

Multiple Documents

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND ADVOCACY)
SERVICES COMMISSION, on behalf of its)
clients and constituents;)
JOSHUA HARRISON, GREGGORY SIMS,)
JAMES PANOZZO, on their own behalf and on)
behalf of a class of similarly situated persons,)

Plaintiffs,)

v.)

COMMISSIONER, INDIANA DEPARTMENT)
OF CORRECTION,)

Defendant.)

No. 1:08-cv-1317-RLY-JMS

CLASS ACTION-COMPLAINT

Amended Class Action Complaint for Declaratory and Injunctive Relief

Introduction

1. A significant number of prisoners committed to the care and custody of the Indiana Department of Correction have serious mental illnesses that significantly impede their ability to function within the prison environment. The Indiana Department of Correction provides insufficient programs and placements to treat these prisoners and many are confined in segregation or excessively isolated and harsh conditions which exacerbate their illnesses and conditions where they fail to receive adequate mental health care. The failure of the Indiana Department of Correction and its agents to adequately treat the prisoners in non-segregated and therapeutic environments violates the Eighth Amendment to the United States Constitution, as well as the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794. This action for injunctive and declaratory relief is brought by Indiana Protection and Advocacy Services

Commission (“IPAS”) which is empowered and charged by federal law to protect the rights of mentally ill and developmentally disabled individuals in Indiana and has standing to bring this action on behalf of its numerous clients and constituents who are mentally ill prisoners affected by defendant’s unlawful actions and inactions. It is also brought by three prisoners who suffer from mental illness who bring this action on their own behalf and on behalf of a class of those similarly situated.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331.
3. Declaratory relief is authorized by 28 U.S.C. § 2201.
4. Venue lies in this district pursuant to 28 U.S.C. § 1391.
5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States, as well as being brought pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12132, and the Rehabilitation Act, 20 U.S.C. § 794.

Parties

6. Indiana Protection and Advocacy Services (IPAS) is an agency, created under State law (Indiana Code § 12-28-1-1, *et. seq.*) pursuant to Federal mandate, which agency is funded through eight separate federal programs to advocate for and protect the rights and interests of developmentally disabled individuals, individuals with mental illness, and other persons with disabilities.
7. Joshua Harrison is an adult person who is committed to the Indiana Department of Correction and who is currently confined in the Indiana State Prison.

8. Gregory Sims is an adult person who is committed to the Indiana Department of Correction and who is currently confined in the Indiana State Prison in Michigan City, Indiana.

9. James Panozzo is an adult person who is committed to the Indiana Department of Correction and is currently confined in the New Castle Psychiatric Unit in the New Castle Correctional Facility in New Castle, Indiana.

10. Defendant Commissioner is the duly appointed head of the Indiana Department of Correction (“DOC”), a state agency which receives federal financial assistance and is a public entity as defined under 42 U.S.C. § 12131(1)(B).

Class action allegations

11. Plaintiff Harrison, Sims and Panozzo bring this action on their own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

12. The class is defined as:

all current and future mentally ill prisoners who are committed to the Indiana Department of Correction and who are housed in settings in Department of Correction institutions or in the New Castle Correctional Facility that feature extended periods of time in cells, including, but not limited to, prisoners in disciplinary segregation, administrative segregation, or in the New Castle Psychiatric Unit.

13. As defined, the class meets all the requirement of Rule 23(a) of the Federal Rules of Civil Procedure. Specifically,

a. The class is so numerous that joinder of all members is impracticable. The exact size will be determined through discovery. However, it is believed to be in the hundreds.

b. There are questions of law or fact common to the class – whether their treatment by the Department of Correction violates the Eighth Amendment, the Americans with Disabilities Act, and the Rehabilitation Act.

c. The claims of the representative parties are typical of those of the class.

d. The representative parties will fairly and adequately protect the interests of the class.

14. The further requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure are met in this cause in that the defendant, at all times, has acted and has refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

15. Counsel for plaintiffs are appropriate and adequate attorneys to represent the class and should be appointed as attorneys for the class pursuant to Rule 23(g), Federal Rules of Civil Procedure.

Factual allegations

Facts concerning IPAS

17. The Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq.*, provides for the establishment and funding of systems within each state which are designed to protect and advocate the rights of individuals with mental illness as well as to investigate incidents of abuse and neglect of those with mental illness.

18. The federal funding is to be given to independent agencies or organizations which have the capacity to protect and advocate the rights of individuals with mental illness. 42 U.S.C. §§ 10804, 10805.

19. The system established by each State to protect and advocate the rights of mentally ill individuals must have the authority to “pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State.” 42 U.S.C. § 10805(a)(1)(B).

20. Pursuant to Indiana law, Indiana Code § 12-28-1-1, *et seq.*, IPAS has been designated as the protection and advocacy agency under both the Protection and Advocacy for Individuals with Mental Illness Act and the Developmental Disabilities Assistance and Bill of Rights Act.

21. IPAS receives absolutely no State funding.

22. IPAS has the legal authority to “[p]rovide legal and other advocacy services throughout Indiana to individuals or organizations on matters related to the protection of the legal and human rights of individuals with a developmental disability . . . [and] individuals with a mental illness.” IND. CODE §12-28-1-12(3).

23. IPAS has the legal authority to “sue and be sued” in its own name. IND. CODE § 12-28-1-12(4).

24. IPAS has the legal authority to enter into contractual relationships in its own name. *Id.*

25. IPAS has the legal authority to “apply for, solicit, and accept contributions or grants of money, property, or services made by gift, devise, bequest, grant or other means from any source.” IND. CODE § 12-28-1-12(5).

26. One of IPAS’ primary legal responsibilities is to investigate allegations of abuse and neglect involving individuals with mental illness and to advocate for appropriate treatment and programs for such individuals. IPAS’ legal role is to ensure that their legal and civil rights are provided for and protected; that they are treated with dignity and respect; and that they receive appropriate services to address their needs.

27. IPAS brings this action on behalf of prisoners within the DOC, who are currently clients and constituents of IPAS, and who are mentally ill and are confined in segregation

or other isolated confinement or seclusion settings, and who are not receiving adequate treatment programs.

28. The prisoner clients and constituents of IPAS in this action, confined within the DOC, are confined to “facilities” rendering care and treatment for the mentally ill as that term is defined in 42 U.S.C. § 10802(3).

Facts concerning the levels of confinement within the DOC

29. Prisoners who are committed to the Indiana Department of Correction may be placed in, among other places, an array of state institutions which range from minimally restrictive to high security institutions.

30. These state institutions are owned, managed and operated by the State of Indiana with the exception of the New Castle Correctional Facility which, although owned by the State of Indiana, is operated and managed by the GEO Corporation, a private, for-profit, company, through a contract with the DOC and the DOC is ultimately in control of the care and custody of its prisoners confined there.

31. The lower security institutions feature dormitory-style housing and tend to house prisoners with less violent crimes and shorter criminal histories than those in the higher security-level prisons.

32. The higher security prisons, including Wabash Valley Correctional Facility, Indiana State Prison (also known as Michigan City), and Pendleton Correctional Facility, house many prisoners in cells and have prisoners who, because of their committing offense and criminal history, require closer supervision and restrictive security measures.

33. The higher security prisons contain segregation units where prisoners may be placed either for disciplinary reasons for a specific period of time or for indeterminate periods of time if the prisoners are on administrative segregation.

34. The DOC also maintains, at the Westville Correctional Facility and the Wabash Valley Correctional Facility, secure confinement units which are long-term segregation units.

35. The DOC has specific policies and administrative procedures that govern both administrative and disciplinary segregation of prisoners.

36. By policy and procedure, prisoners who are in segregation will be placed in solitary cells generally for 23 hours each day.

37. They are released from their cells for a minimum of three solitary showers a week and for one hour of daily recreation. Some segregated prisoners receive recreation only 5 days a week.

38. The recreation may be solitary although outdoor recreation may take place in contiguous cages housing other prisoners engaged in outdoor recreation.

General facts concerning the treatment of mentally ill prisoners within the DOC system

39. All medical care, including mental health care, within the DOC, has been contracted to a private, for-profit, company, Correctional Medical Services.

40. Subsequent to the filing of the original complaint in this cause the DOC made changes in its housing and treatment of some, but not all, of its seriously mentally ill prisoners.

41. At the current time the DOC maintains a unit at Wabash Valley Correctional Facility called the Special Needs Unit or SNU that has 134 beds. The purpose of this unit is to provide transition into placement back into general population.

42. The DOC also maintains a crisis mental health stabilization unit at the New Castle Correctional Facility for seriously mentally ill prisoner in need of short term care and treatment. This unit has 32 single cells.

43. Also at the New Castle Correctional Facility there is now a 32 cell Chronic Care Unit for seriously mentally ill prisoners who are deemed to be so seriously mentally ill that they cannot live independently and successfully perform activities of daily living.

44. The New Castle Correctional Facility also contains 64 single cells reserved for seriously mentally ill prisoners who are deemed to be a substantial danger to themselves or others. This is now called the Behavioral Achievement Range. ("BAR").

45. The units housing mentally ill prisoners at the New Castle Correctional Facility are known as the New Castle Psychiatric Unit.

46. Prisoners in the BAR report that they have infrequent contact with mental health staff. A number may have group therapy once a week and may see a therapist for individual discussions intermittently.

47. The prisoners in the BAR are housed behind solid doors which increase their feeling of isolation.

48. They are afforded individual recreation daily for one hour in either an indoor small cage or in an outdoor cage.

49. They are allowed three showers a week that are supposed to be for 15 minutes. However, at times prisoners are locked into the showers for much longer periods of time.

50. The doors to the cells in the BAR are solid doors with a small window and a cuff port that is locked from the outside except when it is opened to slide in meals or for the prisoner to extend his wrists so he can be cuffed from behind before he leaves the cell.

51. The prisoners are fed in their cells.

52. When prisoners are removed from their cells they wear leg chains and their hands are cuffed.

53. The large majority of interactions between the mentally ill prisoners and mental health professionals on the BAR take place in short discussions at cell fronts which require the prisoner and professional to yell at each other through the solid cell door. This is an unsatisfactory and inappropriate mental health intervention inasmuch as there is absolutely no privacy. Because of the lack of confidentiality, it is extremely difficult to accurately assess the prisoner's mental health functioning, and prisoners do not disclose necessary information concerning their mental conditions.

54. Confinement in virtual isolation exacerbates the illnesses of those who are mentally ill and is extremely deleterious to the mental health of mentally ill prisoners.

55. There has recently been at least one suicide and another patient death in the BAR.

The continued segregation of mentally ill prisoners

56. There are a significant number of seriously mentally ill prisoners within the DOC who are confined in segregation units in various DOC institutions.

57. In these units they are subjected to severe isolation and lack of environmental stimulation. This isolation is extremely detrimental and harmful to the mental health of mentally ill persons.

58. In these units the primary, if not sole, contact the prisoners will have with mental health staff will be brief conversations at their cell doors which, for the reasons indicated above, is wholly inadequate.

59. An example of the segregation units to which mentally ill persons are being confined is the Custody and Control Unit which is located at the Wabash Valley Correctional Facility.

60. There are a significant number of prisoners on this unit who are mentally ill.

61. As in all segregation units, those imprisoned in this unit are held in isolation for 23 hours a day. They are released for solitary recreation and showers.

62. The prisoners are held behind solid doors which only increases their isolation and the mental health problems flowing from the isolation.

63. Mentally ill prisoners on this segregation unit report that they are frequently and violently extracted from their cells by armored correctional officers.

64. These violent encounters are often caused by the prisoners' mental illness when, for example, they engage in such irrational behavior as refusing to "cuff up" so they can leave their cells.

65. The Westville Control Unit at the Westville Correctional Facility also contains a large number of seriously mentally ill persons.

66. Mentally ill prisoners confined in other segregation units throughout the DOC do not see mental health staff with any frequency.

The named plaintiffs

Joshua Harrison

67. Joshua Harrison is an adult resident of Indiana.

68. He is currently confined in the Indiana State Prison, although he was in Westville Control Unit from November of 2008 until October of 2009 for disciplinary segregation.

69. He is diagnosed as having an Axis I diagnosis of, among other things, Impulse Control disorder, unspecified.

70. While at the Westville Control Unit he was released from his cell for five one hour solitary recreation periods and five short showers a week. The rest of the time he was confined to his cell.

71. While at the Westville Control Unit he was in the ACT Program, but was removed from it after he received a disciplinary write-up. However, all that occurred in the ACT program was that he completed worksheets in his cell and handed them in to the correctional counselor. He never received any sort of therapy or treatment.

72. While at the Westville Control Unit, approximately every two weeks or so, someone from the mental health department would come to his cell front to ask if he was doing OK. He was never taken out of the cell to talk to a mental health counselor. It was not possible to have meaningful and therapeutic conversations about his mental health issues through his cell door because all other prisoners and staff nearby would be able to hear the conversations.

73. While at the Westville Control Unit he was prescribed medications for his mental illness and approximately every 90 days he was seen by a psychiatrist to review his medications. He refused his medications because they did not do any good and he was not being allowed to receive the medications that have assisted him in the past.

74. He has a history of suicidal behavior.

75. The persistent isolation of the Westville Control Unit made his mental health conditions worse. He had visual and auditory hallucinations. He sat in his cell and stressed all day.

76. While at the Westville Control Unit he was placed in a strip cell for 24 hours at a time for punishment. A prisoner placed in this cell is stripped to his shorts. When he was in the strip cell he was not examined by anyone from the institution's mental health department. He was fed sack food of bologna sandwiches for all his meals.

77. The Westville Control Unit was an inappropriate placement for him and all other persons who are seriously mentally ill. He is aware that there are many other mentally ill prisoners also confined in the isolated environment of the Westville Control Unit.

78. His disciplinary segregation is now over and he has been moved to the Indiana State Prison and reclassified for Administrative Segregation.

79. He has been in administrative segregation in Michigan City previously and is aware that in Administrative Segregation he will continue to be isolated in a solitary cell.

80. He understands that there is no mental health programming or treatment in administrative segregation. Approximately once a month a mental health professional will walk the range and will talk to prisoners at their cell front to assess their situation and condition. It is not possible to have a meaningful conversation with a therapist in this environment.

81. The only time he will be out of his cell regularly is for recreation five days a week for approximately one hour and a 15 minute shower 7 days a week.

82. The continued isolation and lack of treatment will make his mental condition worsen.

83. He desires to have group therapy and other mental health treatment in a prison setting that does not feature prolonged isolation.

84. He has fully exhausted his grievances to challenge the failure to provide him in an adequate setting and with adequate treatment as is shown by the attached. (Exhibit 1).

Greggory Sims

85. Greggory Sims is an adult resident of Indiana.

86. He is diagnosed as having an Axis I diagnosis of unspecified psychosis.

85. He has recently been moved to the Indiana State Prison. Prior to that he was confined in the Westville Control Unit at the Westville Correctional Facility for disciplinary segregation and in other segregated settings within the DOC, including the secure confinement unit at Wabash Valley Correctional Facility which was the subject of the private settlement agreement referred to earlier in this amended complaint.

87. While at the Westville Control Unit he was released from his cell for five one hour solitary recreation periods and five short showers a week. The rest of the time he was confined to his cell.

88. While at the Westville Control Unit he was, for a period of time, in the ACT Program, but was removed from it after he received a disciplinary write-up. However, all that occurred in the ACT program was that he completed worksheets in his cell and handed them in to the correctional counselor. He never received any sort of therapy or treatment.

89. While at the Westville Control Unit periodically, approximately every thirty days or so, someone from the mental health department will come to his cell front to ask if he was doing OK. He was never taken out of the cell to talk to a mental health counselor.

It was not possible to have meaningful and therapeutic conversations about his mental health issues through his cell door because all other prisoners and staff nearby would be able to hear the conversations.

90. He is prescribed medications for his mental illness and approximately every 90 days he is seen by a psychiatrist to review his medications.

91. The persistent isolation of the segregation units he has been in makes him paranoid and makes his mental health conditions worse.

92. The Westville Control Unit was an inappropriate placement for him and all other persons who are seriously mentally ill. He is aware that there are many other mentally ill prisoners also confined in the isolated environment of the Westville Control Unit.

93. He was recently transferred to the Indiana State Prison and has been classified to be placed in administrative segregation..

94. He has been placed into administrative segregation in Michigan City previously and is aware of the conditions there.

95. In administrative segregation prisoners are in solitary cells

96. He will be allowed out for recreation and a shower five days a week for 75 minutes and for another two days will be allowed out for a short period of time during which he can take a shower..

97. On administrative segregation he and the other prisoners are not afforded any regular mental health treatment. Approximately every 30 days someone from the mental health department will come to prisoners' cell fronts and inquire as to their mental status. These are brief conversations only and, as indicated above, it is not possible to have

meaningful and therapeutic conversations about his mental health issues through his cell door because all other prisoners and staff nearby will be able to hear the conversations.

98. He desires to have group therapy and other mental health treatment in a prison setting that does not feature prolonged isolation.

99. In 2007, shortly after he was placed into the Westville Control Unit, he filed a grievance challenging his placement and requesting that he be moved to a place where he can obtain treatment. The grievance was denied and is fully exhausted. The grievance is attached. (Exhibit 2). He has exhausted all available grievances.

James Panozzo

100. James Panozzo is an adult resident of Indiana.

101. He is currently confined in the BAR in the New Castle Psychiatric Unit at the New Castle Correctional Facility.

102. He has been diagnosed in the past as suffering from paranoid schizophrenia as well as schizo-affective disorder. He is currently diagnosed as having antisocial personality disorder as well as borderline personality disorder.

103. He has been confined in the New Castle Psychiatric Unit since October of 2008.

104. He was confined to the secure housing unit at Wabash Valley Correctional Facility for many years.

105. Although he has previously been on anti-psychotic medications, they have been discontinued by the psychiatrist at New Castle.

106. He has frequent auditory hallucinations and sometimes has visual hallucinations.

107. He has a history of injuring himself and has suicidal thoughts.

108. He is very depressed and often does not eat for days.

109. Although he is supposed to be in a setting that treats his serious mental illness, he receives little treatment at New Castle.

110. He is supposed to be in group therapy once a week with two other prisoners. However, the sessions are often cancelled.

111. He is also taken out of his cell to speak individually to a mental health professional. This does not occur frequently. He last met with someone in early September.

112. He is confined to a small solitary cell except for an hour of recreation each day and three showers a week. The showers are only supposed to be for 15 minutes. However, sometimes the guards leave prisoners in the showers for hours.

113. The persistent isolation makes his mental condition worsen.

114. As discipline prisoners may be served nutraloaf instead of regular food. This is a food substance made by cooking vegetables together so they form a block. All the prisoners receive for their meals is a portion of nutraloaf and two pieces of bread. He was fed nutraloaf as punishment for two weeks.

115. Mr. Panozzo attempted to file a grievance concerning his placement. His grievance and the response is attached. (Exhibit 3). He attempted to appeal this but was informed by the staff person who is responsible for grievances, David Ittenbach, that he was not going to assign Mr. Panozzo an appeal number because it was a waste of time. He was therefore not able to appeal the matter further.

116. He has exhausted all grievance remedies that are available to him.

117. The New Castle Correctional Facility is an inappropriate placement for him and all other persons who are seriously mentally ill.

118. He desires to have mental health treatment in a prison setting that does not feature prolonged isolation.

General factual allegations

119. IPAS represents as clients and constituents severely mentally ill prisoners who are placed in segregation throughout the DOC as well as in the BAR.

120. The segregation units as well as the BAR into which the DOC has placed the seriously mentally prisoners, feature severe social isolation, lack of environmental stimulation, and lack of frequent contact with mental health staff and cause psychological deterioration of the prisoners confined there.

121. These conditions create a substantial risk of serious harm to the mentally ill prisoners who are confined there, including plaintiffs, the putative class, and IPAS' clients and constituents, and in fact cause them ongoing and severe harm.

122. These conditions deprive mentally ill prisoners, including plaintiffs, the putative class, and IPAS' clients and constituents, of the minimal civilized measure of life's necessities.

123. The psychological and mental health needs of these prisoners, including plaintiffs, the putative class, and IPAS' clients and constituents, represent a serious medical need and the exacerbation of their illnesses and conditions due to the conditions of their confinement also constitutes a serious medical need.

124. Despite prior litigation which highlighted the danger of confining mentally ill prisoners in 23 hour-a-day isolation, the defendant continues to do so and has failed to provide adequate mental health care for persons so confined, including plaintiffs, the putative class, and IPAS' clients and constituents.

125. The defendant is aware of the risk of harm caused by this form of confinement and is deliberately indifferent to it.

126. The prolonged isolated confinement of mentally ill persons, including plaintiffs, the putative class, and IPAS' clients and constituents, causes severe harm and defendant, at all times, has been aware of this fact.

127. The defendant has not reasonably accommodated the mentally ill prisoners in segregated and isolated conditions, including plaintiffs, the putative class, and IPAS' clients and constituents, by providing appropriate treatment in non-segregated and non-isolated environments.

128. Providing such an accommodation would not be a fundamental alteration in the services provided by the DOC.

129. The continued confinement of mentally ill prisoners, including plaintiffs, the putative class, and IPAS' clients and constituents, in the segregated and isolated conditions noted above, and without appropriate treatment, is causing them irreparable harm for which there is no adequate remedy at law.

130. The mentally ill prisoners confined within the DOC, including plaintiffs, the putative class, and IPAS' clients and constituents, are qualified individuals with a disability as defined in the Americans with Disabilities Act, 42 U.S.C. §§ 12102(2), 12131(2), and the Rehabilitation Act, 29 U.S.C. § 794. Specifically, they have mental impairments that substantially limit one or more of the major life activities, as well as having records of having such impairments and further are regarded as having such impairments.

131. As qualified individuals with disabilities, the mentally ill prisoners within the DOC, including plaintiffs, the putative class, and IPAS' clients and constituents, meet the essential eligibility requirements for the receipt of services or the participation in activities provided by defendant.

132. At all times defendant has acted under color of state law.

Legal claims

133. The continued confinement of mentally ill prisoners, including plaintiffs, the putative class, and IPAS' clients and constituents, in the segregated and isolated conditions noted above, and without adequate and appropriate mental health care and treatment, violates the rights of the prisoners to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution as made applicable to the State of Indiana by the Fourteenth Amendment to the United States Constitution.

134. Defendant has discriminated against the mentally ill prisoners, including plaintiffs, the putative class, and IPAS' clients and constituents, in segregated and isolated confinement throughout the DOC by failing to provide non-segregated and non-isolated housing and increased treatment as a reasonable accommodation to prevent confinement conditions which exacerbate the prisoners' mental illnesses. This represents discrimination against these prisoners in violation of both the Rehabilitation Act and the Americans with Disabilities Act. 29 U.S.C. § 794, 42 U.S.C. § 12132.

Request for relief

WHEREFORE, the individual plaintiffs and IPAS, on behalf of the mentally ill prisoners who are its clients and constituents, request that this Court:

- a. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
- b. Certify this case as a class action as defined above with the class defined as indicated above.
- c. Declare that the actions and inactions of defendant are unlawful and unconstitutional for the reasons specified above.
- d. Enter a preliminary injunction, later to be made permanent, enjoining defendant from continuing to violate the constitutional and statutory rights of the mentally ill prisoners noted above and enjoining it to provide adequate treatment to the prisoners in appropriate and therapeutic settings.
- e. Award plaintiff its costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 , 42 U.S.C. § 12205, and 29 U.S.C. § 794.
- f. Award all other proper relief.

/s/ *Kenneth J. Falk*

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Certificate of Service

I hereby certify that this 12th day of November, 2009, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

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/s/ Kenneth J. Falk
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Attorney at Law

EXHIBIT ONE



Indiana Department of Correction

Westville Control Unit

Offender Grievance Response Report

Case Log #: 52363

DOC No: 132627

Offender Name: Joshua Harrison

Bldg/Range/Bed: B-2-202

Current Facility WCU

TOPIC: Mental Health Care - Access to Mental Health Treatment

Incident Date: 17-AUG-09

Response

LEVEL	Form Issue Date	Level Recelve Date	Response Date
I - Formal Grievance		26-AUG-09	26-AUG-09
Level Response This matter has been addressed and in conferring with Dr.Vanderstoep he sees you quite frequently but did not recommend group counseling. Any transfer to another facility would have to be approved by Central office.			
II - Formal Appeal		08-SEP-09	22-SEP-09

Level Response

Grievance denied. Documentation in the electronic medical record supports Mr. Harrison has been provided access to mental health services. He was last seen by the psychologist on 09/17/09 and he last saw the psychiatrist on 09/15/09.

Rose Vaisvilas APRN MSN
 Director, Health Services

T. Bean
 Executive Assistant

9-22-09
 Date

Josh Harrison
 Student/Offender

9-25-09
 Date

EXHIBIT TWO



Indiana Department of Correction
Indiana State Prison
Offender Grievance Response Report
Case Log # 36512

DOC No: 979154

Offender Name: Gregory Sims

Bldg/Range/Bed: ID-2E-208

Current Facility WCU

D-6-207 2.7

TOPIC: Classification Matters - Housing Assignment(Except Special Housing Unit) Incident Date:

Response

LEVEL	Form Issue Date	Level Receive Date	Response Date
I - Formal Grievance	10-SEP-07	12-SEP-07	14-SEP-07

Level Response

Medical Records indicate that you were seen in the Medical Services Unit on 9-11-07 and you are being referred to the Mental Health Department. C. Ritchie, Medical Services was contacted and stated that you will be schedule to be seen by the facility Psychiatrist as soon as possible.

Capt. Batchelor stated that once you are evaluated by Mental Health staff if a recommendation is made to remove you from IDU or this facility then action will be taken to possibly move you. As of today's date you are appropriately placed.

You will be seen by the Mental Health Department in the very near future. If that department makes a recommendation that you be moved to another unit or facility then that recommendation will be acted on.

II - Formal Appeal	25-SEP-07	27-SEP-07	02-OCT-07
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Level Response

Your appeal has been reviewed and I concur with the response at the facility level 1 response.
Your request to be moved will be up to Mental Health staff and Classification.

Appeal denied

By: L. A. VanNatta
signature on file
Final Level of Review
Offender Grievance Procedure


Executive Assistant

10-3-07
Date

Student/Offender

Date

EXHIBIT THREE



INDIANA DEPARTMENT OF CORRECTION
OFFENDER GRIEVANCE PROGRAM
FORMAL GRIEVANCE
 State Form # 45471

For Official Use Only

Grievance Number

TO: EXECUTIVE ASSISTANT	FACILITY: N.C.C.F.	DATE: 8-20-09
FROM: (OFFENDER NAME & DOC NUMBER) JAMES D. PANOLLO 062308	SIGNATURE OF OFFENDER: <i>James Daniel Panollo</i>	
WORK ASSIGNMENT: IDLE	HOUSING ASSIGNMENT: M-H-513	
INFORMAL COMPLAINT		
Please explain what steps you have taken in order to try to resolve this issue informally. Please indicate the staff person(s) with whom you have discussed this issue and any response(s) or action(s) that were provided to resolve this issue.		
STAFF PERSON(S) CONTACTED: SAWYER, HINSHAW		
STAFF PERSON WHO RESPONDED: NONE DATE RESPONSE RECEIVED: NONE		
STATE COMPLAINT PRESENTED TO STAFF AND THE RESPONSE RECEIVED: (NOTE: A SINGLE ONE-SIDED 8 1/2" X 11" SHEET OF PAPER MAY BE ATTACHED IF NECESSARY TO EXPLAIN YOUR GRIEVANCE.) I NEED TO BE IN A PLACEMENT WHERE I AM NOT SEGREGATED AND WHERE I CAN RECEIVE CONSISTENT MENTAL HEALTH TREATMENT AND MEDICATION		
FORMAL GRIEVANCE		
PROVIDE A BRIEF, CLEAR STATEMENT OF YOUR GRIEVANCE. INCLUDE ANY INFORMATION THAT WAS NOT INCLUDED IN YOUR INFORMAL COMPLAINT THAT MAY ASSIST STAFF IN RESPONDING TO YOUR GRIEVANCE. (NOTE: May be continued on same sheet as used to state your complaint.) SAME AS INFORMAL COMPLAINT		
STATE RELIEF THAT YOU ARE SEEKING. SAME AS INFORMAL COMPLAINT		

David M. [Signature]
 Signature of Executive Assistant

8-21-09
 Date



INDIANA DEPARTMENT OF CORRECTION
OFFENDER GRIEVANCE PROGRAM
RETURN OF GRIEVANCE
 State Form # 45475

GRIEVANCE NUMBER:

TO: OFFENDER NAME AND DOC NUMBER <i>Panozzo, J. 862308</i>	FACILITY: <i>NCF</i>	DATE OF GRIEVANCE: <i>8-20-09</i>
WORK ASSIGNMENT:	HOUSING ASSIGNMENT: <i>M.H.5-573</i>	
DATE GRIEVANCE RECEIVED: <i>8-21-09</i>	DATE GRIEVANCE RETURNED: <i>8-21-09</i>	

THE ATTACHED GRIEVANCE IS BEING RETURNED TO YOU BECAUSE YOU HAVE FAILED TO COMPLY WITH THE ADMINISTRATIVE PROCEDURES FOR POLICY 00-02-101, "OFFENDER GRIEVANCE PROCESS." THIS GRIEVANCE IS BEING RETURNED FOR THE FOLLOWING REASON(S):

☒ No indication you have attempted to resolve this grievance informally. If you have attempted to resolve this grievance informally, please include the required information regarding the action taken and the response received. If you did not attempt to resolve this grievance informally, you have five (5) working days from the date below to attempt to do so; otherwise this grievance will not be considered. Document your informal resolution by attaching a request for interview form with the responding staff member's signature. The grievance is a request for reimbursement or replacement of personal property that has been lost, damaged or destroyed. This claim is handled through the Tort Claim process, Policy 00-01-104. See the Law Library.

☐ This grievance concerns a Classification or Disciplinary Hearing action. These types of actions are to be appealed through their own appeal process and not through the grievance process.

☒ There is no indication that you were personally affected by a Department or facility action or policy/procedure.

☐ This grievance appears to be on behalf of a group and group grievances are not permitted.

☐ This grievance is not signed and/or dated and/or does not include your commitment name and DOC number.

☐ This grievance contains multiple issues. Grievances are to address only one (1) issue unless there is a direct relationship between multiple issues. You may submit separate grievances for the separate issues.

☐ This grievance is not legible, understandable, presented in a courteous manner or contains excessive legal jargon.

☐ This grievance concerns an issue that cannot be resolved by the Department of Correction because the issue is beyond the authority of the Department. This issue may be addressed to: _____

☐ This grievance/appeal was not submitted within the allowed time frame. Unless you can show just reason(s) for this delay, this grievance/appeal will not be reviewed.

☐ The issue in this grievance was reviewed and addressed previously in Grievance # _____

☐ You are identified as a grievance abuser. This grievance exceeds the number of active grievances you are allowed to have in the system. To proceed with this grievance, you must withdraw at least one (1) currently pending grievance.

☒ Other: *Per policy you do not have the right to choose your medical/mental provider.*

PRINTED NAME OF EXECUTIVE ASSISTANT: <i>David L. Littenberg</i>	SIGNATURE OF EXECUTIVE ASSISTANT: <i>[Signature]</i>	DATE OF RESPONSE: <i>8-21-09</i>
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If you wish to proceed with this grievance, you have five (5) working days from the date of response to initiate an informal grievance, if not already done, or to return the corrected grievance to the Executive Assistant.

General Information

Case Name	INDIANA PROTECTION AND ADVOCACY SERVICES COMMISSION et al v. COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION
Docket Number	1:08-cv-01317
Court	United States District Court for the Southern District of Indiana
Nature of Suit	Prisoner Petitions: Habeas Corpus - Prison Condition
Related Opinion(s)	642 F. Supp. 2d 872 2010 BL 98421