IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

R.G., an individual; C.P., an individual by and through her next friend, A.W.; and J.D., an individual, Plaintiffs, vs. LILLIAN KOLLER, Director of the State of Hawai'I Department of Human Services, in her individual and official capacities; SHARON AGNEW, Director of the Office of Youth Services, in her individual and official capacities; KALEVE TUFONO-IOSEFA, Hawai'I Youth Correctional Facility Administrator, in her individual and official capacities; et al., Defendants.	CIVIL NO. 05-00566 JMS/LEK PRELIMINARY INJUNCTION ORDER

PRELIMINARY INJUNCTION ORDER

On December 20 and 21, 2005, the court held an evidentiary hearing on Plaintiffs' Motion for Preliminary Injunction. On February 7, 2006, the court issued its Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction, which contains detailed Findings of Fact and Conclusions of Law and which is hereby incorporated by reference. Having considered all of

the papers, evidence, testimony of witnesses, and arguments of counsel, and for good cause shown, IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants[1] shall not discriminate against, harass or abuse – physically or verbally – any ward because the ward is or is perceived to be lesbian, gay, bisexual, or transgender ("LGBT"). Defendants shall appropriately counsel or discipline employees who violate this provision, and such counseling or discipline shall comply with Hawaii law.

2. Defendants shall not use any form of isolation,[2] excepting temporary emergency protective segregation, as a means of keeping a ward safe from discrimination, harassment or abuse based on actual or perceived LGBT status. Defendants shall adopt a policy defining temporary emergency protective segregation.

3. Defendants shall not prohibit or discourage any form of communication between members of the same sex that is not also prohibited or discouraged between members of different sexes.

4. Defendants shall not use in the course of their employment, and in a manner intended to convey hatred, contempt, or prejudice, terms or slurs that are commonly used to convey hatred, contempt, or prejudice towards LGBT

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[1] "Defendants" means Defendants in their official capacities, and each of them, as well as their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

[2] "Isolation" means placement of a youth alone in a locked room, and includes such practices as lockdown, seclusion, and early dorms. The term isolation does not apply to locking a youth in a room during normal sleeping hours, with normal sleeping hours not to exceed 8 to 10 hours, as long as any period in excess of 8 hours is as part of a behavior modification and/or level system for the youth and not associated with discipline or punishment of the youth (such as "early dorms"). The court adopts this definition from the Memorandum of Agreement Between the United States and the State of Hawaii (Memorandum of Agreement), which is attached as Exhibit A to the Joint Motion for Conditional Dismissal Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure filed in *United States v. Hawaii, et. al.*, Civ. No. 06-00073 JMS/LEK (D. Haw. 2006).

persons. Such terms include "butch," "butchie," "bull," "faggot," "fag" "wahine," "mahu," "cupcake" or "fruitcake." Defendants shall intervene to stop wards from using such terms in a manner intended to convey hatred, contempt, or prejudice towards wards who are or are perceived to be LGBT.

5. Defendants shall take reasonable steps to protect wards from discrimination, or verbal, sexual, or physical harassment or abuse by other wards based on actual or perceived LGBT status.

6. Defendants shall develop policies, procedures, and practices for the Hawaii Youth Correction Facility (HYCF) administration and staff regarding their obligation to refrain from discrimination, harassment, or abuse of wards who are or who are perceived to be LGBT.

7. Defendants shall develop policies, procedures, and practices for HYCF administration and staff regarding their obligation to intervene in discrimination against or abuse or harassment of wards who are or who are perceived to be LGBT.

8. Defendants shall appropriately investigate and respond to grievances[3] by wards at HYCF who allege discrimination, harassment, or abuse based on actual or perceived LGBT status.

9. Defendants shall develop policies, procedures, and practices regarding adequate staffing and supervision of LGBT youth housed at HYCF, so as to minimize incidents of anti-LGBT ward-on-ward harassment.

10. Defendants shall develop policies, procedures, and practices to provide for a classification system that protects wards who are or who are perceived to be LGBT, from other wards.

The court is not an expert in the administration of a secure juvenile

[3] The Memorandum of Agreement requires the Defendants to develop a grievance system at HYCF. The court uses the term "grievance" to refer to any complaint by a ward recognized under this system.

facility or in the development or implementation of policies, procedures and practices with respect to youth who are or who are perceived to be LGBT. Based on the facts, the law, and the exceptional circumstances present in this case, the court finds that there is a need for Defendants to develop the policies, procedures and practices set forth above and to implement and provide training on the same in collaboration with a consultant who has expertise in operating juvenile correctional systems ("Consultant").[4] Preferably, the Consultant should also have experience working with LGBT youth, though this experience is not a requirement.

It is therefore ordered that the parties shall submit to the court, not later than five business days after entry of this Order, names, curriculum vitae and other pertinent information (including experience working with LGBT youth) to aid in the court's selection of the Consultant. The Consultant will guide Defendants in: (1) the prompt development and implementation of policies, procedures and practices necessary to comply with this preliminary injunction; and (2) the development and implementation of appropriate training to the same end.

[4] At a status conference held February 13, 2006, the parties agreed that, on or before March 15, 2006, they will jointly file proposed procedures that HYCF will follow should plaintiff J.D be returned to HYCF. Nothing in this Order alters the parties' obligation to file these proposed procedures by the March 15, 2006 deadline.

The parties, of course, may stipulate to a particular Consultant and provide the court with that Consultant's curriculum vitae within five business days of this Order.

The Defendants may submit the names of their current consultant, Alex Escarcega, and/or their monitor named under the Memorandum of Agreement, Russell Van Vleet, for consideration. If the Defendants wish Escarcega or Van Vleet to assume the role of the Consultant for purposes of this injunction, the Defendants must satisfy the court that either Escarcega or Van Vleet is willing and able to act as the Consultant and that the role of Consultant is consistent with his current position working with the Defendants.

After the Consultant completes an initial assessment of HYCF, the Consultant shall provide the court with a proposed timeline for developing the policies, procedures, and practices required by this Order. The timeline shall also include a proposed schedule for appropriate training on the polices, procedures, and practices, once adopted.[5] This timeline shall be provided to the court not more than 30 days after the selection of the Consultant and is subject to the approval of

[5] The court recognizes that several of the paragraphs contained in this injunction, in particular paragraphs eight, nine, and ten, impose obligations on the Defendants that may overlap substantially with obligations imposed under the Memorandum of Agreement. To the extent that the Defendants and the Consultant decide to incorporate certain policies required by this Order with policies required under the Memorandum of Understanding, the timeline shall reflect this decision and shall provide, to the extent possible, the date by which such policies will be drafted.

this court.

No bond shall be required pursuant to Fed. R. Civ. P. 65(c). This Preliminary Injunction Order shall be binding as provided in Fed. R. Civ. P. 65(d) and shall remain in effect for the duration of this litigation, until further order of the court.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 1, 2006.

J. Michael Seabright
United States District Judge