



JI-WA-0002-0007

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, JAMES BARNHART,	)	CLASS ACTION
JEROME PAYTON, J.B., through his	)	
next friend, LORRAINE WEST, and	)	NO. C94-5428 RJB
K.M., through his mother DEBBIE	)	
MOORE, on behalf of themselves	)	
and all others similarly situated,	)	STATE DEFENDANTS' MEMO-
	)	RANDUM IN SUPPORT OF
Plaintiffs,	)	MOTION TO PARTIALLY
	)	DISMISS CLAIMS UNDER
vs.	)	RULE 12(B)(6)
	)	
BOB WILLIAMS, in his official	)	
capacity as Superintendent of	)	
Green Hill School; JEAN SOLIZ,	)	
in her official capacity as	)	
Secretary of the Department of	)	
Social and Health Services; and	)	
SID SIDOROWICZ, in his official	)	
capacity as Assistant Secretary	)	
of the Juvenile Rehabilitation	)	
Administration; and the Chehalis	)	
School District,	)	
	)	
Defendants.	)	

This memorandum is filed on behalf of defendants Williams, Soliz, and Sidorowicz (the state) in support of a motion pursuant to Fed. R. Civ. P. 12(b)(6) to partially dismiss claims for failure to state a claim upon which relief may be granted.

This lawsuit is a class action, seeking declaratory and injunctive relief, brought under 42 USC § 1983 by residents challenging certain conditions of confinement at Green Hill

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1 School, which is an institution for juvenile offenders operated by
2 the State of Washington.

3 Plaintiffs' claims are set out on pages 10 and 11 of the
4 complaint. The factual allegations in support of these claims are
5 set out on pages 1 through 10 of the complaint.

6 I. ARGUMENT

7 When a suit challenges conditions of confinement, to grant
8 relief, a court must identify a specific condition that allegedly
9 violates the constitution, rather than taking into consideration
10 to "totality of conditions." Hoptowit v. Ray, 682 F.2d 1237, 1247
11 (9th Cir. 1982). A claim, therefore, should be dismissed if the
12 specific allegations on which the claim is based are insufficient.
13 Since plaintiffs' claims are worded to incorporate by reference
14 each factual allegation, each factual allegation on which a claim
15 is based must be non-conclusory and supported by specific facts,
16 as well as alleging an injury and a cognizable constitutional
17 violation.

18 A. Conclusory allegations unsupported by specific facts, or
19 which do not allege an injury, are insufficient to state a cause
20 of action.

21 The level of specificity required in pleading a cause of
22 action is regulated by Fed. R. Civ. P. 8(a)(2), which requires a
23 "short and plain statement of the claim showing the pleader is
24 entitled to relief." Conclusory allegations unsupported by
25 specific facts are not sufficient. McCarthy v. Mayo, 827 F.2d
26 1310, 1316 (9th Cir. 1987). A claim must provide sufficient

1 notice of the nature of the claim and the facts which underlie the
2 claim, so the defendant may assess the initial strength of the
3 claim, preserve relevant evidence, and identify related counter-
4 claims and cross claims. Grid Systems Corp. v. Texas Instruments
5 Inc., 771 F. Supp. 1033, 1037 (N.D.Cal. 1991). Conclusory
6 allegations are not sufficient to state a claim under 42 USC §
7 1983. Kennedy v. H & M Landing Inc., 529 F.2d 987, 989 (9th Cir.
8 1976); Bergquist v. Cochise County, 806 F.2d. 1364, 1367 (9th
9 Cir. 1986).

10 What is required is an allegation of "specific, narrowly-
11 defined conduct" on the part of defendant. Gibson v. United
12 States, 781 F.2d 1334, 1341 (9th Cir. 1986), quoting Kadar Corp.
13 v. Milbury, 549 F.2d 230, 234 (1st Cir. 1977). Any claim under 42
14 USC § 1983 must be supported by "particularized facts"
15 demonstrating a constitutional deprivation. Cohen v. Illinois
16 Institute of Technology 581 F.2d 658 (7th Cir. 1978). A liberal
17 reading of a civil rights complaint may not supply essential
18 elements of a complaint that were not initially pled. Ivey v.
19 Board of Regents, 673 F.2d 266, 268 (9th Cir.1982). When
20 plaintiffs, as here, are represented by experienced counsel, their
21 complaint must be more strictly construed. Benson v. Cady, 761
22 F.2d 335, 339 (7th Cir. 1985); Balistreri v. Pacifica Police
23 Dept., 901 F.2d 696, 699 (9th Cir. 1990); Ferdik v. Bonzelet, 963
24 F.2d 1258 (9th Cir. 1992).

25 The requirement for a non-conclusory complaint, supported by
26 specific facts, prevents plaintiffs from proceeding with an action

1 in which they may not know what the issues are, what they hope to
2 prove, or what they hope to gain from the action. Plaintiffs
3 cannot proceed on the basis of vague allegations in hopes that at
4 some point in the litigation they may discover some specific
5 ground on which they are entitled to relief. Proceeding in such
6 a manner is not a proper use of the courts. That is precisely the
7 danger when plaintiffs, as in this case, are allowed to proceed on
8 such vague allegations as failure to provide such things as
9 adequate "educational, recreational, and other treatment
10 services", "social services", "transition services", "treatment in
11 the least restrictive environment", "numbers of properly trained
12 staff", "educational, treatment, and security needs of Spanish-
13 speaking resident", "identification of treatment needs",
14 "alternative education programs", "unburdened facilities",
15 "dangerous conditions", and "safe and sanitary conditions".
16 Plaintiffs' complaint is riddled with this type of general
17 allegation.

18 In addition to making specific allegations, a plaintiff must
19 demonstrate an actual injury in fact stemming from the allegedly
20 illegal conduct. O'Shea v. Littleton, 414 U.S. 488, 494 (1973);
21 Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993).

22 Many cases have dismissed § 1983 claims for making
23 insufficient conclusory allegations. For example, Swoboda v.
24 Dubach, 992 F.2d 286 (10th Cir. 1993), involved the following
25 claims by an inmate:
26

1 a) conditions, restrictions, and constraints placed on
2 pretrial detainees amounted to punishment, b) pretrial
3 detainees were limited in their preparation of a legal
4 defense by their inability to post bail, c) oppressive jail
5 conditions limited inmates' ability to prepare or assist in
6 their legal defense, d) restrictions placed on inmates'
7 communications and access to law books amounted to a denial
8 of access to the courts and counsel, e) conditions at the
9 jail constituted cruel and unusual punishment, f) inmates
10 received inadequate medical care, g) lack of access to
exercise and recreation, h) lack of access to reading
material, i) inadequate diet at jail, j) the jail's housing
conditions, heating, ventilation and cooling, fire alarm,
plumbing and lighting systems were inadequate and posed
health threats to inmates, k) failure to provide regular
bathing, cleaning, and laundry services, l) denial of right
to vote, m) denial of the right to exercise religious
freedom, n) failure to train and staff the jail to insure
inmates' safety, and o) failure to protect inmates privacy.

11 992 F.2d at 289. In dismissing the claim, the court held:

12 He stated no specific facts connecting the allegedly
13 unconstitutional conditions with his own experiences at [the
14 jail], or indicating how the conditions caused him injury.
Without such facts, these claims are little more than
conclusory allegations, which are insufficient to state a
claim.

15 Id. In Lowe v. Board of Commissioners, 750 F. Supp. 697, 700
16 (M.D.Pa. 1990), the court found conclusory an allegation that
17 defendants "chose and pursued a policy of administration of
18 medical care which was grossly inadequate to meet the needs of
19 plaintiff," and "acted pursuant to a policy approved, encouraged,
20 and acquiesced in" by the county and the warden.

21 A complaint that a prison failed to treat sex offenders until
22 near their release failed to state a claim when there was no
23 allegation of deliberate indifference or of what the serious
24 medical needs were. Patterson v. Webster, 760 F. Supp. 150, 153
25 (E.D.Mo. 1991). A prisoner's claim of deprivation of property was
26

1 properly dismissed when he failed to allege what property had been
2 taken. Guglielmo v. Cunningham, 811 F. Supp. 31, 33 (D.N.H.
3 1993). Similarly, a prisoner's claim of racial discrimination was
4 dismissed when the complaint did not state what action or omission
5 gave rise to the complaint. Johnson v. KSIR, 804 F. Supp. 173,
6 179 (D.Kan. 1992).

7 Because "complaints relying on civil rights statutes are
8 insufficient unless they contain some specific allegation of fact
9 indicating a deprivation of rights, instead of a litany of general
10 conclusions that shock but have no meaning," claims such as
11 "denial of proper health and safety care" must be dismissed.
12 Smith v. State, 764 F. Supp. 260, 261 (E.D.N.Y. 1991).

13 A claim that a prisoner is kept in administrative segregation
14 without reason is not sufficient without allegations that he was
15 denied the right to a hearing, or that administrative segregation
16 is used as a pretext for indefinite confinement. Williams v. ICC
17 Committee, 812 F. Supp. 1029, 1033 (N.D.Cal. 1992). A prisoner
18 claiming "medical indifference" due to denial of crutches, to
19 avoid dismissal, must allege how treatment of the injury was
20 inadequate. Davis v. Hall, 992 F.2d 151, 153 (8th Cir. 1993).
21 Since a prisoner has the right to "outdoor" exercise, a complaint
22 alleging inadequate exercise space must make clear whether the
23 allotted space is outside or not. Cooper v. Sumner, 672 F. Supp.
24 1363, 1366 (D.Nev. 1987). A claim of denial of "religious
25 privileges" is insufficient without indicating what specific
26

1 privileges were denied. Adams v. O'Leary, 659 F. Supp. 736, 739
2 (N.D.II. 1987).

3 Claim that a prisoner's health deteriorated in segregation
4 must specify a illness or medical condition. Lewis v. Woods, 848
5 F.2d 649, 653 (5th Cir. 1988). A claim that prisoner was given
6 job transfers to "punish and harass" him is conclusory. Gill v.
7 Mooney, 824 F.2d 192, 194 (2nd Cir. 1987). Also conclusory are
8 claims that health care is "inadequate", and standards within a
9 unit are "below... adequate". Martin v. Sargent, 780 F.2d 1334
10 (8th Cir. 1985).

11 Based on these cases, the plaintiffs' claims below must be
12 dismissed because they are conclusory and not supported by
13 specific facts, or fail to allege an injury.

14 1. Plaintiffs claim what they call "disciplinary cottages"
15 are used in violation of their Fourteenth Amendment rights (page
16 10, line 26) because residents are not provided "educational,
17 recreation, and other treatment services that are appropriate to
18 their needs" (page 8, line 40). This totally conclusory claim
19 fails to list any specific program which plaintiffs believe is
20 unconstitutionally denied them. It fails to identify what
21 plaintiffs' needs are, what services would be appropriate to meet
22 those needs, or how they are injured by the level of services
23 currently offered.

24 2. Plaintiffs claim they are denied "adequate procedural
25 protection prior to the infliction of harsh and cruel punishment"
26 in violation of due process (page 11, lines 4-5). This claim

1 appears to be based on allegations that plaintiffs are denied due
2 process when placed in a "disciplinary cottage" (page 9, lines 1-
3 3) and when excluded from educational services (page 9, lines 22-
4 23). This claim completely fails to specify what procedural
5 protections plaintiffs are entitled to, how they are denied, or
6 how plaintiffs are injured. Moreover, nowhere in the complaint do
7 plaintiffs allege they are subject to "harsh and cruel punishment"
8 in violation of the Eighth Amendment. Thus, the allegation that
9 they are denied procedural protections prior to infliction of such
10 punishment, has no factual basis.

11 3. Plaintiffs claim they are not "protected... from harm in
12 the state's custody" in violation of due process (page 11, lines
13 5-6). This claim apparently is based on an allegation that there
14 are insufficient number of properly-trained staff to protect
15 residents from assault or injury (page 10, lines 21-22). This
16 allegation is conclusory and not supported by sufficient facts.
17 For example, there are no facts to support an allegation that
18 residents are subject to undue risk of assault or injury, or in
19 fact are assaulted or injured in undue numbers. Nor are there
20 alleged facts regarding why assaults or injuries are caused by
21 insufficient numbers of properly-trained staff.

22 4. Plaintiffs claim they are not provided "adequate and
23 appropriate health care in violation of due process" (page 11,
24 line 6). This claim apparently is based on the allegation that
25 overcrowding has burdened health facilities beyond their
26 capacities (page 5, lines 15-19). This allegation is not

1 sufficient because it does not provide specific facts showing why
2 health care is inadequate, what health care is being denied, what
3 pain or injury is resulting, or describing how alleged
4 overcrowding makes the health care inadequate.

5 5. Plaintiffs claim they are not provided adequate
6 "education programs" in violation of due process (page 11, line 7)
7 and equal protection (page 11, line 15). The allegations in
8 support of this claim include that plaintiffs are not provided
9 educational services equivalent to what is provided youths outside
10 the institution (page 9, lines 20-21). This allegation fails to
11 give any indication of what those services are. Another
12 allegation is that plaintiffs are excluded from educational
13 services without "process" and are not given "alternative
14 educational programs" (page 9, lines 22-24). This allegation
15 fails to specify what education is being denied, what process is
16 being denied, and what alternative program is denied.

17 6. Plaintiffs claim they are not provided adequate
18 "rehabilitative treatment" in violation of due process (page 11,
19 line 7). The allegations on which this claim is based include
20 that plaintiffs do not receive either "adequate treatment" (page
21 10, line 6), or "appropriate mental health, counseling, and social
22 services" (page 11, lines 7-8). These allegations are conclusory
23 and unsupported by facts. They are couched in only the most
24 generic terms. They fail to specify, for example, what plaintiffs
25 currently receive for treatment, why the treatment is inadequate,
26

1 | what the needs are, what the injuries are, or what the appropriate
2 | level of treatment is.

3 | 7. Plaintiffs claim they receive no "classification" in
4 | violation of due process (page 11, line 7). It is not clear what
5 | is meant by "classification". There are no specific facts related
6 | to that term.

7 | 8. Plaintiffs claim they do not receive adequate
8 | "supervision" in violation of due process (page 11, line 7). This
9 | claim apparently is based on the allegation that there are
10 | insufficient numbers of properly-trained staff to protect
11 | residents from assault or injury (page 10, lines 21-22). This
12 | allegation is conclusory and not supported by sufficient facts.
13 | For example, there are no facts to support an allegation that
14 | residents are subject to undue risk of assault or injury, or in
15 | fact are assaulted or injured in undue numbers. Nor are there
16 | facts alleged supporting a contention that the reason for assaults
17 | or injuries is an insufficient number of untrained staff.

18 | 9. Plaintiffs claim they were denied adequate "educational
19 | services" (page 11, lines 12-18). This claim apparently is based
20 | upon several allegations, at least two of which, as explained
21 | above, are conclusory and not supported by specific facts; that
22 | plaintiffs are excluded from services without process, and are not
23 | offered "alternative education programs" (page 9, lines 48-51).

24 | B. There must be a provable set of facts entitling
25 | plaintiffs to relief.

26 |

1 A court may grant a motion to dismiss for failure to state a
2 set of facts that would entitle plaintiff to recover. Keniston v.
3 Roberts, 717 F.2d 1295 (9th Cir. 1983), quoting Conley v. Gibson,
4 335 U.S. 41, 45-46 (1957). A claim under 42 U.S.C. § 1983,
5 therefore, must allege facts which, if true, amount to a
6 constitutional violation. The threshold question is whether
7 plaintiff has been denied a right of constitutional significance.
8 Parratt v. Taylor, 451 U.S. 527, 532 (1981). For example, while
9 prison officials may not show "deliberately indifference" to a
10 prisoner's medical needs, an allegation of delay in allowing a
11 prisoner to see a doctor is an allegation of mere negligence which
12 does not rise to the level of a constitutional violation. Franklin
13 v. State, 662 F.2d 1337 (9th Cir. 1981).

14 Federal courts, moreover, lack the power to interfere with
15 decisions made by state prison officials, except when there are
16 constitutional violations. Bell v. Wolfish, 441 U.S. 520, 562
17 (1979). A remedy should do no more than correct a particular
18 constitutional violation. Swann v. Charlotte-Mecklenburg Bd. of
19 Ed., 402 U.S. 1, 16 (1972). In particular, injunctive relief
20 should be no broader than necessary to remedy the constitutional
21 violation. Toussaint v. McCarthy, 801 F.2d 1080, 1086 (9th Cir.
22 1986).

23 Based on these principles, the claims below must be
24 dismissed.

25
26

1 1. Plaintiffs allege the use of aerosol restraint violates
2 due process (page 10, line 26) in several respects, including the
3 following:

4 (a) The spray concentration is arbitrarily selected (page 7,
5 lines 13-17);

6 (b) The person giving final approval for use of aerosol
7 restraint is not always on-site (page 7, lines 22-23);

8 (c) A "spray program" allows spraying by staff without
9 further authorization (page 7, lines 25-27); and

10 (d) Staff threatens residents by putting their names on
11 aerosol restraint canisters (page 8, lines 1-2).

12 In Washington, juvenile offenders do not stand convicted of
13 a "crime". RCW 13.04.240. Thus, juvenile offenders, like a
14 civilly-committed person, have a due process right to be free from
15 restraints that are not reasonably related to legitimate
16 government objectives. Youngberg v. Romeo, 457 U.S, 307, 320
17 (1982); Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987).
18 One of the issues in this case, therefore, is whether use of
19 aerosol restraint is reasonably related to a legitimate government
20 interest in maintaining institutional security. If so, the
21 practice is constitutionally-permissible.

22 There is, however, no constitutional right, as plaintiffs
23 allege, to have any particular person approve the use of aerosol
24 restraint, or in the process by which the aerosol concentration is
25 selected. Nor is it a constitutional violation to place a name on
26 a canister of aerosol restraint since such an act in itself is not

1 a form of restraint. Even if, as alleged, putting the name on the
2 canister is a threat, a mere threat is not a constitutional
3 violation. Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987).

4 Thus, these claims must be dismissed because they do not rise
5 to the level of a constitutional violation on which relief may be
6 granted.

7 2. Plaintiff allege they are denied due process by not
8 receiving "adequate and appropriate health care" (page 11, line 6)
9 because of overburdened health facilities (page 5, lines 16-17).
10 An allegation of overcrowding, without more, does not state a
11 claim under the Eighth Amendment. Hoptowit v. Ray, 682 F.2d 1237,
12 1249 (9th. Cir. 1982); Akao v. Shimoda, 832 F.2d 119, 120 (9th
13 Cir. 1987). Under the due process clause, persons involuntarily
14 confined, like plaintiffs, are entitled to safe conditions of
15 confinement. Youngberg v. Romero, 457 U.S. 307, 315 (1982). No
16 court holds that overcrowding, without more, is a due process
17 violation. There is no allegation, for example, that the
18 overcrowding is causing unsafe conditions by delaying the time in
19 which residents are treated for serious medical problems.

20 3. Plaintiffs allege their due process rights are violated
21 by failure to provide "rehabilitative treatment" (page 11, line 7)
22 and education programs (pages 11, lines 7, 13-24). Specifically,
23 plaintiffs allege inadequate education evaluation (page 9, lines
24 11-15), lack of parental participation in education (page 9, lines
25 16-18), lack of education services comparable to non-committed
26 juveniles (page 9, lines 20-21), exclusion from education for

1 violating rules (page 9, lines 22-23), lack of alternative
2 education programs (page 9, line 24), inadequate evaluation of
3 treatment needs (page 9, line 27), inadequate treatment (page 10,
4 line 6), lack of appropriate counseling and social services (page
5 10, lines 7-8), no transition services (page 10, lines 9-10),
6 insufficient Spanish interpreters (page 10, lines 14-15), and
7 failure to treat in the least restrictive environment (page 10,
8 lines 19-20).

9 The state has a statutory obligation to provide
10 rehabilitative services to plaintiffs. RCW 13.40.010(2)(f), RCW
11 72.05.130. The state operates a residential school at Green Hill.
12 RCW 28A.190.030. State defendants are complying with these state
13 statutes by providing the required rehabilitation and education.
14 The sole issue in this case, however, is whether plaintiffs have
15 a constitutional right to the identified services. They do not.

16 While some courts may grant juvenile offenders a
17 constitutional right to rehabilitation, the Ninth Circuit in Gary
18 H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987), adopted the
19 approach of Santana v. Collazo, 714 F.2d 1172, 1177 (1st Cir.
20 1983), which expressly rejected that right. Instead, Gary H.
21 adopted the following test for treatment of juvenile offender:

22 The Constitution requires only minimally adequate training,
23 and a reasonable balance between liberty interests and the
institution's operational needs. (Emphasis added.)

24 831 F.2d at 1432, citing Youngberg v. Romero, 457 U.S. at 822-23.
25 In Youngberg, the court held that a civilly-committed person has
26

1 a due process right to "minimally adequate training" necessary to
2 be free from unreasonable physical restraints. 457 U.S. 822.

3 Plaintiffs request various treatments not related to freedom
4 from physical restraints; that is, they have not stated or even
5 implied that failure to provide these treatments (e.g., an
6 education evaluation) results in undue use of restraints such as
7 aerosol restraint, handcuffs, or isolation. Instead, the
8 identified treatment needs relate simply to general rehabilitation
9 and education of all residents, without regard to whether
10 residents are subject to restraint. (Indeed, plaintiff class is
11 comprised of all residents, and not just those subject to physical
12 restraint.) Even if the allegations are related to freedom from
13 physical restraints, or if there is a general right to treatment,
14 the allegations do not even approach failure to provide "minimally
15 adequate training." Plaintiffs' claims, therefore, simply do not
16 rise to the level of a constitutional violation. Indeed, there
17 are no cases, to the state's knowledge, that grant incarcerated
18 juvenile offenders a constitutional right to such things as
19 education evaluations, parental participation in education, an
20 education comparable to that provided outside the institution, to
21 attend school when rules are violated, treatment evaluations,
22 social services, transition programs, and a certain number of
23 language interpreters.

24 C. Claims related to the physical plant should be dismissed.

25 This subsection addresses specifically plaintiffs' numerous
26 allegations regarding the condition of the physical plant at Green

1 Hill School (pages 4-6). There is no legal claim that any of
2 these alleged conditions actually violate plaintiffs'
3 constitutional rights (pages 10-11). Allegations under 42 U.S.C.
4 § 1983 not tied to a constitutional violation should be dismissed.
5 Franklin v. State, 662 F.2d 1337, 1338 (9th Cir.1981). Thus, any
6 claim related to the physical plant allegations should be
7 dismissed. Because no constitutional claim is asserted, there is
8 no need for further inquiry into these matters.

9 If, however, for the sake of argument, the allegations do
10 constitute claims, most of them should be dismissed as conclusory
11 or failing to allege an injury or a constitutional violation.

12 The claims below are conclusory and fail to allege an injury.

13 1. Plaintiffs allege buildings are in "extreme disrepair",
14 subjecting them to "punitive conditions which jeopardize their
15 health and safety" (page 5, lines 5-8). This claim is conclusory
16 because it does not specific what buildings are in disrepair, what
17 are the conditions of disrepair, how these conditions jeopardize
18 health, and safety, or what the injury is.

19 2. Plaintiffs allege residential cottages are not maintained
20 in a "safe and sanitary condition", are "dilapidated, unclean, and
21 unsanitary", and are not in compliance with "building code
22 standards and requirement" (page 5, lines 9-11). These claims are
23 conclusory because they do not give any specific indication of how
24 the cottages are substandard. Nor do they allege an injury.

25 3. Plaintiffs allege residential cottages are "overcrowded"
26 (page 5, line 15). This claim is conclusory because it does not

1 indicate how the appropriate number of residents in a cottage, the
2 actual number of residents in a cottage, or how cottages are
3 overcrowded. Nor is an injury alleged.

4 4. Plaintiffs allege that, because of overcrowding, certain
5 facilities are "burdened... beyond their capacities", resulting in
6 "unsafe and punitive conditions" (page 5, lines 15-18). This
7 claim is conclusory because it does not indicate a single specific
8 service that is denied or delayed because of the alleged
9 overcrowding. No specific injury is alleged.

10 5. Plaintiffs allege that walls are "cracked" (page 5, line
11 22). No injury is demonstrated.

12 6. Plaintiffs allege that the kitchen and food service have
13 not been maintained in a condition which complies with "applicable
14 health and safety regulations, rules, and standards" (page 6,
15 lines 9-11). This claim is conclusory because it does not state
16 any specific rule that is violated. Nor does it claim that any
17 injury has resulted.

18 The claims below fail to rise to the level of a
19 constitutional violation.

20 1. Plaintiffs allege that residential cottages do not meet
21 building codes (page 5, lines 13-14), and the kitchen does not
22 meet health and safety regulations (page 6, lines 9-11). Besides
23 being conclusory, these claims fail to allege a constitutional
24 violation. While juvenile offenders have a right to safe
25 conditions of confinement, Youngberg v. Romero, 457 U.S. at 315,
26

1 compliance with safety codes is not required by the constitution.

2 As stated in Ruiz v. Estelle, 679 F.2d 1115, 1153 (5th Cir.1982):

3 Moreover, although the standards set by private
4 organizations' safety codes may be instructive in certain
5 cases, they simply do not establish the constitutional
minima; rather they establish goals recommended by the
organization in question.

6 2. Plaintiffs allege that residential cottages are
7 "overcrowded" (page 5, lines 15-19). Besides being conclusory,
8 this claim does not rise to the level of a constitutional
9 violation. Under the Eighth Amendment, overcrowding is not a
10 constitutional violation, unless it results in deprivation of some
11 Eighth Amendment right, such as the right to shelter that is fit
12 for human habitation. Hoptowit v. Ray, 682 F.2d at 249. A due
13 process analysis should be the same. In this case, therefore, the
14 mere allegation of overcrowding in residential cottages is
15 insufficient because there is no allegation that the overcrowding
16 is responsible for deprivation of some constitutional right.

17 D. Recovery under 42 U.S.C. § 1983 is not available for
18 violation of state law.

19 Plaintiffs claim that failure to provide "adequate
20 educational services" violates due process, equal protection, the
21 Washington State Constitution (Article 9, § 1), and Washington
22 State statutes (RCW 28A.190.010-050) (page 11, lines 13-17).

23 As stated, the due process claims must be dismissed because
24 they do not allege deficiencies that would constitute a failure to
25 provide the "minimally adequate" treatment guaranteed by the
26 constitution. The equal protection claim is based on the

1 allegation that plaintiffs do not receive an education equivalent
2 to that received by youths outside the institution (page 9, lines
3 20-21). As stated, this claim is conclusory.

4 Article 9, § 1 of the State Constitution, and RCW
5 28A.190.010-050 entitle Green Hill residents to an education. A
6 claim that these laws have been violated is a state claim that is
7 barred in § 1983 suits. Pennhurst State School & Hosp. v.
8 Halderman, 465 U.S. 89, 121, (1984); Connor v. Sakia, 994 F.2d
9 1408 (9th Cir. 1993).

10 II. CONCLUSION

11 Based on the foregoing, the state respectfully submits that
12 plaintiffs' claims should be dismissed on grounds summarized
13 below.

14 1. Claim: Fourteenth Amendment violated by not providing
15 residents in "disciplinary cottages" with "educational,
16 recreation, and other treatment services appropriate to their
17 needs." Grounds: Conclusory, no constitutional violation.

18 2. Claim: Due process violated by no "adequate procedural
19 protection prior to infliction of harsh and cruel punishment."
20 Grounds: Conclusory, no allegation of harsh and cruel punishment.

21 3. Claim: Due process violated by not protecting residents
22 from "harm while in the state's custody" and not providing
23 adequate "supervision" due to "insufficient numbers of properly-
24 trained staff" to protect residents from injury. Grounds:
25 Conclusory.

26

1 4. Claim: Due process violated by not providing
2 "appropriate health care" due to the fact that facilities are
3 "burdened... beyond their capacities." Grounds: Conclusory, no
4 injury, no constitutional violation.

5 5. Claim: Due process violated by not providing adequate
6 "education programs" that are equivalent to what is provided
7 outside the institution or "alternative education programs".
8 Grounds: Conclusory, no constitutional violation.

9 6. Claim: Equal protection violated by failure to provide
10 an education program equivalent to what is available outside the
11 institution. Grounds: Conclusory.

12 7. Claim: Due process violated by failure to provide
13 "rehabilitative treatment" based on "inadequate treatment" and
14 lack of "appropriate mental health, counseling, and social
15 services." Grounds: Conclusory, no constitutional violation.

16 8. Claim: Due process violated by lack of "classification".
17 Grounds: Conclusory, no constitutional violation.

18 9. Claim: Fourteenth Amendment violated by (1) the manner
19 in which the concentration of OC spray is selected for use, (2)
20 the fact that no person gives final approval to staff before OC
21 spray is used, and (3) a resident's name may be put on OC spray
22 canisters. Grounds: No constitutional violation.

23 10. Claim: Due process violated by failure to provide
24 "rehabilitative treatment" or adequate "education" based on
25 inadequate evaluations, parental participation, exclusion from
26

1 school for violating rules, lack of alternative education
2 programs, inadequate treatment, lack of counseling and social
3 services, no transition services, insufficient Spanish
4 interpreters, and failure to treat in least restrictive
5 environment. Grounds: Conclusory, no constitutional violation.

6 11. Claim: Numerous allegations related to physical plant.
7 Grounds: No constitutional violation even alleged. (In the
8 alternative, see Nos. 12 to 17.)

9 12. Claim: Buildings in disrepair. Grounds: Conclusory.

10 13. Claim: Residential cottages not "safe and sanitary",
11 and "dilapidated, unclean, and unsanitary." Grounds: Conclusory.

12 14. Claim: Residential cottages not in compliance with
13 building codes. Grounds: Conclusory, no constitutional
14 violation.

15 15. Claim: Residential cottages are overcrowded. Grounds:
16 Conclusory, no constitutional violation.

17 16. Claim: Facilities burdened beyond capacity. Grounds:
18 Conclusory.

19 17. Claim: Walls are cracked. Grounds: No injury, no
20 constitutional violation.

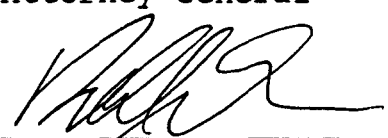
21 18. Claim: Food service not in compliance with health and
22 safety code. Grounds: Conclusory, no constitutional violation.

23 19. Claim: Article 9, § 1 of Washington State Constitution,
24 and RCW 28A.190.010-050, violated by failure to provide "adequate
25 educational services." Grounds: Conclusory, state claim.

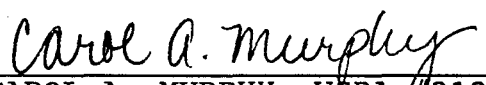
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DATED this 28th day of September, 1994.

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