

Docket No 5:19-CV-00106-gwc

NOW COMES Plaintiff in the above-referenced matter, by and through counsel, and hereby moves the Court to impose appropriate post-settlement relief as contemplated by Paragraph 6 of the Settlement Agreement approved by the Court on March 20, 2020. (See Document 66-2). Defendants' failure to adequately train, implement and enforce new policies and practices, mandated by this Court through this litigation, require notice to the Court and remedial action, including additional oversight, extension of that oversight, and other remedies directed at preventing ongoing and imminent Constitutional and statutory violations against youth with disabilities detained at Woodside.

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**MEMORANDUM**

The Settlement Agreement approved by the Court in this matter includes a provision allowing Plaintiff to Move directly to request that the Court impose additional, appropriate relief for identified, serious, violations of the agreement. (See Document 66-2). Paragraph #6 of the Agreement states:

*While the Court has jurisdiction, Plaintiff may move for any appropriate relief in the event that 1) DAIL reports that the criteria in Exhibit A were not met, 2) JKM reports that there are areas of concern with respect to Woodside's compliance with SCM, or 3) RLSI issues a finding that any of the three policies identified in paragraph 2 of this Agreement were violated. Appropriate relief may include an extension of the Court's jurisdiction over this matter and/or an enlargement of the monitoring periods established in paragraphs 2 and 3.*

The Department of Disabilities, Aging and Independent Living (DAIL) provided Plaintiff the initial Quarterly Report covering April 2020 to almost the end of June 2020. Of note is that significant incidents likely violating the Settlement Agreement occurred on June 29<sup>th</sup> and 30<sup>th</sup> and were not included in DAIL's review. Plaintiff expects Defendants will work with DAIL to produce a full First Quarter Report that includes *all* incidents that occurred during the specified time-frame. The existing DAIL First Quarter report identified three uses of force involving a total of two youth during the time frame reported: Two uses of force against Youth #1 in April, and one use of force against Youth #2 also in April. DAIL found at least one violation of the relevant policies, relating to designating leadership, a crucial aspect to actually doing the work correctly, in each incident reviewed. In one incident, despite noting that a staff person pushed a youth causing the youth's head to "strike the door with apparent force", the DAIL report does not comment further on the legality or probity of that use of force, other to note that similar policy violations to the other

incidents occurred in this one as well. Overall, while the First Quarter DAIL report finds policy violations triggering Paragraph 6 of the Settlement Agreement, the report itself is not as comprehensive, critical, or as productive as Plaintiff envisioned it to be. Amending the manner and scope of DAIL's ongoing monitoring to improve this process is an appropriate remedy for the Court to consider in light of the violations so far.

Plaintiff has been informed that JKM Training Inc., through the person of Penny Sampson, reported that the uses of force in April and on June 29<sup>th</sup> raised significant concerns about Woodside's compliance with SCM. The use of force in April resulted in a youth's head striking the door with force, and the recent use of force on June 29<sup>th</sup> involving two youth, one of whom was the same youth whose head struck the door with force in April, involved prohibited methods. Review of the video of the June 29, 2020 incident regarding two youth confirms that the same, or even more dangerous, pain-inflicting maneuvers that existed prior to this litigation were used again, despite this Court's Preliminary Injunction Order and Order approving the Settlement Agreement.

In addition to these specific facts (DAIL and JKM reports) that trigger this Court's renewed review of conditions at Woodside, the Court should be aware of additional factors that heighten the perceived risk to youth remaining in the Woodside facility. These facts include that the Woodside Director put in place soon after the Settlement Agreement, and agreed upon by both parties, was suddenly removed from her position last week. This removal was made without a plan for a replacement Director, leaving the facility without strong leadership that can enforce the change of culture required to overcome years of misconduct on the part of staff, conduct that is quickly reverted to as is evidenced by the June 29<sup>th</sup> Use of Force incidents.

In addition, due to Defendants' failure to have a plan accepted by the Legislature regarding Woodside's future, no actual new mental health program with adequate clinical leadership has been developed or implemented, or will be in the foreseeable future. On information and belief, police responses to the facility, and the prior two facilities youth were moved to over this Spring and Summer (St. Albans and Middlesex) before being returned to Woodside, have increased dramatically since the Settlement Agreement, further heightening concerns that Defendants have not acted appropriately to create a new facility/program that is adequate to provide security and treatment to youth with disabilities detained at Woodside.


Youth at Woodside have reported that staff now require grievances be handed from residents directly to staff to pass along to supervisors, contrary to the prior process of having a secure box to deposit grievances in a way that only supervisors would see them. This chilling new process may be related to staff statements in the June 29<sup>th</sup> Incident Reports identifying a desire to litigate and obtain money damages as the motivating factor behind the youth's misbehavior. Far from the staff identifying their own failures to comply with this Court's Orders regarding Constitutional uses of force, staff have documented apparent denigration of the youths' expressions of protest when witnessing staff violate the law.

### **CONCLUSION**

For the reasons put forth above Plaintiff hereby moves this Court to set a prompt hearing in order to determine the extent and severity of Defendants' violations of the Settlement Agreement and appropriate remedies.

Dated this 7<sup>th</sup> of July, 2020.

Respectfully submitted,

A handwritten signature in black ink that reads "A.J. Ruben". The signature is written in a cursive style with a horizontal line underneath it.

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