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Skinner v. Uphoff



PC-WY-003-004

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

BRAD SKINNER, on his own behalf,
and on behalf of all other persons
similarly situated,

Plaintiffs,

vs.

JUDITH UPHOFF; VANCE EVERETT;
JAMES HEWITT; DAVID EBELL; and)
JOHN DOES 1 THROUGH 6; all in their
individual and official capacities,

Defendants.

Civil Action No. 02-CV-033B

DEFENDANTS' REMEDIAL PLAN

COME NOW the Defendants, Judith Uphoff and Vance Everett, by and through their undersigned attorney, and hereby submit, pursuant to the Court's order of November 27, 2002, their Remedial Plan ("Plan") intended to address and correct the violations outlined by the Court in its order.

INTRODUCTION

On November 27, 2002, this Court entered its Order Granting Plaintiffs Motion for Summary Judgment. The Court's Order addressed Plaintiffs Motion for Partial Summary Judgment on Class Claims. The Court's Order of November 27 does not address the individual claims of the Plaintiff Brad Skinner, which claims remain adjudicated.

In the Court's Order of November 27, the Court granted summary judgment for the Plaintiffs on their class claims and ordered the parties to file proposed "Remedial Plans" which will "promptly and effectively abate the Eighth Amendment violations noted in this decision and reasonably protect against a repetition of those violations." The Court directed that the Remedial Plan "set forth the remedies that will be implemented, the manner of implementation, and a schedule of implementation."

THE DEFENDANTS' PLAN

The Plaintiffs claim and the Court's Order analyzed the alleged Eighth Amendment violation in three parts:

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- “1. failure to adequately supervise and train subordinates in how to investigate and abate dangerous conditions;
 2. failure to develop an effective internal review process for the reporting of policy violations; and
 3. failure to discipline malfeasant employees, thereby substantially jeopardizing inmate safety.”

Without conceding the truth of the Plaintiff's allegations or the correctness of the Court's decision finding an Eighth Amendment violation by these Defendants, the Defendants submit the following Remedial Plan.

Defendants have the right to appeal the decision of the Court and nothing in this submission is intended or shall be construed as a waiver of that right. Further, the individual claims of the Plaintiff, Brad Skinner, have not been adjudicated, the Defendants do not intend and nothing in this submission should be construed as an admission or concession of any fact or question of law which remains undecided in that litigation, including liability or damages. Finally, this entire litigation is governed by the *Prison Litigation Reform Act* (PLRA), 18 U.S.C. § 3626(a)(1)(A), as noted in the Court's Order of November 27, 2002. The PLRA provides that with respect to prospective relief in any civil action respecting prison conditions the federal courts are without jurisdiction to order any relief which extends beyond what is necessary to correct the violation of the federal right of the

particular plaintiff or plaintiffs. Nothing in this submission is intended to grant to the court any authority beyond what is permitted by the PLRA.

Defendants believe their Plan goes beyond the minimum needed to resolve the issues that led to this action. Nevertheless, Defendants are willing to implement the changes outlined because they believe it is based upon good correctional practice.

OVERVIEW

In response to the Court's Order granting Plaintiffs' motion for summary judgment, the Wyoming Department of Corrections ("WDOC") has formulated a Remedial Plan ("Plan"), that addresses the three violations contained in the Court's order and which, when implemented, will reasonably protect inmates from harm resulting from assaults by other inmates at the Wyoming State Penitentiary ("WSP"). The Plan was prepared by the Director, Deputy Director, and Training Division Administrator of the WDOC, along with the Warden of the WSP, and in consultation with George Camp, of Criminal Justice Solutions, Middletown, Connecticut.

Consistent with the Court's Order, the Plan has two goals. They are:

- (1) to provide clear guidance to staff so they can respond appropriately to any known threat of harm to an inmate at WSP; and
- (2) to ensure that staff involvement in protection from harm events is reported, documented, reviewed, and appropriately responded to.

The Plan is presented in three parts. They are:

- (1) Development/Review/Revision of specific WDOC Policies, Administrative Regulations, and Director's Executive Orders;
- (2) Training and Skill Development; and
- (3) Monitor and Track Policy Compliance and Staff Conduct with regard to Protection from Harm at WSP.

The Plan includes specific remedial tasks within each of the three parts of the Plan. Each task is further explained in terms of how it will be accomplished via specific sub-tasks. Lastly, the Plan specifies the time frames within which each sub-task will be accomplished.

ANTICIPATED OUTCOMES

Each of the eight tasks, and one sub-task contained in the Plan has an expected outcome, which cumulatively, will result in lessening the likelihood of harm to inmates at WSP. The outcomes associated with each of these tasks and sub-task are:

- (1) Clear, consistent, and constitutionally sound WDOC policies to guide staff conduct and serve as the basis of lessons to be used in the training of WSP staff in their roles and responsibilities. (Related to all of Part 1 of the Plan.);
- (2) The presence of a trained, skilled person to impartially investigate and objectively assess staff involvement in protection from harm incidents at WSP. (Related to 1.3.2 of the Plan.);

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- (3) Immediate action to isolate inmates from real or perceived threats of harm will be accomplished by WSP staff. (Related to 2.1 of the Plan.);
 - (4) WDOC will have accurate and complete reports on all incidents involving issues of inmate harm. (Related to task 2.2 of the Plan.);
 - (5) Staff will remain knowledgeable as to their roles and responsibilities to reduce the risk of harm to inmates at WSP. (Related to task 2.3 of the Plan.);
 - (6) Appropriate, corrective action for staff misconduct, which may include disciplinary action will be taken. (Related to task 2.4 of the Plan.);
 - (7) Instances of staff misconduct or errors in judgment will be more readily reported, thoroughly investigated and appropriately resolved. (Related to task 2.5 of the Plan.);
 - (8) WDOC will know the extent to which Department policies are being followed and which portions of them require remedial action, thereby decreasing the likelihood of harm to inmates at WSP. (Related to task 3.1 of the Plan.);
 - (9) WDOC will have current and accurate records and reports on staff conduct and misconduct, as well as the Department's response to staff misconduct, associated with their involvement in preventing or breaking up inmate on inmate assaults at WSP. (Related to task 3.2 of the Plan.).

REPORTING

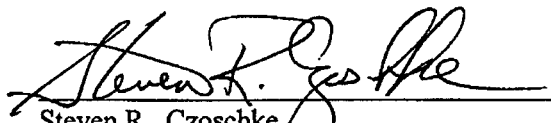
Defendants will submit reports monthly to the Court on the status of its success in implementing the Plan.

CONCLUSION

The Plan is consistent with the Court's stated expectation for a remedial plan. It addresses the Court's order in a practical and realistic manner as well as in a timely fashion. In addition, Defendants believe the Plan is achievable. Finally, the Department either has the resources or has identified realistic means of obtaining the resources necessary to implement the Plan.

Respectfully submitted this 23rd day of December, 2002.

ATTORNEY FOR DEFENDANTS UPHOFF,
EVERETT, HEWITT AND EBELL


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CERTIFICATE OF SERVICE

I, Steven R. Czoschke, do hereby certify that I have caused a true and correct copy of the Foregoing to be sent by First Class, postage prepaid, United States mail, on this 20th day of December, 2002, addressed to the following individuals:

Stephen L. Pevar
ACLUF
32 Grand Street
Hartford, CT 06106

Timothy C. Kingston
Graves, Miller & Kingston
408 West 23rd Street
Cheyenne, WY 82001



ATTORNEY GENERAL'S OFFICE

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
PART 1: DEVELOPMENT/ REVIEW / REVISION OF THE FOLLOWING DOC POLICIES, AR's, and DEO's																				
1.1 - Modify/ Merge/ Update theTemporary Restriction Order policy 3.305 (TRO) and the Protective Custody policy 3.304 (PC). [Clarify roles and responsibilities with regard to responding to requests for, or determining the need for, protection.]	12/25/02	1/7/03	10.00			▼														
1.1.1 - Review, revise relevant WSP Operational Procedures (OP's) to reflect these updated DOC policies.	1/8/03	1/27/03	14.00			▼														
1.2 - Develop Director's Executive Order (DEO) on Delegation of Authority to Discipline Staff.	12/25/02	1/7/03	10.00			▼														
1.3 - Modify/Merge/Update Incident Reporting (A.R. 1.004); Incident Reporting/ Initial Inquiries (DEO 02-003); and Reporting and Investigation of Major Incidents (A.R. 7.017) [Clarify roles/responsibilities in the process of reporting and reviewing violations. Specify who is to report what by when and issues to be addressed in internal reviews. Clarify roles/responsibilities in the process of reporting and reviewing violations.]	11/27/02	1/7/03	30.00			▼	▼													
1.3.1 - Develop a WSP OP to reflect the updated policy(ies).	1/8/03	2/4/03	20.00			▼	▼													
1.3.2 - Assign Responsibilities to the Investigator Position and oversee the hiring process	11/1/02	4/28/03	127.00	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼		
1.3.2.1 - Write Position Description Questionnaire (PDQ). (completed)	11/1/02	11/15/02	10.00	▼																
1.3.2.2 - Advertise Position. (completed)	11/19/02	12/11/02	17.00	▼	▼															
1.3.2.3 - Receive Applications from State's Personnel Division (A& I). (completed)	12/17/02	12/17/02	1.00			▼														
1.3.2.4 - Finalize Assessment Committee and Assess Applications.	12/18/02	1/14/03	20.00			▼	▼													
1.3.2.5 - Assessment Committee Conduct Interviews and DCI conducts background checks on finalists.	1/15/03	3/11/03	40.00			▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼		
1.3.2.6 - Select Person and Offer Position.	3/12/03	3/18/03	5.00					▼												
1.3.2.7 - Starts Work at WDOC	4/1/03	4/28/03	20.00					▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼		

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
1.3.2.7.1 - Develop manual and appropriate policies to guide investigations.	5/1/03	7/23/03	60.00																	
1.3.2.7.2 - Train selected staff at WSP in the investigative process	8/4/03	8/29/03	20.00																	
PART 2: TRAINING AND SKILL DEVELOPMENT OF WSP STAFF																				
2.1 - Train WSP staff on Revised TRO/PC, and on constitutional rights and case law (CR&CL) regarding protection of harm issues.																				
2.1.1 - Write lesson plans. [TRO, PC, CR&CL]	1/28/03	2/17/03	15.00																	
2.1.2 - Establish Training Schedules	2/18/03	3/3/03	10.00																	
2.1.3 - Deliver the training to direct supervision staff [security and unit management]	3/4/03	7/7/03	90.00																	
2.1.4 - Deliver orientation/awareness training to remainder of WSP staff.	3/4/03	12/29/03	215.00																	
2.1.5 - Prepare monthly report on an on-going basis on who received/ who has not yet received training and send to the Chief of Operations and the Warden.	4/7/03	3/26/04	255.00																	
2.1.6 - Maintain indefinitely record of training completion .	3/4/03	3/22/04	275.00																	
2.1.7 - On an on-going basis Chief of Operations acknowledges receipt of monthly report and identifies items requiring follow-up to the Director within seven (7) days.	4/7/03	3/26/04	255.00																	
2.1.8 - Deliver a training module annually on this topic as part of WSP's in service training beginning in 2004.	1/5/04	12/24/04	255.00																	
2.2 - Provide training for WSP supervisors on the results of the modifications in 1.3.																				
2.2.1 - Develop a lesson plan.	2/5/03	2/25/03	15.00																	
2.2.2 - Establish Training schedule.	2/26/03	3/11/03	10.00																	

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
2.2.3 - Deliver the training to approximately 75 supervisors (Corporals through Warden).	3/12/03	7/15/03	90.00					▼												
2.2.4 - Prepare monthly report on an on-going basis on who received/has not received training; submit to Chief of Operations and Warden	4/7/03	3/26/04	255.00					▼												▼
2.2.5 - Maintain indefinitely record of training completion by employee, course, date and lesson plans on an on-going basis.	3/12/03	3/30/04	275.00					▼												▼
2.2.6 - On an on-going basis Chief of Operations acknowledges receipt of monthly report and within seven (7) days identifies items requiring follow-up by the Director.	3/7/03	3/25/04	275.00					▼												▼
2.2.7 - Deliver a training module annually on this topic as part of WSP's in-service training beginning in 2004.	1/5/04	12/24/04	255.00															▼		
2.3 - On-going, in-service training for all WSP staff on their roles and responsibilities in investigations and abating dangers based on agency outcomes and "lessons learned."																				
2.3.1 - Modify lesson plan.	12/1/03	12/12/03	10.00													▼				
2.3.2 - Establish In-Service Training schedule.	12/1/03	12/12/03	10.00													▼				
2.3.3 - Deliver the training to approximately 75 supervisors (Corporals through Warden).	1/5/04	12/17/04	250.00															▼		
2.3.4 - Prepare monthly report on an on-going basis on who received/has not received training; submit to Chief of Operations and Warden	2/9/04	1/7/05	240.00																▼	
2.3.5 - Maintain record of training completion by employee, course, date and lesson plans on an on-going basis.	1/5/04	12/17/04	250.00															▼		
2.3.6 - On an on-going basis Chief of Operations acknowledges receipt of monthly report and identifies within seven (7) days items requiring follow-up by the Director.	2/9/04	1/7/05	240.00																▼	

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
2.4 - Train WSP supervisory staff on the new DEO as noted in 1.2 regarding their specific duties in disciplining employees with regard to when, and under what circumstances, to recommend to the Warden that disciplinary action be taken against employees determined to have violated protection from harm policies.																				
2.4.1 - Develop a lesson plan.	2/5/03	2/25/03	15.00				▼													
2.4.2 - Establish Training schedule.	2/26/03	3/11/03	10.00				▼													
2.4.3 - Deliver the training to approximately 75 WSP supervisors (Corporals through Warden).	3/12/03	7/15/03	90.00				▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼
2.4.4 - Prepare monthly report on an on-going basis on who received/has not received training; submit to Chief of Operations and Warden	4/7/03	3/26/04	255.00					▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼
2.4.5 - Maintain indefinitely record of training completion by employee, course, date and lesson plans.	3/12/03	3/30/04	275.00					▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼
2.4.6 - On an on-going baasis Chief of Operations acknowledges receipt of monthly report and within seven (7) days identifies items requiring follow-up by the Director.	4/7/03	3/26/04	255.00					▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼
2.4.7 - Deliver a training module annually on this topic as part of WSP's inservice training beginning in 2004.	1/5/04	12/24/04	255.00															▼	▼	▼
2.5 - Train WSP staff in WDOC Code of Ethics, Governor's Executive Orders related to expected conduct, and State Personnel rules related to expected conduct.																				
2.5.1 - Update Lesson Plan.	1/28/03	2/17/03	15.00				▼													
2.5.2 - Develop schedule to deliver training to all WSP staff.	2/18/03	3/3/03	10.00				▼													
2.5.3 - Deliver the training to all WSP staff.	3/4/03	7/7/03	90.00				▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼	▼

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
2.5.4 - Prepare monthly report on an on-going basis on who received/has not received training; submit to Chief of Operations and Warden	4/7/03	3/26/04	255.00																	
2.5.5 - Maintain record of training completion by employee, course, date and lesson plans on an on-going basis.	3/4/03	3/29/04	280.00																	
2.5.6 - On an on-going basis Chief of Operations acknowledges receipt of monthly report and identifies within seven (7) days items requiring follow-up by the Director.	4/7/03	3/26/04	255.00																	
2.5.7 - Deliver a training module annually on this topic as part of WSP's inservice training beginning in 2004.	1/5/04	12/24/04	255.00																	
PART 3: MONITOR / TRACK / POLICY COMPLIANCE AND STAFF CONDUCT WITH REGARD TO PROTECTION FROM HARM ISSUES AT WSP.																				
3.1 - Establish Department Policy Monitoring and Compliance Office.																				
3.1.1. Designate and re-classify existing position to the Office and assign existing staff to assist in the completion of Office tasks.																				
3.1.1.1 - Write the PDQ's and classify the position, get approval from A&I	1/6/03	2/14/03	30.00																	
3.1.1.2 - Announce & Advertise Positions	2/17/03	2/28/03	10.00																	
3.1.1.3 - Receive Applications from A&I.	3/3/03	3/3/03	1.00																	
3.1.1.4 - Finalize Assessment Committee and Assess Applications.	3/4/03	3/31/03	20.00																	
3.1.1.5 - Assessment Committee Conduct Interviews and DCI Runs Background Checks on finalists.	4/1/03	5/26/03	40.00																	
3.1.1.6 - Select Person and Offer Position.	5/27/03	6/2/03	5.00																	
3.1.1.7 - Start Work	6/3/03	6/30/03	20.00																	
3.1.2 - Develop protocol for monitoring compliance with targeted policies.	6/2/03	8/1/03	45.00																	

TASK TIMELINE FOR WDOC PLAN TO REMEDY PROTECTION FROM HARM ISSUES

Activity Name	Start Date	Finish Date	Duration	2002		2003												2004		
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
3.1.3 - Establish schedule for auditing compliance with protection from harm policies at WSP.	6/2/03	8/1/03	45.00																	
3.1.4 - Prepare monthly report and submit to the Director on an ongoing basis, on activities, audits conducted, and corrective action plans required.	7/7/03	3/26/04	190.00																	
3.1.5 - Create system to track recommendations and corrective action plan results contained in the reports.	6/2/03	8/1/03	45.00																	
3.1.6 - Conduct Audits at WSP on an on-going basis	8/4/03	3/26/04	170.00																	
3.2 - Ensure that Corrective Action is Taken when Employees Violate DOC Policy, Rules, or State Personnel Rules Regarding Protection from Harm Incidents.																				
3.2.1 - Refine database and/or forms to track inmate on inmate assaults, and staff involved	12/2/02	2/21/03	60.00																	
3.2.1.1 - Refine system to track disciplinary action recommended and taken with regard to protection from harm events.	1/20/03	3/14/03	40.00																	
3.2.1.2 - Tabulate and assess actions involving employee discipline in regard to protection from harm every month on an on-going basis.	4/1/03	3/22/04	255.00																	
3.2.2 - Implement staff incentive program to encourage desired behaviors.	1/6/03	5/9/03	90.00																	
				N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M