientation unit he was never seen by
17 a teacher. While in the orientation unit, he did not receive any
18 school work, was not seen by any teacher, and was not let out of
19 his room to do school work.⁴ (Ex. 12.)

20 The dorm school and mid school programs do not meet basic
21 education requirements. (Declaration of Dr. Steven Sulzbacher,
22 Ex. 15.)

23
24 ⁴ When H.L.'s witness statement was taken, he had been
25 cutting on himself for 2 1/2 hours with a staple. His clothes
26 were bloodied, his arms were bleeding, and there were puddles of
27 blood on the floor. According to H.L., he has cut himself a
28 number of times in detention. On this occasion, however, the
staff decided not to stop him and told him to "Go for it. If you
want to kill yourself, go ahead, I'm not your baby sitter."

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. ARGUMENT

A. Preliminary Injunction Standards.

Granting a preliminary injunction lies within the sound discretion of this Court to be exercised based on the circumstances of each case. Alderwood Associates v. Environmental Council, 96 Wn.2d 230, 233, 635 P.3d 108 (1981).⁵

In Tyler Pipe Industries v. Department of Revenue, 96 Wn.2d 785, 638 P.2d 1213 (1982), the Washington Supreme Court set forth the equitable criteria to be considered in granting injunctive relief in a constitutional case:

'It is an established rule . . . that one seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.'

⁵ Preliminary injunctive relief is available under RCW 7.40.020 which provides in pertinent part:

"When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiffs; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court . . ."

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 11

EVERGREEN LEGAL SERVICES
INSTITUTIONAL LEGAL SERVICES PROJECT
101 YESLER WAY, SUITE 301
SEATTLE, WASHINGTON 98104
(206) 464-0838

1 Tyler Pipe Industries v. Department of Revenue, 96 Wn.2d at 792,
2 quoting Port of Seattle v. International Longshoremen's and
3 Warehousemen's Union, 92 Wn.2d 317, 324 P.2d 1099 (1958). See
4 also Physicians v. Tacoma Stands Up For Life, 106 Wn.2d 261, 265,
5 721 P.2d 946 (1986). These criteria must be examined "in light of
6 equity including balancing the relative interests of the parties
7 and, if appropriate, the interests of the public." Tyler Pipe v.
8 Department of Revenue, 96 Wn.2d at 793. As is shown below, in
9 light of these equitable factors the criteria for injunctive
10 relief are unquestionably met here.

11 B. The Standards Applied In This Case Show That A Preliminary
12 Injunction Should Be Granted.

13 1. Clear Legal Right.

14 a. Youth In Detention Have A Clear Legal Right To A
15 Basic Education.

16 School age youth have a right to education while detained in
17 juvenile detention facilities. Tommy P. v. Board of
18 Commissioners, 97 Wn.3d 385, 386, 645 P.2d (1982). This right
19 derives from RCW Titles 13 (the Juvenile Justice Act) and RCW 28A,
20 as well as Article 9, Section 1 of the Washington State
21 Constitution. The duty to provide an education to all children in
22 the state is mandatory and paramount. Const. Art. 9, § 1; Seattle
23 School District v. State, 90 Wn.2d 476, 499, 585 P.2d 71 (1978).

24 An education program in detention which includes classroom
25 instruction provides "significant benefits for detainees within a
26 few days of their detention." Tommy P. v. Board of Commissioners,
27 97 Wn.2d at 395.

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 12

1[T]he classroom is a familiar milieu
2 for juveniles, and the education program aids
3 adjustment to detention by providing familiar
4 classroom experiences in detention. By
5 occupying and stimulating detainees, the
6 education program improves security and
7 discipline and is even effective in reducing
8 attempts at suicide.

9 Id. at 396. Indeed, " . . . juvenile offenders are in special
10 need of education in detention." Id. at 397.

11 It appears clear to us that the provision of
12 education in detention is a particularly
13 effective response to a critical need of
14 juvenile offenders, and an important step in
15 achieving the rehabilitation of a juvenile
16 offender.

17 Id. at 397-98. (See also, Declaration of Dr. Steven Sulzbacher,
18 attached as Ex. 15.)

19 b. Dorm School And Mid School Do Not Meet The
20 Requirements Of A Basic Education.

21 In Tommy P. v. Board of Commissioners, supra, the Washington
22 Supreme Court did not fully set forth the exact requirements of a
23 detention school program, or how to measure its adequacy. But it
24 did make clear that a detention school program should
25 "... reasonably address the special needs of juvenile offenders
26 and the policy of the Legislature of rehabilitating such offenders
27 into productive members of society." Id. at 398.

28 Under any measure of adequacy, the dorm-school and mid-school
programs at the KCDF falls far short of a basic education.
Students in mid school get only a maximum of 40 minutes of
classroom instruction a day as compared to the comparable five
hours a day provided to youth in the regular detention school
program and to students outside the detention setting. The kind

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 13

1 of familiar classroom milieu discussed in Tommy P. is not provided
2 to youth in dorm school at all. No educational aids, other than a
3 packet of xeroxed materials, are used to "educate" youth in their
4 units. Students in dorm school cannot attend special assemblies
5 or programs. They seldom interact with or are taught by teachers.

6 The Institute of Judicial Administration/American Bar
7 Association (hereafter IJA/ABA Standards) suggest that youth
8 confined in short-term detention should go to the school they
9 normally attend or an equivalent tutorial program:

10 All accused juveniles held in interim detention
11 should be afforded access to the educational institution
12 they normally attend, or to equivalent tutorial or other
13 programs adequate to their needs, including an
14 educational program for 'exceptional children.'

15 IJA/ABA Standards 10.6.⁶ The "education" provided to youth in
16 dorm and mid school is a far cry from the education available in
17 either the regular school they normally attend or in the regular
18 detention school.

19 RCW 28A.58.754 establishes the program requirements of a
20 basic education in this state. It is beyond dispute that the
21 total program hour and instructional offerings available to youth
22 in dorm and mid school in detention do not satisfy the
23 requirements of this law.

24 ⁶ The commentary to this standard states:

25 The necessity for access to educational facilities
26 for those held in detention has been stressed by several
27 commentators. See, e.g., R. Sarri, "Under Lock and Key:
28 Juveniles in Jails and Detention" 73 (1974); Illinois
Department of Corrections, "Standards and Guides for
Juvenile Detention Centers" 18 (1971).

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 14

1 To exemplify, plaintiff T.I. was in the tenth grade when he
2 was put in dorm school in detention. (Ex. 14.) RCW
3 28A.58.754(2)(e), applicable to students in the ninth through
4 twelfth grade, requires a minimum total program hour offering of
5 four thousand three hundred twenty hours. It states in relevant
6 part:

7 (2) Satisfaction of the basic education goal. . .shall
8 be considered to implemented by the following program
9 requirements:

10 (e) Each school district shall make available
11 to students in grades nine through twelve at
12 least a total program hour offering of four
13 thousand three hundred twenty hours. A
14 minimum of sixty percent of the total program
15 hour offerings shall be in the basic skills
16 areas of language arts, foreign language,
17 mathematics, social studies, science, music,
18 art, health and physical education. A minimum
19 of twenty percent of the total program hour
20 offerings shall be in the area of work skills.
21 The remaining twenty percent of the total
22 program hour offerings may include traffic
23 safety or such subjects and activities as the
24 school district shall determine to be
25 appropriate for the education of the school
26 district's students in such grades, with not
27 less than one-half thereof in basic skills
28 and/or work skills. . .

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 15

EVERGREEN LEGAL SERVICES
INSTITUTIONAL LEGAL SERVICES PROJECT
101 YESLER WAY, SUITE 301
SEATTLE, WASHINGTON 98104
(206) 464-0838

1 RCW 28A.58.744(2)(e).⁷ During his 145 day stay in detention
2 plaintiff T.I. did not receive anywhere near the mandated total
3 program hour offering, since he only did a maximum of 45 minutes
4 of schoolwork per day.⁸ Neither did he receive instruction in
5 the basic skills area as required by law. To isolate youth from
6 the classroom, and to fail to provide basic instruction, is also
7 completely contrary to this state's educational purposes and
8 goals.

9 The mission of the common school system is to provide
10 learning experience which will assist all students to
11 develop skills, competencies, and attitudes that are
12 fundamental to an individual's achievement as a
13 responsible, contributing citizen.

14 WAC 180-40-210. The dorm and mid school programs are, under any
15 measure, incompatible with this goal.

16 Plaintiffs' expert Dr. Steve Sulzbacher concludes that the
17 educational services provided in the dorm school and mid school

18 ⁷ "Total program hour offering" means:

19 ...those hours when students are provided the
20 opportunity to engage in educational activity planned by
21 and under the direction of school district staff, as
22 directed by the administration and board of directors of
23 the district, inclusive of intermissions for class
24 changes, recess and teacher/parent-guardian conferences
25 which are planned and scheduled by the district for the
26 purpose of discussing students' educational needs or
27 progress, and exclusive of time actually spent for
28 meals.

RCW 28A.58.744(1)(a).

⁸ Assuming a 180 day school year (see, RCW 28A.58.754) and
at a rate of 45 minutes of program hours per day, T.I. would
complete just 135 total program hours in his tenth grade. At this
rate, he would have completed a total of 640 program hours during
grades 9-12, compared to the 4,320 hours required by statute.

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 16

1 program does not satisfy the requisites of a basic education
2 because it does not provide regular access to teachers and does
3 not meet the individual learning needs of students. (Declaration
4 of Steve Sulzbacher, Ex. 15.) This conclusion is inescapable.
5 In short, defendants have not fulfilled their "paramount" duty to
6 make "ample provision for the education" of its resident children,
7 as required by Const. Art. 9, §1, and state law, through the dorm
8 and mid school programs.

9 The legality of providing detained youth with dorm-based
10 instruction similar to that provided in dorm school at the KCDF
11 was addressed in Inmates of Boy's Training School v. Affleck, 346
12 F.Supp. 1354 (D.R.I. 1972). In Affleck the court determined it
13 was illegal to provide youth detained in the annex of the training
14 school - who were confined there for behavioral reasons unrelated
15 to conduct in school - with dorm-based instruction. The court
16 held that boys confined in the annex were entitled to receive the
17 same education as given boys in the training school proper. The
18 court enjoined defendants from confining any members of the
19 plaintiff class in the annex without providing them with education
20 equivalent in " . . . duration, subject matters, materials, and
21 otherwise, with that provided [to the general population]." Id at
22 1370. As in Affleck, the youth in the dorm and mid-school program
23 in King County detention are not receiving the same education
24 provided in other students in population and to which they are entitled.⁹

25
26 ⁹ Article 9, Section 2 of the Washington Constitution
27 requires, as a first priority, fully sufficient funds for the
(continued...)

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 17

1 c. Youth Have A Clear Legal Right Not To Be Punished
2 By Removal From School For Out Of School Behavior
3 Or Due To Over-Crowding In Detention.

4 Defendants violate state law when they punish youth by
5 removing them from school for out-of-school behavior or because
6 there are not enough classrooms in detention to accommodate all
7 detained youth.¹⁰

8 WAC 180-40-225 requires school districts to adopt rules
9 governing the types of misconduct that will result in discipline,
10 suspension, or expulsion from school. WAC 180-40-225(2) states:

11 Rules that establish the types of misconduct pursuant to
12 this section must have a real and substantial
13 relationship to the lawful maintenance and operation of
14 the school district including, but not limited to, the
15 preservation of the health and safety of students and
16 employees and the preservation of an educational process
17 which is conducive to learning.

18 In compliance with this directive, the Seattle Public School
19 District adopted a Statement of Rights and Responsibilities. (A
20

21 ⁹(...continued)

22 "general and uniform system of public schools." (emphasis added)
23 See also, Northshore School Dist. No. 417, 84 Wn.2d 685, 530 P.2d
24 178 (1974) ("General and uniform system of public schools" is one
25 in which every child in the state has free access to certain
26 minimum and reasonably standardized educational and instructional
27 facilities and opportunities to at least the 12th grade, and a
28 system administered with that degree of uniformity which enables
29 child to transfer from one district to another within the same
30 grade without substantial loss of credit or standing and with
31 access by each student of whatever grade to acquire those skills
32 and training reasonably understood to be fundamental and basic to
33 sound education). As plaintiffs' facts show, the mid and dorm
34 school programs at KCDF are not even comparable to the regular
35 school program offered in detention, let alone equivalent to the
36 standardized educational opportunities offered district students
37 who are not in detention.

38 ¹⁰ This argument section presumes that the dorm and mid
39 school programs do not constitute "school" and do not have the
40 equivalent educational opportunities offered in night school.

41 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
42 MOTION FOR PRELIMINARY INJUNCTION
43 RE DORM SCHOOL AND MID SCHOOL- 18

1 copy of this document attached as Ex. 16.) These rules list the
2 prohibited conduct or behaviors which can result in emergency or
3 temporary suspension and expulsion. Under these policies, conduct
4 that may result in punishment must occur on school grounds or at
5 school function. (See, e.g., District Discipline Policy, at p.4,
6 where it states: "Participation in any of the following behaviors
7 in school, on school grounds, on school-district sponsored
8 transportation, or at any school sponsored event . . ." (emphasis
9 added).)

10 State law further requires that the conduct must be related
11 to a student's functioning in the classroom. For example, the
12 emergency removal of a student from a classroom may occur only
13 when there is good and sufficient reason to believe that a
14 student's presence in the classroom poses an immediate and
15 continuing danger to the student or others. WAC 180-40-290
16 states:

- 17 (1) Notwithstanding any other provision of this
18 chapter, a student may be removed immediately from a
19 class, subject or activity by a certificated teacher or
20 an administrator and sent to the building principal or a
21 designated school authority: Provided, That the teacher
22 or administrator has good and sufficient reason to
23 believe that the student's presence poses an immediate
24 and continuing danger to the student, other students, or
25 school personnel or an immediate continuing threat of
26 substantial disruption of the class, subject, activity,
27 or educational process of the student's school. The
removal from classes, subjects, or activities shall
continue only until: (a) The danger or threat ceases,
or (b) The principal or designated school authority acts
to impose discipline, impose a short-term suspension,
initiate a long-term suspension or an expulsion, or
impose an emergency expulsion, pursuant to this chapter.
(2) The principal or school authority shall meet with
the student as soon as reasonably possible following the
student's removal and take or initiate appropriate

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 19

1 corrective action or punishment. In no case shall the
2 student's opportunity for such meeting be delayed beyond
3 the commencement of the next school day. Prior to or at
4 the time any such student is returned to the class(es),
5 subject(s), or activity(ies), the principal or school
6 authority shall notify the teacher or administrator who
7 removed the student therefrom of the action which has
8 been taken or initiated.

9
10 Nationally recognized standards applicable to the operation
11 of juvenile detention facilities suggest that it is impermissible
12 to deny detained youth the opportunity to attend school as a means
13 of punishment for behavioral infractions occurring in the living
14 unit. The American Correctional Association (hereafter ACA)
15 Standards for Juvenile Detention Facilities, Second Edition, state
16 as follows:

17 2-8333 WRITTEN POLICY AND PROCEDURE ENSURE THAT PRIOR
18 TO PRIVILEGE SUSPENSION THE JUVENILE HAS THE REASONS FOR
19 THE RESTRICTION EXPLAINED TO HIM/HER, AND HAS AN
20 OPPORTUNITY TO EXPLAIN THE BEHAVIOR LEADING TO THE
21 SUSPENSION.

22 DISCUSSION: Prior to punishment for any rule
23 infraction the juvenile should be given an
24 opportunity to explain the reason(s) for the
25 violation. Privilege suspension includes no
26 use of the television, radio or record player,
27 no smoking, no visits from friends, no
28 recreation or other special activity outside
the facility. Privilege suspension in no
instance includes loss of regular meals,
clothing, sleep, health care services, school,
exercise, correspondence privileges, contact
with parents, or legal assistance. (Emphasis
added.)

29 ACA Standards For Juvenile Training Schools and Services
30 similarly prohibit the loss of the right to attend school as a
31 means of punishment for institutional disciplinary rules.

32 A major violation of the rules may entail loss of
33 privileges or a period of separate confinement and
34 requires independent review of the circumstances leading

35 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
36 MOTION FOR PRELIMINARY INJUNCTION
37 RE DORM SCHOOL AND MID SCHOOL- 20

1 to the imposition of punishment. In no case should such
2 punishment include loss of regular meals, clothing,
3 sleep, health care services, school, exercise,
4 correspondence privileges, contact with parents or legal
5 assistance. Specific time limits should be set and
6 stated in writing for completion of each step in the
7 process. Residents should be allowed to confront and
8 cross-examine adverse witnesses, provided there is no
9 threat to facility security. (Emphasis added.)

10 ACA Standard, 9373, Discussion.

11 Additionally, the Standards for the Administration of
12 Juvenile Justice established by the National Advisory Committee
13 for Juvenile Justice and Delinquency Prevention (hereafter NAC
14 Standards) prohibit the denial of academic educational services to
15 detained youth for disciplinary reasons. NAC Standards 4.52,
16 4.53, and 4.41-4.410. (A copy of these standards and related
17 commentary are attached as Ex. 18.)

18 Finally, the Court in Inmates v. Affleck, supra, in essence
19 held that it is unlawful to punish detained youth by removing them
20 from the regular school program and placing them into a non-
21 equivalent school program in a segregation unit. Inmates v.
22 Affleck, 346 F.Supp. at 1369.

23 The lack of funds or inadequate space or facilities are
24 similarly impermissible justifications to deny youth a basic
25 education. Seattle School Dist. v. State, supra; Tommy P. v.
26 Board of Commissioners, supra. Thus, neither out-of-school
27 behavior nor the lack of space are legally adequate reasons to
28 deny detained youth the opportunity to attend detention school.¹¹

¹¹ It not only violates state statutes, regulations
and relevant national standards to remove youth from detention
(continued...)

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 21

1 d. Students In Dorm And Mid School Have A Clear Legal
2 Right To Procedural Due Process.

3 Even if some especially egregious out-of-school behavior
4 which relates to school performance could justify the loss of
5 basic education rights, such a deprivation must be accompanied by
6 due process protections.¹² Here, defendants have denied
7 plaintiffs their right to a basic education without due process of
8 law.

9 RCW 28A.04.132 provides:

10 The state board of education shall adopt and
11 distribute to all school districts lawful and reasonable
12 rules and regulations prescribing the substantive and
13 procedural due process guarantees of pupils in the
14 common schools. Such rules and regulations shall
15 authorize a school district to use informal due process
16 procedures in connection with the short term suspension
17 of students to the extent constitutionally permissible:
18 Provided, That the state board deems the interest of
19 students to be adequately protected.

20 See also, RCW 28A.58.101 which requires school governments to
21 adopt rules and regulations regarding the discipline of pupils.

22 In response to these legislative directives the board of
23 education promulgated WAC 180-40. In relevant part the regulation
24 provides:

25 No student shall be deprived of the right to an equal
26 education opportunity in whole or in part by a school
27 district without due process of law.

28 ¹¹(...continued)
 school for these impermissible reasons but it is a substantive due
 process violation as well.

¹² Plaintiffs maintain that it is never legally permissible
 to deny equal educational opportunities in detention due to
 facility space concerns no matter what the due process
 protections.

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 22

1 (Ex. 16, p.2.)

2 As set out in these rules, certain procedures must be
3 followed prior to the long, short-term or emergency suspension or
4 expulsion of a student. Prior to long term suspension, written
5 notice to the student and parent is required which specifies: (1)
6 alleged misconduct; (2) proposed corrective action; and (3) the
7 parent and student's right to request a hearing.¹³ Students and
8 parents are entitled to a hearing, if requested, at which they are
9 allowed to question witnesses, present evidence, and inspect
10 documentary or other physical evidence. Parents and students have
11 the right to be represented by counsel at the hearing. A verbatim
12 record of the hearing must be made and written findings and
13 conclusions entered. WAC 180-4-270. WAC 180-40-270 further
14 limits the power to suspend a youth's right to education as
15 follows:

16 (1) The nature and circumstances of the
17 violation must reasonably warrant a long-term
18 suspension and the length of the suspension
imposed.

19 (2) No student shall be suspended unless other forms of
20 corrective action or punishment reasonably calculated to
21 modify his or her conduct have failed or unless there is
good reason to believe that other forms of corrective
action or punishment would fail if employed.

22 Similar procedural protections are accorded parents and
23 students during expulsion proceedings. See, WAC 180-40-275, 280,

24
25 ¹³ Ex. 17 is the form used by the Seattle Public School
26 District to notify students and parents of disciplinary action.
27 Neither youths in detention nor their parents are provided with
any such notice when removed from the regular detention school
program.

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 23

1 and 285. Emergency removal from class is permitted, but the
2 principal of the school must meet with the student by the next
3 school day. WAC 180-40-290. In addition, written notice of the
4 right to a hearing must be provided to the parent and guardian
5 within 24 hours. WAC 180-40-300. Most significantly, emergency
6 removal may occur only if there is good and sufficient reason to
7 believe that the student's presence in the classroom poses "an
8 immediate and continuing threat of substantial disruption of the
9 class, the subject, activity or educational process of the
10 student's school." (Ex. 16, p. 15.)

11 None of these procedural safeguards (or anything even
12 remotely like them) are afforded youth who are expelled,
13 suspended, or otherwise removed from the regular classroom or
14 night school program in detention. Indeed, detention and school
15 policy permits "automatic" suspension from the classroom for
16 certain conduct. (Ex. 5, p.5.) Youth are not given notice of the
17 reasons they are removed from detention school or a hearing at
18 which they can present and cross-examine witnesses or explain the
19 circumstances. (Exs. 9-14.) Therefore, plaintiffs have been
20 denied due process.

21 2. Youth in detention have a well-grounded fear of
22 immediate invasion of their right to education.

23 The dorm and mid school policies of the KCDF were developed
24 as a "solution" to the space problems created when defendants
25 closed the Spruce unit in order to begin building a new facility
26 on that site. As a result of closing Spruce, the classroom and
27 other space available for education accommodates far less than the

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 24

1 average daily population in detention. Youth are, therefore, put
2 in dorm school or mid school due to space concerns or purportedly
3 for behavioral reasons.

4 It cannot be denied that the regular school program space,
5 and staffing levels currently available to educate youth in
6 detention, are inadequate to serve all youth at a minimum level.
7 So long as the population exceeds the capacity of the detention
8 school, and assuming no other physical space is provided for the
9 school program, and unless defendants are enjoined as requested
10 herein, the dorm school and mid-school policies and practices will
11 remain in effect. Thus, youth have a well-grounded fear that they
12 will be immediately and continually be deprived of their right to
13 a basic education.

14 3. Youth Are Substantially And Actually Injured By Their
15 Removal From School And Placement In Dorm Or Mid School.

16 The Washington Supreme Court has acknowledged that youth in
17 detention significantly benefit by an education program within a
18 few days of their detention. Tommy P. v. Board of Commissioners,
19 supra, 97 Wn.2d at 395-398. As the court recognized,
20 "...education is one of the most urgent needs of many juvenile
21 offenders." (Emphasis added.) Id at p.398.

22 As plaintiffs' declarations show, youth in the KCDF who are
23 put in dorm and mid school actually suffer significant harm from
24 their isolation and denial of educational opportunities.

25 Plaintiff T.I. attempted to commit suicide. (Ex. 14.) The
26 effects of this deprivation are ongoing: Youth who are denied
27 basic educational opportunities in detention carry their

28 MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 25

1 unremediated basic skills deficiencies with them when they leave
2 detention. They have less access to job opportunities and
3 advancement. See, Morgan v. Sproat, 432 F.Supp. 1130, 1150-1151
4 (S.D. Miss. 1977).

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
III. CONCLUSION

For all the foregoing reasons, this court should
preliminarily enjoin defendants from:

(1) Removing youth in detention from the regular school
program and placing them in dorm school or mid school due to the
lack of space in detention classrooms to accommodate the detention
population.

(2) Removing detained youth from the regular detention
school program and placing them in dorm school or mid school to
punish them for out-of-school behavior that is unrelated to their
school performance.

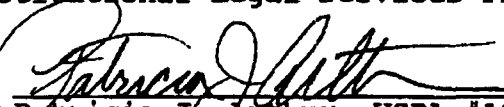
(3) Suspending or expelling detained youth from the regular
detention school program without providing the same procedural
protections afforded to students attending Seattle Public Schools
who are not in detention.

DATED this 17th day of October, 1990.

Respectfully submitted,

EVERGREEN LEGAL SERVICES
Institutional Legal Services Project

By


Patricia J. Arthur, WSBA #13769
John Midgley, WSBA #6511

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 26

EVERGREEN LEGAL SERVICES
INSTITUTIONAL LEGAL SERVICES PROJECT
101 YESLER WAY, SUITE 301
SEATTLE, WASHINGTON 98104
(206) 464-0838

HELLER, EHRMAN, WHITE & MCAULIFFE

By

John W. Phillips (JWP)

John W. Phillips

Washington State Bar #12185

Attorneys for Defendant W.F.

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION
RE DORM SCHOOL AND MID SCHOOL- 27

EVERGREEN LEGAL SERVICES
INSTITUTIONAL LEGAL SERVICES PROJECT
101 YESLER WAY, SUITE 301
SEATTLE, WASHINGTON 98104
(206) 464-0638