Horton v. Williams
JI-WA-0002-0010

THE HONORABLE ROBERT J. BRYAN

FILED
LODGED
ENTERED
RECEIVED
OCT 24 1994
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES HORTON, et al., Plaintiffs, vs. BOB WILLIAMS, et al., Defendants.	No. C94-5428 RJB PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO PARTIALLY DISMISS CLAIMS UNDER RULE 12(b)(6)

INTRODUCTION

Defendants Williams, Soliz and Sidorowicz (hereafter the State defendants) move to dismiss some of plaintiffs' claims on the grounds that plaintiffs have failed to allege a constitutional violation and/or have made conclusory allegations.[1] For the reasons below, defendants' Motion to Dismiss should be denied.

[1]/ Although the State defendants purport to seek dismissal of only a portion of plaintiffs' claims, it is not clear which claims they exempt from their Motion to Dismiss. The defendants' Motion appears to encompass all of the claims for relief set forth at pp. 10-11 of plaintiffs' First Amended Complaint.

STANDARD OF REVIEW

In considering a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6), the court must accept plaintiffs' allegations as true and construe them in a light most favorable to them. Abrahamson v. Brownstein, 897 F.2d 389, 391 (9th Cir. 1990). Dismissal is improper unless it appears beyond doubt that the plaintiffs cannot prove any set of facts in support of their claims. Abrahamson, 897 F.2d at 391.

Plaintiffs need not plead facts with great specificity. "Notice pleading" suffices:

> The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which the claim is based. To the contrary, all the rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Conley v. Gibson, 355 U.S. 41, 47 (1975), citing Fed. R. Civ. P. 8(a)(2). Moreover, in an injunctive suit alleging liability under 42 U.S.C. §1983 a federal court may not apply a pleading standard more stringent than the notice pleading required by Fed. R. Civ. P. 8(a). Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, ____ U.S. ____, 113 S.Ct. 1160, 1163 (1993).[2]

> While conclusory allegations unsupported by any specific facts are not sufficient, McCarthy v. Mayo, 827 F.2d 1310, 1316 (9th Cir. 1987), plaintiffs are not required to plead all their evidence in order to avoid dismissal under Rule 12. Under Rule 8, a claim will be sufficiently plead where it provides

---

[2]/ Citing cases which stand for the proposition that pro se litigants are held to a lower standard than attorneys, defendants incorrectly state that a stricter standard applies to civil rights cases filed by experienced attorneys. Defendants' Memorandum at 3, citing, Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985); Balistretri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990); and Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992). While the cases cited by defendants may apply a stricter standard to experienced counsel as compared to pro se litigants, they cannot be read to impose a stricter standard on experienced counsel than on less experienced attorneys, nor can these cases be read to require a "heightened pleading" standard for civil rights litigants because the United States Supreme Court has expressly rejected such a standard. Leatherman, 113 S.Ct. at 1162 (1993).

> fair notice of the nature of the claim and the facts which underlie the claim. In re Genentech, Inc. Securities Litigation, Fed.Sec.L.Rep. (CCH) ¶ 94,960, 1989 WL 201577 (N.D. Cal. 1989); Wright & Miller, Federal Prac. & Proc.: Civil § 1215, pp. 109-110 (1969 ed.). Effective notice pleading should provide the defendant with a basis for assessing the initial strength of the plaintiff's claim, for preserving relevant evidence, for identifying any related counter- or cross-claims, and for preparing an appropriate answer.

Grid Systems Corp. v. Texas Instruments Inc., 771 F.Supp. 1033, 1037 (N.D. Cal. 1991), cited by defendants at p. 3 of their Memorandum.

Under this standard, plaintiffs' First Amended Complaint (hereafter Complaint) certainly provides the State defendants with fair notice of our claims. Indeed, on September 6, 1994, defendants filed an Answer to the Complaint which variously admits and denies plaintiffs' allegations and includes eight affirmative defenses. As evidenced by this Answer, which does not include denials based on lack of information or the need for a statement of more particularized fact, defendants have shown they are able to frame an appropriate answer to the Complaint and to identify related affirmative defenses. Moreover, defendants have also stipulated to class certification in this case which indicates that they are able to understand plaintiffs' claims sufficiently to know that they meet the typicality and commonality requirements of class certification. See, Stipulated Agreement and Order Re: Class Certification, filed on September 27, 1994.[3] Thus, plaintiffs' Complaint should not be dismissed as it gives defendants fair and adequate notice of plaintiffs' claims.

---

[3]/ The cases relied upon by defendants in support of their argument that plaintiffs' complaint should be dismissed on the grounds that our allegations are "conclusory" (Defendants' Memorandum at pp. 4-7) are not persuasive. First, none of the cases cited by defendants were decided by the Ninth Circuit Court of Appeals and, thus, are not controlling here. More importantly, however, many of the cases relied upon by defendants involved requests for dismissal that were reviewed under a "heightened pleading" standard which was rejected by the United States Supreme Court in Leatherman. See, e.g., Lewis v. Wood, 848 F.2d 649, 653 (5th Cir. 1988), citing Elliott v. Perez, 751 F.2d 1472, 1479 (5th Cir. 1985), which was expressly overruled in Leatherman, 113 S.Ct. at 163.

ARGUMENT

I. PLAINTIFFS HAVE PLEADED SUFFICIENT FACTS TO SUPPORT THEIR 42 U.S.C. §1983 AND FEDERAL EDUCATION CLAIMS.

A. 42 U.S.C. §1983 Claims

A plaintiff bringing an action based on 42 U.S.C. §1983 must show that the conduct being complained of was committed by a person acting under color of state law, and that the conduct deprived the plaintiff of a constitutional right. Balistretri v. Pacifica Police Department, 901 F.2d at 699. As shown below, plaintiffs have met the pleading requirements for their Fourteenth Amendment claims brought under 42 U.S.C. §1983.

1. Plaintiffs Have Pleaded Sufficient Facts To Show That The State Defendants Violate Plaintiffs' Fourteenth Amendment Rights By Failing To Provide Reasonably Safe And Sanitary Conditions Of Confinement.

Plaintiffs have alleged that the physical plant at Green Hill School (GHS) is in such disrepair, the ventilation, fire safety, and food service systems are so inadequate, and the facility is so filthy that plaintiffs are not provided a reasonably safe and sanitary environment, thus violating their rights under the Fourteenth Amendment. Plaintiffs also allege that these conditions subject them to an unreasonable risk of harm. Complaint, ¶¶ 16-23. Each of these conditions separately, and considered in light of each other, violate plaintiffs' substantive due process rights.[4]

---

[4]/ Relying on an Eighth Amendment case dealing with adult prisoners, defendants assert that this court may not consider the "totality of conditions" to assess whether plaintiffs have pleaded sufficient facts to state a claim regarding physical plant conditions at GHS. Defendants' Memorandum at 2, citing Hoptowit v. Ray, 682 F.2d 1237, 1247 (9th Cir. 1982). However, plaintiffs' physical plant and conditions claims should be measured against substantive due process, not Eighth Amendment standards. Gary H. v. Hegstrom, 831 F.2d 1430 (9th Cir. 1987). Thus, a "totality of conditions" approach may be appropriate under this more forgiving analysis. Moreover, even though a "totality of conditions" analysis may be improper under the Eighth Amendment, "each condition can be considered in light of

(continued...)

People who are involuntarily incarcerated in state facilities are constitutionally entitled to be free from unreasonable risks of harm, and they have a right to personal safety. Youngberg v. Romeo, 457 U.S. 307, 315-316 (1982). This includes juveniles confined in state correctional institutions. See, Gary H. v. Hegstrom, 831 F.2d at 1433.

The Supreme Court explains the underlying rationale of this principle as follows:

> [W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. ... The rationale for this principle is simple enough: when the State by affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs - e.g., food, clothing, shelter, medical care, and reasonable safety - it transgresses the substantive limits on state action ...

DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 199-200 (1989), quoted in Helling v. McKinney, ____ U.S. ____, 113 S.Ct. 2475, 2480 (1993), citing Youngberg, 457 U.S. at 315-316 (1982).

Each of the unsafe and unsanitary conditions referred to by plaintiffs in their Complaint and delineated below -- taken together and standing alone -- create an unreasonable risk of harm to plaintiffs confined at GHS. As the United States Supreme Court has recently held, conditions that create unreasonable risks of harm may form the basis of a constitutional challenge to institutional conditions of confinement. Helling v. McKinney, 113 S.Ct. at 2481 (deliberate exposure to second-hand smoke may violate the

---

[4](...continued)
other conditions." Hoptowit v. Spellman, (Hoptowit II) 753 F.2d 779, 783 (9th Cir. 1995), citing Hoptowit v. Ray, (Hoptowit I), 682 F.2d at 1256. Nevertheless, plaintiffs state a separate Fourteenth Amendment claim with respect to each condition of confinement.

Eighth Amendment if it poses an unreasonable risk of harm).[5] Thus, contrary to defendants' assertions in their Motion to Dismiss, plaintiffs have adequately stated a claim that conditions at GHS violate plaintiffs' constitutional rights.

a. Physical Plant Conditions.

Plaintiffs make numerous factual assertions about the dilapidated conditions of many of the buildings at GHS which give rise to a constitutional claim. Specifically, plaintiffs allege that buildings at GHS are in an extreme state of disrepair (Complaint, ¶17); are unsafe and dilapidated (Complaint, ¶18); are so overcrowded as to impermissibly and unsafely burden recreational, educational, health and food services (Complaint, ¶19), and are dangerous due to significant structural deficiencies (Complaint, ¶20). Importantly, plaintiffs allege these conditions present unreasonable risks of harm to juveniles at GHS. Complaint, ¶17, 19, 21, and 22. Thus, plaintiffs have sufficiently alleged facts to show that certain physical plant conditions at GHS are unsafe in violation of plaintiffs' right to a safe facility. See, Youngberg v. Romeo, 457 U.S. at 316 (involuntarily confined mental patients have an "historic liberty interest" to safe conditions of confinement protected by the Due Process clause).

b. Sanitation

Plaintiffs make several factual allegations about the lack of sanitation at GHS. Specifically, plaintiffs allege that: (1) the residential cottages are "unclean and unsanitary"

---

[5]/ Throughout their Motion to Dismiss defendants protest that plaintiffs have not stated a claim regarding physical plant conditions because they have not alleged actual harm. See, e.g., Defendants' Motion at pp. 2 and 16. However, under Helling, actual harm is not an element of plaintiffs' claims concerning the environmental conditions at GHS. Plaintiffs need only allege that the conditions under defendants' control subject them to an unreasonable risk of harm.

(Complaint, ¶18); (2) "the gym has standing water on the floor" (Complaint, ¶21), and (3) food service facilities at GHS are unsanitary (Complaint, ¶22). These allegations sufficiently state a constitutional claim since people who are incarcerated are constitutionally entitled to sanitary conditions of confinement. Hoptowit v. Ray, 682 F.2d at 1256 (the Eighth Amendment entitles adult prisoners to sanitary conditions), on appeal after remand, Hoptowit v. Spellman, 753 F. 2d at 783-84. See also, Gary H. v. Hegstrom, 831 F.2d at 1433 (sanitary conditions in a juvenile facility challenged on Fourteenth Amendment grounds). Similarly, unsanitary food preparation areas have been held unconstitutional. Leeds v. Watson, 630 F.2d 674 (9th Cir. 1980); Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981).

c. Fire Safety

Plaintiffs allege that defendants have failed to implement appropriate fire safety measures at GHS placing juveniles at significant risk of serious injury or death. Complaint, ¶23. Indeed, defendants admit in their Answer to plaintiffs' Complaint that there are no fire sprinkler systems at GHS. Defendants' Answer at 3. Courts analyzing the constitutionality of conditions in adult prisons and jails have recognized that such deficient firefighting measures may constitute a constitutional violation. Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974); Hoptowit v. Spellman, 753 F.2d at 783-4; Leeds v. Watson, 630 F.2d at 675-6.

d. Inadequate Heating And Ventilation

The denial of adequate heating and ventilation to people in institutions is unconstitutional. Hoptowit v. Spellman, 753 F.2d at 784; Ramos v. Lamm, 639 F.2d at 569. Plaintiffs here have pleaded facts sufficient to show that the State defendants have violated this constitutional guarantee. Complaint, ¶18. Specifically, plaintiffs allege that the

living units at GHS are inadequately heated and cooled, and improperly ventilated. They further allege that these conditions subject them to an unreasonable risk of harm. Complaint, ¶¶ 15, 17.

2. Plaintiffs Have Pleaded Sufficient Facts To Show That The State Defendants' Disciplinary Practices Violate Plaintiffs' Rights Guaranteed By The Fourteenth Amendment.

Juveniles confined in state correctional facilities have a liberty interest in freedom from restraint and arbitrary punishment that is protected by the due process clause of the Fourteenth Amendment of the United States Constitution. H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986); Cf. Youngberg v. Romeo, 457 U.S. 307 (1982); Bell v. Wolfish, 441 U.S. 520 (1979); Wolff v. McDonnell, 418 U.S. 539 (1974). This includes the right to be free from bodily and chemical restraint, as well as the right to be free from arbitrary confinement in isolation. Youngberg; Wolff. See also, D.B. v. Tewksbury, 545 F.Supp. 896 (D. Or. 1982).

Plaintiffs make numerous allegations concerning defendants' disciplinary practices at GHS. Complaint, ¶¶ 24-43. Plaintiffs' allegations generally concern the State defendants' use of the chemical agent oleoresin capsicum on youth to punish them for violating institutional rules or to coerce their compliance with staff directives (Complaint, ¶¶ 24-34); defendants' use of handcuffs and shackles for disciplinary reasons on youth who are not out-of-control (Complaint ¶¶ 35-38), and defendants' use of disciplinary cottages to punish youth (Complaint, ¶¶ 39-43).

a. Physical and Chemical Restraint

The United States Supreme Court held in Youngberg that "'liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process

Clause from arbitrary governmental action'" Youngberg v. Romeo, 457 U.S. at 317, quoting Greenholz v. Nebraska Penal Inmates, 442 U.S. 1, 18 (1979)(Powell, J., concurring in part and dissenting in part). Juveniles therefore have a due process right to be free from physical restraint and it is also unconstitutional for juvenile corrections officials to use unnecessary force to punish youth.

Courts have consistently found due process violations in the use of corporal punishment to punish juveniles in institutions. Nelson v. Heyne, 355 F.Supp. 451 (N.D. Ind. 1972), aff'd, 491 F.2d 352 (7th Cir. 1973), cert. denied, 417 U.S. 976 (1974) (use of thick board to punish); Morales v. Turman, 383 F.Supp. 53 (E.D. Tex. 1974), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), rev'd and remanded, 430 U.S. 322, remanded on rehearing, 562 F.2d 993 (5th Cir. 1977) (physical beatings and use of tear gas); Santana v. Collazo, 533 F.Supp. 966 (D.P.R. 1982), aff'd in part, 714 F.2d 1172 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1978) (physical beatings); Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982), cert. denied, 460 U.S. 1069 (1983) (grabbing youth by the hair and flinging them against the wall), and H.C. v. Jarrard, 786 F.2d 1080 (11th Cir. 1986) (superintendent shoved juvenile detainees).[6]

At GHS, plaintiffs allege that defendants spray youth with a chemical agent - aerosol oleoresin capsicum - and use physical restraints to punish youth in a manner that causes unnecessary pain and injury. At ¶¶ 24-34 of their Complaint, plaintiffs allege that the

---

[6]/ The United States Supreme Court has also held that even in the absence of serious injury the use of excessive force on prisoners may constitute cruel and unusual punishment under the Eighth Amendment. Hudson v. McMillan, ____ U.S. ____, 112 S.Ct. 995 (1992), citing Whitley v. Albers, 475 U.S. 312 (1986). While the Eighth Amendment standard in these excessive force cases do not govern plaintiffs' corporal punishment claim brought under the Fourteenth Amendment, these cases may be relied upon for the proposition that plaintiffs need not plead facts showing that defendants' disciplinary practices result in serious injury.

chemical spray used to punish juveniles at GHS causes loss of upper body control, paralysis of the larynx, nausea, and coughing. Plaintiffs further allege that defendants are responsible for developing the policies and supervising the practices that result in such punitive and painful uses of restraint. Complaint, ¶¶ 8, 9, 10, 24-43. The use of restraint as alleged by plaintiffs thus constitutes impermissible corporal punishment and the facts alleged by plaintiffs state a claim under the authority cited above.[7]

b. Disciplinary Cottages

Plaintiffs allege that defendants punish youth at GHS by confining them for indefinite periods of time without due process in disciplinary cottages where education and treatment is denied.[8] Complaint, ¶¶ 39-43. Youth who are placed in these restrictive, punitive cells are subject to increased terms of confinement. Complaint, ¶ 42. Release from disciplinary confinement is arbitrarily determined. Complaint, ¶¶ 41, 43.

In Wolff v. McDonnell, 418 U.S. 539 (1974), the United States Supreme Court established basic standards of due process for adult prisoners who face placement in segregation and loss of good time credits. The Court held that prisoners facing punishment or discipline must be given a hearing before an impartial hearing examiner, 24 hour notice in advance of the hearing, must be allowed to call witnesses and present evidence, and be given a written statement by the fact-finders as to the evidence relied on at the hearing and reasons

---

[7]/ Because juvenile delinquent offenders in Washington have not been convicted of a crime, whether defendants' restraint practices are unconstitutional turns on whether or not the restraint is to punish, i.e., "reasonably related to a legitimate governmental purpose" and not excessive. Youngberg, 457 U.S. at 321. Plaintiffs have adequately pleaded facts that show that defendants' restraint practices are punitive and excessive. Complaint, ¶¶ 25-38.

[8]/ "Behavioral cottages", called "intensive management units" by defendants (Defendants' Answer at 5), are isolation or segregation units used to punish youth for violating institutional rules. Complaint, ¶¶ 39-43.

for any disciplinary action taken. Courts have similarly held that juveniles are entitled to procedural protections prior to being isolated for punitive reasons. H.C. by Hewett v. Jarrard, 786 F.2d 1080 (11th Cir. 1986) (damages awarded for the imposition of isolation without procedural due process). Under the reasoning of these cases, the facts plaintiffs have alleged sufficiently state a claim.

3. Plaintiffs Have Pleaded Sufficient Facts To Show That the State Defendants Violate Plaintiffs' Fourteenth Amendment Rights By Failing To Provide Adequate Treatment And Rehabilitative Services In The Least Restrictive Setting.

As defendants concede, under the Juvenile Justice Act of 1977, RCW 13.04 et seq., juvenile offenders in Washington are not convicted of "crimes". Defendants' Memorandum at 12. Commitment to a juvenile institution, like GHS, is primarily for rehabilitation purposes:

> Commitment of a juvenile to an institution is still limited to juvenile facilities established pursuant to RCW 72.05 and 72.16 through 72.20. RCW 13.40.020(9). Looking at those referenced statutes we find again emphasis upon the interest, welfare and rehabilitation of the individual child. For example, RCW 72.05.010 refers to providing certain facilities and services which best serve the welfare of the child and society. RCW 72.0.130 refers to programs for treatment, guidance and rehabilitation. Likewise, RCW 72.19.060 establishes a policy of reformation, training and rehabilitation.

State v. Lawley, 91 Wn.2d 654, 657-658, 591 P.2d 772 (1979). Thus, the Washington Supreme Court has repeatedly held rehabilitation, not punishment, is the paramount goal of the juvenile delinquency system. Id; State v. Schaaf, 109 Wn.2d 1, 743 P.2d 240 (1987), State v. Rice, 948 Wn.2d 384, 655 P.2d 1145 (1982).[9] Indeed, it is because of the more

---

[9]/ In State v. Rice, 98 Wn.2d at 392-93 the Washington Supreme Court compared relevant provisions of the Juvenile Justice Act and the Sentencing Reform Act of 1981 governing adult crimes to show the difference in the purposes of the adult and juvenile systems. Based on this statutory comparison, the Rice court justified the incarceration of (continued...)

benevolent rehabilitative purpose of the juvenile justice system that some of the usual procedures required in an adult prosecution may be relaxed without offending the constitution. State v. Schaaf, 109 Wn.2d at 13 (juveniles in Washington do not have a right to a jury trial).

Over twenty-five years ago the United States Supreme Court set forth why such a different system of justice -- one which emphasizes rehabilitation and treatment -- evolved for juvenile offenders:

> The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone. They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." The child - essentially good, as they saw it - was to be made "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

In re Gault, 387 U.S. 1, 15-16 (1967) (emphasis added)(footnotes omitted).

Thus, as our state and federal juvenile justice jurisprudence has evolved, courts have approved a different system of justice for juveniles, permitting the denial of constitutional rights afforded adults precisely on the ground that juveniles will not be imprisoned in

---

[9](...continued)
juveniles for longer periods than adults committing the same offense on the ground that one of the important purposes of the juvenile system is rehabilitation or, in the language of RCW 13.40.010(2), "responding to the needs of the offender," whereas the adult system "...does not place such an importance on rehabilitation." 98 Wn.2d at 392-393.

punitive adult prisons but rather in rehabilitative facilities for juveniles. This analysis has been described as the quid pro quo theory of the juvenile justice system: basic due process protections -- such as the right to be tried by a jury -- are dispensed with in exchange for treatment in a juvenile facility. See, e.g., Morgan v. Sproat, 432 F.Supp. 1130, 1136 (S.D. Miss. 1977); Inmates of Boys' Training School v. Affleck, 344 F.Supp 1354, 1364 (D.R.I. 1972) ("Thus, the constitutional validity of present procedural safeguards in juvenile adjudications, which do not embrace all of the rigorous safeguards of criminal court adjudications, appears to rest on the adherence of the juvenile system to rehabilitation rather than penal goals ... Rehabilitation ... is the interest which the State has defined as being the purpose of confinement of juveniles ... Thus due process in the juvenile justice system requires that the post-adjudicative stage of institutionalization further this goal of rehabilitation.")

Since the juvenile system in Washington, like those in other states, is premised primarily upon the right to treatment, and because juveniles sacrifice significant constitutional rights in exchange for the promise of treatment, juvenile delinquents in this state have a liberty interest in treatment protected by the due process clause of the Fourteenth Amendment. State v. S.H., 75 Wn. App. 1, 19 P.2d ____ (1994); see also Nelson v. Heyne, 491 F.2d at 358-360. Cf., J.W. v. City of Tacoma, Washington, 720 F.2d 1126 (9th Cir. 1983) (former mental patients have due process right to rehabilitative services), relying on Youngberg v. Romeo, supra.

Defendants are wrong in their assertion that the Ninth Circuit in Gary H. v. Hegstrom determined that juveniles do not have a constitutionally protected right to treatment. Defendants' Memorandum at 14. Gary H. simply does not so hold. The only holding in

Gary H. relevant to the right to treatment question is the Court's rejection of the notion that "any treatment falling short of standards adopted by various professional associations" falls below what is constitutionally required. 831 F.2d at 1432. Contrary to defendants' reading of this case, the implication of the court's holding is that juveniles have a constitutionally based right to treatment, even though the scope of the right may be somewhat limited.

Moreover, although the Ninth Circuit has not addressed the question, several lower courts have held that juveniles' right to treatment encompasses the right to be treated in the least restrictive setting. Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979); Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974, rev'd on other grounds and remanded, 562 F.2d 993 (5th Cir. 1977); Inmates of Boys Training School v. Affleck, 346 F. Supp. 1369 (D.R.I. 1972). This right has its source in the principle that:

> Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose. [Footnotes omitted]

Shelton v. Tucker, 364 U.S. 479, 488 (1960). Thus, when the State interferes with a person's constitutional rights, it must do so in the least burdensome or intrusive manner possible. But see, Society For Good Will To Retarded Children Inc. v. Cuomo, 737 F.2d 1239, 1248 (2d Cir. 1984); Phillips v. Thompson, 715 F.2d 365, 368 (7th Cir. 1983); S.H. v. Edwards, 860 F.2d 1045, 1051 (11th Cir. 1988); Jackson v. Fort Stanton Hosp. & Training School, 964 F.2d 980, 992 (10th Cir. 1992) (state may consider cost limitations and availability of resources in meeting its obligation to provide treatment).

Plaintiffs here have pleaded facts that show that defendants fail to provide youth at

GHS with adequate treatment and rehabilitative services in the least restrictive setting. Complaint, ¶¶ 49-53 and ¶55. Plaintiffs specifically allege that defendants fail to adequately evaluate plaintiffs' treatment needs (¶49); fail to develop individual treatment plans (¶50); fail to provide adequate treatment (¶51); fail to provide mental health counseling (¶52); fail to provide release transition services (¶53); and fail to provide treatment services in the least restrictive environment (¶55). We further allege that plaintiffs James Barnhart and Jerome Payton have been denied adequate rehabilitative services. Complaint, ¶6. Plaintiffs, therefore, state a claim that defendants, acting under color of state law, have deprived them of their constitutionally protected right to rehabilitation in the least restrictive setting.

4. Plaintiffs Have Pleaded Sufficient Facts That The State Defendants Fail To Adequately Train And Supervise Staff At GHS To Ensure The Safety Of Residents In Violation Of The Fourteenth Amendment To The United States Constitution.

Plaintiffs allege that they are injured by the inadequate training and supervision given to staff at GHS. Complaint, ¶56. Plaintiffs further allege that juveniles at GHS are not adequately protected from harm in the state's custody. Complaint, p. 11. This is a constitutionally cognizable claim.

In Youngberg v. Romeo, 457 U.S. 307 (1982), the U.S. Supreme Court held that "minimally adequate or reasonable training to ensure safety and freedom from restraint" is constitutionally required. Youngberg, 457 U.S. at 319. And, in City of Canton v. Harris, 489 U.S. 381 (1989), the Supreme Court held that inadequate training on the use of force can constitute deliberate indifference for purposes of stating an Eighth Amendment claim. See also Davis v. Mason County, 927 F.2d 1473 (9th Cir. 1991), cert. denied, ____ U.S. ____, 112 S.Ct. 275 (1991). The facts plaintiffs allege state a claim under the rationale of these cases.

5. Plaintiffs Have Pleaded Sufficient Facts To Show That The State Defendants Violate Plaintiffs' Right To Health Care Guaranteed By The Fourteenth Amendment.

Plaintiffs make several allegations concerning the inadequacy of health care, including medical, dental and mental health services, at GHS. Plaintiffs allege that plaintiffs Barnhart and Payton have been denied health care (Complaint ¶6) and that the overcrowding at GHS significantly burdens the health care system at GHS, compromising the personal safety of youth there. (Complaint, ¶¶ 13, 16, and 19).[10] Plaintiffs further assert that defendants fail to adequately evaluate plaintiffs' health care needs (Complaint, ¶49), and that defendants fail to provide appropriate mental health services to youth (Complaint, ¶52). Finally, we allege that defendants chemically restrain youth without providing necessary medical and mental health care (Complaint, ¶¶32, 33). Plaintiffs do not, as defendants assert, make only one factual allegation regarding health care services at GHS. Defendants' Memorandum at 13.

As defendants acknowledge, the denial of appropriate health care services to incarcerated juveniles may create unsafe living conditions which give rise to a due process claim under Youngberg v. Romeo, 457 U.S. 307 (1982). Defendants' Memorandum at 13. Under a due process analysis, plaintiffs have pleaded facts which, taken as true, are enough to show that the health care system at GHS violates plaintiffs' due process rights.

Under the Eighth Amendment, the United States Supreme Court has held that it is constitutionally impermissible for prison officials to be deliberately indifferent to the serious medical needs of prisoners. Estelle v. Gamble, 429 U.S. 97, 104-06 (1976). Here, again, however, an Eighth Amendment analysis does not control since this case involves juveniles

---

[10]/ There are almost 200 youth confined in the facility with a capacity of 80. Complaint, ¶¶ 13 and 16.

who have not been convicted of criminal offense; rather, a more protective due process standard applies.[11] Gary H. v. Hegstrom, 831 F.2d at 1432. Nevertheless, Eighth Amendment standards may inform the court's due process analysis. Bell v. Wolfish, 441 U.S. at 1877. Even under the Eighth Amendment, plaintiffs have pleaded facts sufficient to show deliberate indifference.

Plaintiffs' allegation that overcrowding at GHS so burdens the health care system as to render the health care system unsafe (Complaint, ¶19) demonstrates deliberate indifference even under an Eighth Amendment analysis. Courts have found that prison officials demonstrate deliberate indifference by permitting systemic deficiencies in health care:

> . . .[T]he Constitution does not stand in the way of a broader attack on the adequacy of an institute's entire health care system which threatens the well-being of many individuals. And while a single instance of medical care denied or delayed, viewed in isolation, may appear to be the product of mere negligence, repeated examples of such treatment bespeak a deliberate indifference by prison authorities to the agony engendered by haphazard and ill-conceived procedures. Indeed, it is well-settled in this circuit that 'a series of incidents closely related in time . . . may disclose a pattern of conduct amounting to deliberate indifference to the medical needs of prisoners.' When systematic deficiencies in staffing, facilities or procedures make unnecessary suffering inevitable, a court will not hesitate to use its injunctive powers.

Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977)(citations omitted). These are exactly the kinds of systemic deficiencies that plaintiffs here allege exist at GHS. Thus, plaintiffs have stated a claim.

---

[11]/ Plaintiffs' medical care claim as pleaded under the Fourteenth Amendment does not, therefore, require facts showing deliberate indifference or a subjective state of mind element, as required under the Eighth Amendment. See, Estelle v. Gamble, 429 U.S. 97 (1976), and Wilson v. Seiter, 501 U.S. 294 (1991).

6. Plaintiffs Have Pleaded Sufficient Facts To Show That The State Defendants Violate The Constitutional Rights Of Spanish-Speaking Youth By Failing To Provide Language Interpreters.

Plaintiffs allege that defendants violate due process by failing to provide interpretive services to Spanish-speaking juveniles who do not understand English, and that one of the named plaintiffs does not comprehend the rules, policies and services at GHS due to the lack of Spanish-speaking interpreters there. Complaint, ¶¶ 54, 7.

As explained above, the state defendants have a constitutional obligation to ensure that those in their custody are afforded necessary health care and are provided a reasonably safe environment. See, Sections I.A.1. and I.A.4. above. They further have an obligation to provide youth with notice of institutional rules and the potential disciplinary consequences of violating those rules. Wolff v. McDonnell, 418 at 539. It is axiomatic that defendants cannot fulfill these constitutional obligations if they cannot speak to or understand the juveniles in their charge. Juveniles who do not speak English and who are not provided with language interpreters cannot be adequately informed of institutional rules, cannot understand or talk to health care providers, and are unable to participate meaningfully in the educational and other programs available at GHS. Thus, defendants fail to satisfy their constitutional obligations to these non-English speaking residents.

7. Plaintiffs Have Pleaded Sufficient Facts To Show That The State Defendants Violate The Fourteenth Amendment By Excluding Youth From The Education Program At GHS

Plaintiffs allege that defendants exclude juveniles from the education program at GHS arbitrarily and for violations of institutional rules without affording them any due process (Complaint ¶ 48); that residents are not afforded an equivalent education to that given to non-institutionalized youth (Complaint ¶ 47), and that these practices violate the due process and

equal protection clauses of the United States Constitution (Complaint, p. 11, Third Claim).

In Inmates of Boys Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972), the Rhode Island District Court determined that it was illegal to provide dorm-based instruction to juveniles held in a disciplinary unit for behavioral reasons that was not equivalent to that provided to juveniles in the regular population. Under this reasoning, plaintiffs state a cognizable constitutional claim with respect to their education claims.[12]

B. Plaintiffs' Federal Education Claims

Plaintiffs claim the educational services provided to youth at GHS violate the rights of plaintiffs guaranteed by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq. As shown below, plaintiffs have met the pleading requirements for these claims.

The Individuals With Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., mandates that children with disabilities shall be provided an appropriate education which emphasizes special education and related services.[13] 20 U.S.C. §1400(c). This general

---

[12]/ Under Washington law, school age children have a right to education while detained in detention facilities. Tommy P. v. Board of Commissioners, 97 Wn.2d 385, 386, 645 P.2d (1982). This right derives from RCW Tiles 13 (the Juvenile Justice Act) and RCW 28A, as well as Article 9, Section 1 of the Washington State Constitution. Under Article 9, Section 1 of the Washington Constitution, the duty to provide an education to all children in Washington state is mandatory and paramount. Seattle School District v. State, 90 Wn.2d 476, 499, 585 P.2d 71 (1978).

While plaintiffs concede that Pennhurst v. State School & Hospital v. Halderman, 465 U.S. 89 (1984), cited by defendants at p. 19 of their Memorandum, may preclude this Court from deciding plaintiffs' education claims brought under state law, state law may help to inform plaintiffs' equal protection claim in that it establishes the minimum level of educational services provided to non-institutionalized youth in the State which plaintiffs allege are denied to youth at GHS. See, Cassidy v. Adams, 872 F.2d 729 (6th Cir. 1989) (Eleventh Amendment does not bar resolution of state law questions that are prerequisites to determinations of Federal and constitutional questions).

[13]/ The IDEA applies to juveniles incarcerated in state correctional facilities. See, Green v. Johnson, 513 F. Supp. 965 (D.Ma.)

mandate includes the specific requirement that children with disabilities will be identified and evaluated for special educational needs and provided individualized educational plans (IEPs) appropriate to each child's needs. §§ 1401(19), 1414(a)(5). The IDEA also requires the participation of parents or surrogate parents in the development of IEPs. §§ 1400(c), 1401(19), 1412(7), 1415(b)(1)(A),(C),(D),(E) and 1415(b)(2). See also, Honig v. Doe, 484 U.S. 305, 309-312 (1988).

In this case, plaintiffs allege that one of the named plaintiffs, Jerome Payton, is eligible to receive special education services and has been denied them by defendants. Complaint ¶ 6. Plaintiffs further allege that defendants fail to evaluate youth for eligibility for special education and related services (Complaint ¶ 44), that youth are not afforded individualized education plans, and that there is not a process by which juveniles and their parents or surrogate parents may become involved in the IEP process (Complaint ¶¶ 45, 46). These facts state a claim under the IDEA.

II. CONCLUSION

Plaintiffs have alleged sufficient facts in support of their claims. That the State defendants have filed an Answer which includes their affirmative defenses and does not assert a need for a more particularized statement of the facts, and that defendants have stipulated to class certification, shows that Plaintiffs' Complaint is sufficiently specific to give fair notice

of plaintiffs' claims. Defendant's Motion to Dismiss therefore should be denied.

Respectfully submitted this 24th day of October, 1994.

EVERGREEN LEGAL SERVICES
Institutional Legal Services Project
101 Yesler Way, Suite 301
Seattle, WA 98104
(206) 464-0838

Patricia J. Arthur

PATRICIA J. ARTHUR, WSBA #13769
ROBERT A. STALKER, JR., WSBA #13650

NATIONAL CENTER FOR YOUTH LAW
114 Sansome Street, Suite 900
San Francisco, CA 94117
(415) 543-3307

David Lambert (by PJA)

DAVID LAMBERT