

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

MAY 23 1986

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

PARENTS ASSOCIATION OF THE
ST. LOUIS STATE SCHOOL, AND
HOSPITAL, INC., et al.,

Plaintiffs,

v.

CHRISTOPHER S. BOND, et al.,

Defendants.

No. 82-0852-C(2)

CONSENT DECREE

1. In full settlement of all claims alleged in the above-referenced matter, the parties agree to the following decree to be submitted for approval by the Court pursuant to Fed. R. Civ. P. 23(e) without trial, adjudication, or the admission by any party of any allegation or claim made in this action.

2. Full implementation of this agreement may depend upon future legislative appropriations. To the maximum extent possible with all resources available to them, defendants shall comply with the Decree. Where necessary, defendants agree that they shall, in good faith, attempt to persuade the State legislature to provide such additional appropriations as may be necessary to put into effect all components of this Decree. However, if any component of this Decree is not put into effect due to the unavailability of necessary funds, the defendants cannot be found to be in violation of this Decree if they are proceeding as outlined in this paragraph.

3. The term "guardian" as used in this Consent Decree means legal guardian or the parent of a client at the Bellefontaine Habilitation Center (Bellefontaine) under the age of 18.

4. Various provisions of this Decree prescribe rights that may be invoked or exercised within specified periods of time. For example, paragraph 13 (B) provides a twenty-day period during which a parent or other interested family member of a Bellefontaine client for whom a community placement has been recommended may initiate procedures for appointment as a guardian. Paragraph 15 (B) prescribes a fourteen-day period, in the course of a trial visit to a community facility, when consent for such a placement may be withdrawn. In the event that the last day of these and similar time periods set forth herein falls on a weekend or a holiday, the right involved may be timely invoked or exercised on the next business day following such date.

ICF/MR Status

5. Bellefontaine is certified under the Medicaid program as an "intermediate care facility for the mentally retarded" (ICF/MR). Pursuant to this certification, the state of Missouri has received millions of dollars in federal assistance on behalf of Medicaid-eligible clients at Bellefontaine. So long as Missouri participates in the Medicaid program for ICF/MR facilities, defendants agree that they shall attempt in good

faith to maintain ICF/MR certification for all buildings, services and programs at Bellefontaine that are currently certified under the ICF/MR program and, further, that they shall continue to make a good faith effort to obtain ICF/MR certification for all group homes and other utilized residential facilities not currently part of Bellefontaine's Medicaid provider agreement. In the event Missouri withdraws from the Medicaid program for ICF/MR facilities, defendants agree that they shall make a good faith effort to achieve accreditation under the standards set forth by the Accreditation Counsel for the Mentally Retarded and Developmentally Disabled (ACMRDD).

Habilitation

6. Defendants shall continue their current policy of providing treatment and habilitation services to Bellefontaine clients based on an individualized plan of care designed in accordance with recognized standards by an interdisciplinary team of qualified mental retardation professionals. These plans shall be reviewed on a regular basis and, at least annually, parents and legal guardians of Bellefontaine clients shall be strongly encouraged to participate meaningfully in the review process. As appropriate, individualized treatment plans shall be modified to reflect clients' changing needs and their progress, or lack thereof, with respect to identified treatment objectives. Defendants shall make a good faith effort to provide the therapies, treatment, training and services deemed appropriate

for each Bellefontaine client in accordance with his/her individualized plan.

7. Defendants shall make a good faith effort to provide sufficient pre-service and in-service training to Developmental Assistants and other direct care staff assigned to client residences, including regular instruction with respect to the habilitation programs and objectives for the clients under their care, to assure that such staff will be able to intervene effectively when clients exhibit maladaptive behavior, and to interact with clients in a manner consistent with their programming objectives and strategies. Defendants shall maintain an average annual ratio of direct-care staff to clients at a level no lower than that presently prescribed by federal ICF/MR regulations. This last commitment shall apply irrespective of whether Missouri and/or Bellefontaine ceases to participate in the Medicaid provider program for ICF/MR facilities. In addition, defendants shall continue to provide Bellefontaine clients with clothing that is clean, neat and seasonable, specifically including coats and/or other outer garments providing adequate protection from cold during winter months.

8. Defendants agree that they shall continue to adhere to their policy of not using psychotropic and other behavior-modifying drugs as a substitute for behavior programming. Defendants will continue their efforts to reduce the levels of psychotropic medication in use at Bellefontaine. Defendants shall comply with applicable Department of Mental Health

regulations pertaining to psychotropic drug use. In addition, and whether or not prescribed by such regulations, defendants agree that all proposed uses of psychotropic medications, other than for short-term use on an emergency basis, shall be reviewed and approved, prior to implementation, by the client's parent or guardian, and by an independent panel consisting of Bellefontaine staff other than those who proposed the use of psychotropic medication under review.

Specialized Therapies

9. Defendants and plaintiffs agree to incorporate herein the terms of the existing preliminary injunction, and defendants' plan for the implementation of such injunction, governing occupational therapy (OT) and physical therapy (PT) services at Bellefontaine. The reporting requirements of that preliminary injunction shall be continued for three years from the date of this Consent Decree.

Medical Care

10. Defendants will continue to provide high-quality medical and dental care to every Bellefontaine client. Defendants shall use their best efforts, including the provision of adequate staff training, to minimize the risk of errors in the administration of medication to clients. Except in emergencies, defendants shall consult with, and obtain the consent of, clients' parents or guardians in advance of providing medical

treatment (other than routine care) to clients at Bellefontaine, and in advance of initiating any material change to a client's medical treatment, including material changes in medications or medication levels.

Physical Restraints

11. Defendants shall continue to adhere to their policy of not using physical restraints or time-out procedures as a substitute for appropriate programming or for the convenience of Bellefontaine staff. Except in emergencies, physical restraints and time-out procedures shall be used only pursuant to a plan of care developed by the client's interdisciplinary team. Defendants shall comply with applicable Department of Mental Health regulations pertaining to physical restraints and time-out procedures. In addition, and whether or not prescribed by such regulations, all plans of care involving the use of physical restraints and/or time-out procedures shall be reviewed and approved, prior to implementation, by the client's parent or guardian, and by an independent panel consisting of Bellefontaine staff other than those who proposed the use of physical restraints and/or time-out procedures under review. As used herein, "physical restraint" means any physical intervention, mechanical device or mechanical restraint used to restrict the movement of a client or the movement or normal function of a portion of the client's body. As used herein, "time-out" is a behavior modifying procedure involving a

significant exclusion or removal of a client from any positive reinforcement so as to induce a discontinuation of undesired behavior. "Time-out" would include any form of seclusion.

Community Placement

12. Defendants agree that no Bellefontaine resident will be recommended for placement in any other facility unless it has been determined by the resident's interdisciplinary team that such a placement would be more appropriate for the client. The team shall take into account the safety of the resident, among other factors, as a significant consideration in determining the appropriateness of a placement. In making this judgment, the team shall continue to give weight to the views of the resident and his parents, guardians or other involved family members.

13. After a recommendation of placement has been made, the placement shall be implemented in accordance with the following:

A. In the case of a client with a guardian, the placement may occur upon receipt of the written consent of the guardian or after the objection of the guardian has been overruled through the procedures set out in Section 633.135, RSMo, et seq.

B. If a client is recommended for placement and does not have a guardian, but does have interested parents or family members known to the defendants, those parents or family members shall be notified and allowed twenty (20) days from the receipt

of notice to initiate guardianship procedures. Such notification shall include information describing the rights relating to community placement that are secured through guardianship and explaining to the interested parents or family members how they may go about seeking appointment as guardians. Following the twenty (20) day period, defendants may: (1) seek appointment of a guardian, (2) place the client by his consent, subject to the provisions of paragraph 13 (C), below, or (3) place the client over his objection through the procedures set forth in Section 633.135 RSMo, et seq.

C. A client without a guardian may consent to a placement, provided he is capable of giving valid and competent consent. However, no Bellefontaine client shall be placed in another facility under these circumstances unless he is first determined to be able to give valid and competent consent by a licensed psychologist or psychiatrist.

14. Defendants shall continue to observe the requirements of Section 633.145, RSMo, with respect to "transfers" of Bellefontaine clients to other "department mental retardation facilities." In the event that Bellefontaine is administratively merged, or otherwise becomes affiliated with, another state-owned or operated facility not currently a part of Bellefontaine, the same rights and procedures as those prescribed in Section 633.145, RSMo, shall apply to the transfer to such other facility of a Bellefontaine client residing at Bellefontaine at the time any such merger or affiliation is

implemented. Defendants and plaintiffs may agree to alternative procedures that would apply to the transfer of a Bellefontaine client in such circumstances.

15. From time to time, Bellefontaine residents placed in community facilities may fail to make a satisfactory adjustment to their new residential environment. In order to facilitate the process of securing consent to appropriate placements from residents' parents and guardians, defendants agree to the following:

A. Defendants agree that they shall provide readmission on a priority basis to any former Bellefontaine client for whom, in the judgment of the St. Louis Regional Center, a return to Bellefontaine is appropriate.

B. Defendants agree that, with respect to Bellefontaine clients whose placement in the community is based on the consent of the client or his guardian, the following procedures shall apply: the first twenty-eight (28) days following transfer of the client to the community facility shall be deemed a trial visit. During the first fourteen (14) days of this visit, only the St. Louis Regional Center may decide to terminate the visit. During the following fourteen (14) days, the person (client or guardian) who initially consented to the client's visit may withdraw his consent. If consent is withdrawn, the St. Louis Regional Center shall determine whether an appropriate alternative placement in the community is available for the client. If no less restrictive alternative is available and

acceptable to the person withdrawing consent, the client shall be returned to Bellefontaine or placed in a state owned and operated facility, subject to the rights and procedures described in paragraph 14 of this Decree. If consent is not withdrawn during the fourteen (14) day period, the trial visit shall become a regular placement. Nothing herein shall prevent defendants from seeking the placement of a client pursuant to the procedures set forth in Section 633.135, RSMo, et seq., over the objection of a guardian or client.

C. Following the above-referenced twenty-eight (28) day period, the person or persons who initially consented to a client's community placement, or whose objection to such placement was overruled through the procedures set forth in Section 633.135, RSMo, et seq., may submit a request that the client be readmitted to Bellefontaine. Defendants agree that they will give serious consideration to such a request, and that the person or persons making the request shall be given an opportunity, in a meeting with officials of Bellefontaine and/or the St. Louis Regional Center, to set forth reasons why Bellefontaine would be more appropriate for the affected client than the client's community placement.

D. The readmission of any Bellefontaine client pursuant to subsections A, B and C, supra, shall not prevent defendants from attempting on subsequent occasions to place such client in the same or alternative community facilities.

16. Defendants will retain their present policy of

placing Bellefontaine residents in nursing homes only in those rare cases in which the advanced age or physical infirmities of the resident make a nursing home the most appropriate placement.

17. Defendants will make a good faith effort to provide, through caseworkers of the St. Louis Regional Center or otherwise, adequate levels of monitoring and follow-up for Bellefontaine clients who are placed in community facilities.

Physical Plant

18. Defendants will, as soon as practicable, provide such renovations to the group homes at Bellefontaine as are necessary to bring all such residences into compliance with the "institutional occupancy" standards of the Life Safety Code.

Client Injuries

19. Recognizing that some injuries to clients are inevitable at a facility like Bellefontaine, defendants agree that they shall make every effort, consistent with professionally accepted standards of care, to protect clients against physical harm and other forms of abuse. It is acknowledged that certain clients at Bellefontaine, whether due to maladaptive behaviors or other problems, pose a high risk of injury to themselves or others. The composition of this group of clients is subject to change, as is the absolute number of such clients. Defendants agree that, so long as such "high risk" clients are resident at Bellefontaine, they shall be provided with special programming

and increased staffing to protect against injuries and to alter behaviors that lead to injuries.

20. Defendants agree that no more than one Developmental Assistant shall serve on each Board of Inquiry of the Resident Abuse Committee assigned to investigate allegations of staff abuse or neglect. Defendants further agree that the Department of Mental Health shall promptly respond to inquiries regarding the policies and practices governing the Resident Abuse Committee, and that the Bellefontaine Superintendent shall promptly respond to inquiries from parents or guardians regarding allegations of abuse and neglect involving their relatives. In addition, the Bellefontaine Superintendent shall seriously consider recommendations of the Parents Association regarding the operation and makeup of the Resident Abuse Committee.

21. Defendants shall continue to make every effort, consistent with professionally accepted standards of care, to assure that residents are adequately protected from traffic and other hazards on or near the Bellefontaine grounds.

Parents Association

22. At least four times each year, the Superintendent of Bellefontaine shall meet with the Parents Association of the St. Louis State School and Hospital to discuss any issues of concern to the Parents Association. In these discussions the Superintendent shall not disclose confidential information pertaining to individual clients. However, shortly after such

meetings, the Superintendant shall make himself available to meet individually with parents of Bellefontaine clients and to discuss with them issues of concern pertaining to their relatives at Bellefontaine.

23. Defendants agree that they will permit the Parents Association's continued operation of a "Thrift Shop" on the Bellefontaine grounds under terms and conditions consistent with applicable state statutes and regulations. In the event defendants and the Parents Association are unable to reach agreement on such terms and conditions, or in the event the Parents Association decides to relocate its "Thrift Shop" off Bellefontaine grounds, defendants nonetheless shall permit the Parents Association to continue to receive donations of clothing and other articles at the same location at Bellefontaine where such donations are currently received, or at such other location on the Bellefontaine grounds as is mutually acceptable to the Parents Association and defendants and consistent with state statutes and regulations.

State and Federal Law Rights

24. Nothing in this consent decree shall be construed to limit or restrict any rights accorded by State or federal law to Bellefontaine clients, their parents, or other interested family members, or their legal guardians. In the event of any change in State or federal law, or the enforcement of such laws, that requires or effectively requires the defendants to act in a

manner inconsistent with this Decree, the defendants may petition the Court for appropriate modifications to relevant provisions of the Decree.

Implementation

25. For a period of three years from the date of this decree, defendants shall report at least annually to the Court and plaintiffs concerning their compliance with this decree. The Court shall retain jurisdiction over this matter for a minimum of three years and for so long as necessary to ensure that the terms of the decree are being fully implemented.

Attorneys' Fees

26. The parties agree that plaintiffs shall be reimbursed for attorneys' fees and reasonable expenses attributable to: (1) their obtaining certification of this case as a plaintiff-class action; and (2) to the Court's preliminary decision regarding the provision of specialized therapy services to residents at Bellefontaine. The attorneys' fee rate shall be \$75 per hour for out-of-court time and \$95 per hour for in-court time. The parties agree that, so calculated, the amount of fees to be paid to plaintiffs is \$20,000, and the amount of expenses to be paid to plaintiffs is \$5,000. The plaintiffs agree that the defendants shall not be liable for any additional attorneys' fees, costs or expenses relating to the above-referenced matters or other legal services that have been rendered by plaintiffs'

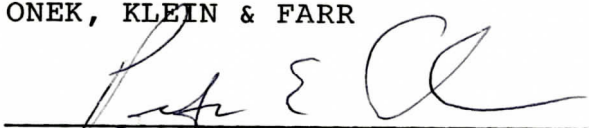
attorneys.

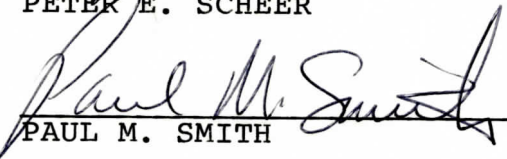
Notice to the Class

27. Notice of this settlement will be sent to all class members and their guardians or closest family members in a form approved by the parties and the Court. Defendants shall be responsible for the distribution of this notice and any further notice that may be required by the Court.

FOR PLAINTIFFS:

ONEK, KLEIN & FARR

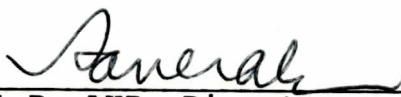

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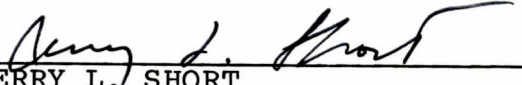
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All parties hereto have entered into an agreement which represents a fair and reasonable settlement and which is in the best interest of class members. Notice has been given in accordance with this Court's order of February 18, 1986, and no objection has been filed. Consequently no additional hearing is necessary nor will be held.

Accordingly,

IT IS HEREBY ORDERED that this consent decree be and is
APPROVED and ENTERED as the judgment of this Court.

Dated this 23rd day of May, 1986.

Edward L. Filippine
UNITED STATES DISTRICT JUDGE

United States District Court

EASTERN DISTRICT OF MISSOURI

OFFICE OF THE CLERK

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EYVON MENDENHALL
CLERK

May 23, 1986

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RE: PARENTS ASSOCIATION OF THE ST. LOUIS
STATE SCHOOL AND HOSPITAL et al vs.
CHRISTOPHER BOND et al
82-852C(2)

Enclosed is a copy of an ORDER entered
this date by the Honorable Edward L.
Filippine in the above-styled cause.

Enclosed is a copy of an ORDER &
MEMORANDUM entered this date by the
Honorable Edward L. Filippine in the
above-styled cause.

Enclosed is a copy of a MEMORANDUM &
ORDER entered this date by the Honorable
Edward L. Filippine in the above-styled
cause.

XX Enclosed is a copy of the CONSENT DECREE
entered this date by the Honorable
Edward L. Filippine in the above-styled
cause.

Very truly yours,

EYVON MENDENHALL, CLERK

By:

Karen Moore
Deputy Clerk

Encl.